
From: Frances Brewster <FBrewster@valleywater.org>
Sent: Friday, October 30, 2015 8:03 AM
To: BDCPcomments
Cc: Beau Goldie; Sylvia Van Diemen; Cindy Kao
Subject: SCVWD Comments on BDCP RDEIR-SDEIS
Attachments: 2015-10-30 SCVWD Comments on RDEIR-SDEIS.pdf

The Santa Clara Valley Water District (District) appreciates the opportunity to comment on the Bay Delta Conservation Plan (BDCP)/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). If there are any questions regarding the attached comments, please contact Ms. Cindy Kao at (408) 630-2346, or ckao@valleywater.org.

Sincerely,

Frances Brewster

Santa Clara Valley
Water District



FRANCES BREWSTER
SENIOR WATER RESOURCES SPECIALIST
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October 30, 2015

BDCP/California WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812
Email: BDCPComments@icfi.com

Subject: Comments on Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement

The Santa Clara Valley Water District (District) appreciates the opportunity to comment on the Bay Delta Conservation Plan (BDCP)/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). The RDEIR/SDEIS represents a nine year, bipartisan effort by a diverse group of stakeholders, public water agencies, and State and federal agencies to develop a workable long-term solution to restore the health of the Delta ecosystem and water supply reliability.

However, the California WaterFix is only one part of the State's overall Water Action Plan. The State's Water Action Plan aims to meet three broad objectives: "more reliable water supplies, the restoration of important species and habitat, and a more resilient, sustainably managed water resources system (water supply, water quality, flood protection, and environment) that can better withstand inevitable and unforeseen pressures in the coming decades." The District supports all three of these objectives and urges the State to not lose momentum on implementing a comprehensive approach to address multiple stressors and restoration opportunities. The District supports accelerating habitat restoration through the California EcoRestore program, and also encourages the State to continue efforts to address all the stressors identified in Conservation Measures 2-21 of the BDCP.

Water supply reliability and environmental stewardship are both part of the District's mission as the primary water resource agency for Santa Clara County. The District supplies wholesale water, provides flood protection, and serves as environmental steward for clean, safe creeks and healthy ecosystems for the County's 1.9 million residents and the vital high-tech economy known as "Silicon Valley."

The District was formed in 1929 to address groundwater overdraft and land subsidence in San Jose and adjacent cities, serious conditions that were successfully resolved by the importation of water from the federal Central Valley Project ("CVP") and State Water Project ("SWP"). Today, an average of 40% of Santa Clara County's water supplies are conveyed through the Delta by these projects. The District adopted a Water Master Plan to achieve long-term water supply reliability in Santa Clara County through 2035. Through implementation of the strategies identified in the Water Master Plan, future growth in water demand in Santa Clara County is

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anticipated to be met with increased water recycling and water conservation; however the county will still be dependent on long-term average Delta-conveyed supplies to meet approximately 30 percent of its water needs.

The District remains concerned with continuing to rely on existing conditions of through-Delta conveyance for the District's imported water supplies because of the instability of existing Delta levees, underlying seismic risks, climate change, ongoing regulatory uncertainty, and the Delta's environmental health. To address these concerns, the District has been supporting efforts to achieve the coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem, in balance with the unique and evolving cultural, recreational, natural resource, and agricultural values of the Delta.

The District's desired outcome is a cost-effective, comprehensive, and reliable long-term solution for the Delta that meets the water supply, water supply reliability and water quality needs of Santa Clara County while balancing other beneficial uses and providing a sustainable Delta ecosystem. It is within this context that the District has reviewed the RDEIR/SDEIS.

The fundamental purpose of the new preferred alternative presented in the RDEIR/SDEIS, specifically the California WaterFix, is "to make physical and operational improvements to the SWP/CVP system in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP south of the Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations." This purpose is consistent with the District's desired outcome. Based on the analysis presented in the RDEIR/SDEIS, the California WaterFix has the potential to achieve this purpose. While the California WaterFix does not go as far to restore and protect ecosystem health as the originally proposed BDCP, the analysis indicates that the project would improve flow patterns and reduce entrainment of fish species of concern. In addition, the increased operational flexibility afforded by the new intakes could improve management of the project to avoid diversions at times and locations that harm fish species of concern.

In addition to these environmental benefits, the analysis in the RDEIR/SDEIS suggests that the California WaterFix would significantly stabilize and protect both the quantity and quality of imported water supplies for Santa Clara County by: (1) reducing regulatory risk and improving long-term average water supply reliability (or avoiding loss of long-term average water supply); (2) reducing risk of a prolonged imported water supply interruption due to seismic events and climate change; and (3) improving quality of imported water conveyed through the Delta.

With respect to the District's goal of balancing other beneficial uses, the District commends the State for revisions to the project that lessen the project's impacts on Delta communities. The California Department of Water Resources (DWR) has, in response to public input, revised the preferred alternative to substantially reduce the adverse effects of the project on Delta residents and the Delta environment. The latest design modifications provide for gravity flow of water through the tunnels and include consolidation of previously proposed pumping plants at the tunnel intakes into a single facility at Clifton Court Forebay; these changes reduce visual impacts, facility footprint size, and power needs.

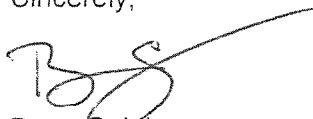
As the District previously stated in its comment letter on the 2013 Draft EIR/EIS for the BDCP, the environmental review document needs to include an assessment of water supply and water quality impacts associated with draw down of the San Luis Reservoir and appropriate measures

to address those impacts. The analysis should consider the real-time operational adjustments that are likely to occur. The District understands that DWR will be responding to all comments on the 2013 Draft EIR/EIS (as well as comments it receives on the RDEIR/SDEIS during this public review process) in the final EIR/EIS and that DWR will be updating its analysis on the issue based on more recent modeling results. Please contact District staff if DWR has questions relating to this issue or if there is any information that the District can provide to assist DWR with completing the updated analysis related to San Luis Reservoir operations.

The District's desired outcome is also a cost-effective solution with costs allocated equitably. In order for the District to support the project, it must make economic sense to Santa Clara County. While the costs and cost allocations among beneficiaries are still being determined, the project must provide for sufficient water supplies, water supply reliability and water quality improvements to justify the substantial financial investment. In addition, there is still significant scientific uncertainty associated with the benefits of many of the operational criteria that constrain export supplies in the proposed project. The District encourages DWR, the U.S. Bureau of Reclamation and the fish and wildlife agencies to commit sufficient staff and financial resources to support a robust collaborative science and adaptive management program which would identify management actions and operational criteria that maximize water supplies while minimizing impacts and avoiding jeopardy to listed fish species.

The District appreciates the lead agencies' consideration of our RDEIR/SDEIS comments. If there are any questions regarding the comments, please contact Ms. Cindy Kao at (408) 630-2346, or ckao@valleywater.org.

Sincerely,



Beau Goldie
Chief Executive Officer

From: Stephanie Riley <sriley@ieua.org>
Sent: Friday, October 30, 2015 9:34 AM
To: BDCPcomments
Subject: FW: 10-29-15 Bay Delta Conservation Plan Water Fix Comments - Sent on Behalf of General Manager Joseph Grindstaff
Attachments: 10-29-15 Bay Delta Conservation PlanWater Fix Comments.pdf

Stephanie Riley
Executive Assistant
Inland Empire Utilities Agency
6075 Kimball Ave
Chino, California
Tel: 909-993-1727

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<http://www.ieua.org>
-----Original Message-----

From: Stephanie Riley
Sent: Thursday, October 29, 2015 3:52 PM
To: 'info@BayDeltaConservationPlan.com' <info@BayDeltaConservationPlan.com>
Cc: Kathryn Besser <kbesser@ieua.org>; Joe Grindstaff <jgrindstaff@ieua.org>; Martha Davis <mdavis@ieua.org>
Subject: 10-29-15 Bay Delta Conservation Plan Water Fix Comments - Sent on Behalf of General Manager Joseph Grindstaff

Please find the attached IEUA letter dated 10-29-15 regarding Bay Delta Conservation Plan Water Fix Comments. A hard copy will also be mailed to your office.

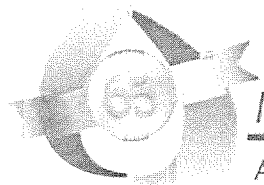
Sent on Behalf of IEUA General Manager Joseph Grindstaff

Thank you,
Stephanie Riley
Executive Assistant

Your message is ready to be sent with the following file or link attachments:

10-29-15 Bay Delta Conservation Plan Water Fix Comments

Note: To protect against computer viruses, e-mail programs may prevent sending or receiving certain types of file attachments. Check your e-mail security settings to determine how attachments are handled.



Inland Empire Utilities Agency
A MUNICIPAL WATER DISTRICT

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October 29, 2015

Bay Delta Conservation Plan/Water Fix Comments
Box 1515
Sacramento, CA 95812

Re: Bay Delta Conservation Plan/Water Fix Comments

On behalf of the Inland Empire Utilities Agency (IEUA/Agency), I would like to provide the following comments on the draft Bay Delta Conservation Plan/California Water Fix (BDCP/Water Fix) and the re-circulated environmental impact report/statement (DEIR/DEIS) as released on July 10, 2015.

The State Water Project (SWP) is a vital component of Southern California's water system, providing roughly 25-30 percent of the region's water needs on average, including critical supplies for replenishment of the region's groundwater basins that are relied upon in drought years. The SWP is of particular importance to the communities served by our Agency since we can use only imported SWP water for groundwater replenishment, as imported water from the Colorado River is too salty. While conservation and local supply development will be the key building blocks of water supply reliability for the southland in coming years, continued imports of water from the Delta, particularly during wet years, will also be essential to sustainable water management for the region.

The vulnerability of both the state and federal water operations in the Delta to interruptions caused by the need to protect threatened and endangered Delta species and the potential for catastrophic earthquakes and flood events are serious concerns that California must address. We continue to believe that the proposed BDCP/Water Fix is the most promising plan to date to solve these challenges and resolve decades of conflicts between agricultural, urban and environmental water users.

The modified preferred alternative outlined in BDCP/WaterFix represents a significant shift in the nine-year planning process that the Department of Water Resources has led. BDCP began as an effort that sought to combine water system and ecosystem improvements within a single permitting construct as a habitat conservation plan under Section 10 of the federal Endangered Species Act (ESA) and as a Natural Communities Conservation Plan under the State ESA law. The modified preferred alternative (Alternative 4a) delineates a different approach, with the WaterFix intake/conveyance improvements proceeding as a stand-alone project with ESA permitting acquired similarly to the approach under the existing ESA permitting/regulatory

Water Smart – Thinking in Terms of Tomorrow

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P. Joseph Grindstaff
General Manager

RECIRC 2505

construct of the SWP. Approximately 30,000 acres of proposed Delta ecosystem improvements, meanwhile, would proceed on a parallel, but separate program now known as California EcoRestore.

IEUA understands that the rationale of this modification is to identify an achievable path to permitting given overwhelming scientific uncertainty on how to best manage the Delta in the coming decades. The ability of public water agencies to participate in a historic reinvestment of the SWP will rely on a final plan that meets the State's co-equal goals of a reliable water supply and restoration of the Delta.

We remain supportive of the overall proposed configuration of the water supply improvements. New intakes in the northern Delta on the Sacramento River would provide the opportunity to divert high-quality supplies and address reverse-flow conditions in the southern Delta that are a result of the existing diversion system. The proposed twin-tunnel conveyance system would protect this supply long-term from threats such as seismic events and sea level rise.

In addition, the proposed project modifications, such as the consolidation of intake pumping into a single facility in the southern Delta on SWP property near Clifton Court Forebay, have further reduced the physical footprint in sensitivity to Delta communities and existing land use activities. And, we continue to support efforts to improve real-time monitoring and embrace adaptive management as essential ways to refine project operations over time to protect both threatened natural fisheries and water supply reliability.

IEUA supports the comments made by the Metropolitan Water District of Southern California, Delta Independent Science Board and the Delta Stewardship Council about the need for additional analyses and information to ensure that Final EIR/EIS provides sufficient information on which to base a final decision that the documents comply with environmental review standards. Specific comments include:

- **Water Supply Reliability:** More and better operational information is needed to compare potential water supply capabilities under various future scenarios. While the DEIR/DEIS provides some information that is useful, it does not sufficiently address the impacts of climate change nor describe operational scenarios that would enable capture of SWP supplies when they are available and the limits on the SWP systems demands when these supplies are not (Gulp-Sip operations).
- **Project Mitigation:** A better description of the habitat mitigation requirements would be helpful, especially given the modification of the project description to allocate ecosystem restoration activities to the proposed California EcoRestore program. A thorough review of all the target mitigation acreages and actions is appropriate in order to settle on a final mitigation strategy that is commensurate with its impacts.
- **Improved Water Quality:** The new modeling and analysis of in-Delta water quality, as a result of proposed water project operations, is helpful information to assure that the state can meet overall water quality objectives in the estuary. Clear descriptions of future water quality monitoring and reporting programs are needed.
- **Flexible Pumping Operations in a Dynamic Fishery Environment:** A provision with more information on an adaptive management approach to project operations will be

helpful in resolving fall outflow requirements for delta smelt, spring outflow requirements for long-fin smelt, and operating constraints for south Delta diversions. Significant improvements in water reliability may be achievable without adversely affecting habitat conditions for important fish species.

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- **Delta Ecosystem Restoration:** While California EcoRestore is a promising approach for habitat restoration, basic operational details remain unclarified. These details are critical to the success of BDCP/Water Fix even though it is now a separate project. The acreage targets and timetables set forth in California EcoRestore cannot be achieved without lead agencies being identified, expeditious planning and the necessary financing being secured. A more robust program description is needed in the BDCP/Water Fix in order to demonstrate that water system investments will be matched with commensurate ecosystem improvements.
- **Seismic and Climate Change Risks:** The modified preferred alternative continues to provide the necessary design and system redundancy to reduce both seismic and climate change risks. However, with the likelihood of levee failure due to a natural disaster increasing, rather than decreasing, additional information on conveyance improvements and the impacts of climate change of operations need to be assessed in tandem to determine the appropriate size of the conveyance system to address these risks.
- **Governance and Adaptive Management:** An adaptive management process to guide future water project operations is essential to the long-term success of California WaterFix. The same holds true for advancing tidal and floodplain habitat restoration projects as mandated in the existing biological opinions for pelagic and anadromous fish species. The need for an effective governance/adaptive management structure in partnership with the public water agencies is as necessary under California WaterFix/California EcoRestore as it was under the previous BDCP construct. Such a structure must be fully detailed and agreed upon before decisions can be made by public water agencies to invest in a final project proposal.

Both the Delta Independent Science Board (Delta ISB) and the Delta Stewardship Council (DSC) were charged by the California legislature in the 2009 Delta Reform Act to provide an independent review of the BDCP program. It is critical that the issues identified by both of these entities be fully addressed in the final BDCP/Water Fix EIR/EIS and the related California EcoRestore program.

In its September 14, 2015, comments on the BDCP/Water Fix, the Delta ISB concluded that the current document "falls short...as a basis for weighty decisions about natural resources. It leaves environmental impact and underlying science unclear by deferring content to the Final EIR/EIS...and by neglecting a number of problems inherited from the Previous Draft." Further, the Delta ISB calls for the more complete and clear assessment of the environmental impacts of the California WaterFix. The full letter is attached for your reference.

The Delta Stewardship Council in its October 28, 2015, comments incorporates the issues identified in the Delta ISB comments. The full DSC letter is attached here for your reference. Additional issues identified by the DSC that we believe are critical to the Final EIR/EIS include the following:

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- Delta Plan and Delta Reform Act Consistency. Under existing law, DWR will need to certify that the final selected project is consistent with the Delta Plan. The Final EIR/EIS needs to provide the necessary findings and fulfill the requirements of California Code Section 85320(b)(2);
- Comprehensive Project Description. The final EIR/EIS must include a clear and complete project description. As currently presented, essential operational aspects of the preferred project are contingent on the results of the Endangered Species Act and State Water Quality Control Board consultation processes. The final EIR/EIS must have a project description that is consistent with and fully informed by the regulatory requirements for the project.
- Evaluation and mitigation of impacts to unique Delta values. The recirculated DEIR/DEIS does not adequately evaluate or mitigate the cumulative impacts of the BDCP/Water Fix alternatives to agriculture, recreation, community character, aesthetics, and cultural resources and inappropriately defers identification of feasible and enforceable measures to mitigate some the impacts that were evaluated.

In closing, this recirculation process represents the final milestone before advancing to a final EIR/EIS and Record of Decision. It represents our final opportunity to provide formal public comments prior to the final phase of this historic planning effort.

We appreciate the exhaustive efforts of both the state and federal administrations to complete this planning process so that a final project and proposal can be advanced sometime next year. It is essential to expeditiously resolve the outstanding issues identified in this comment letter in order for the administration to complete this process and provide assurances that the project will achieve California's co-equal goals. Please know that we do not believe the document has to be perfect before being sent out; rather our intent is to have these comments taken as suggestions for inclusion to improve the ability of decision makers to act on the best information available.

Thank you for your efforts and for considering our comments on this historic draft plan.

Sincerely,
INLAND EMPIRE UTILITIES AGENCY


P. Joseph Grindstaff
General Manager

cc:
California Department of Natural Resources
John Laird, Secretary
Karla Nemeth, Deputy Secretary for Water Policy

California Department of Fish and Wildlife
Charlton Bonham, Director
Carl Wilcox, Policy Advisor on the Delta

California Department of Water Resources
Mark Cowin, Director

California State Water Resources Control Board
Felicia Marcus, Chair

Delta Stewardship Council
Jessica Pearson, Executive Officer

Delta Protection Commission
Erik Vink, Executive Director

Sacramento-San Joaquin Delta Conservancy
Campbell Ingram, Executive Officer

U.S. Bureau of Reclamation
Sue Fry, Manager, Bay-Delta Office

NOAA Fisheries
Maria Rea, Assistant Regional Administrator, CA. Central Valley Office

U.S. Fish and Wildlife Service
Ren Lohoefer, Regional Director, Pacific SWR



DELTA STEWARDSHIP COUNCIL

A California State Agency

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Frank C. Damrell, Jr.
Phil Isenberg
Patrick Johnston
Mary Piepho
Susan Tatayon

Executive Officer
Jessica R. Pearson

October 27, 2015

BDCP/California WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812

SUBJECT: Delta Stewardship Council Comments
Bay Delta Conservation Plan Recirculated Draft Environmental Impact
Statement/Environmental Impact Report

The Delta Stewardship Council (Council) appreciates the opportunity to provide the following comments on the July 2015 Bay-Delta Conservation Plan/CAL Water Fix Partially Recirculated Draft Environmental Impact Statement/Report (Recirculated draft EIR/S). As the Legislature found in enacting the Delta Reform Act of 2009 (Act), the Sacramento-San Joaquin Delta watershed and California's water infrastructure are in crisis and existing Delta policies are not sustainable. The current drought illustrates this crisis. After decades of study, decisions on improved Delta conveyance need to be made promptly to further the coequal goals established by the Act and enshrined by the Council in the 2013 Delta Plan.

As you know, the Council has been watching the BDCP's development since 2010, exercising our consultative and responsible agency roles by commenting on the BDCP's Revised Notice of Preparation, the 2012 and 2013 administrative drafts of BDCP's EIR/S, and the 2013-14 draft EIR/S. Sections of the recirculated draft EIR/S reflect your agency's responsiveness to prior suggestions from the Council and others. Examples include adjustments to Sacramento River diversion facilities that reduce impacts to nearby communities, expanded discussion of impacts to water quality, improved assessment of impacts that may affect Delta wildlife and fish that also rely on habitats downstream in San Francisco Bay, and an improved assessment of cumulative impacts of conveyance improvements and other conservation measures together with other water management actions affecting Bay-Delta water supplies. We thank you for these improvements.

The Council has undertaken its review of the recirculated draft EIR/S: 1) to identify important issues that we believe will need to be more adequately addressed for the BDCP/WaterFix EIR/S to meet the requirements of the California Environmental Quality Act (CEQA) and the

"Coequal goals" means the two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place."

– CA Water Code §85054

Delta Reform Act (see Water Code section 85320); and 2) to improve understanding of how the California WaterFix initiative – if it is ultimately selected by the Department of Water Resources (DWR) as the project – will further the goals established in the Act, achieve consistency with the Delta Plan's regulatory policies and carry out the plan's recommendations.

We recognize that the Council eventually may hear an appeal of DWR's determination that the Water Fix is consistent with the Delta Plan. Should such an appeal occur, the Council will be relying on DWR's certification of consistency as well as its administrative record supporting its certification; the Council's comments on the Recirculated draft EIR/S will not have a pre-decisional effect on the Council's determination with regard to any possible future appeal.

The first attached document was prepared by Council staff working with our consultant team from ARCADIS. It provides our comments on how the recirculated draft EIR/S addresses key CEQA requirements and the unique EIR/S requirements specified in the Delta Reform Act. The attachment is organized according to CEQA requirements and the requirements of the Delta Reform Act. The requirements often overlap, however, and we have tried not to repeat comments made in one area even though they may apply to other areas as well. Key points include:

- Delta Reform Act requirements. Our comments suggest several additional improvements to address the requirements of Water Code section 85320(b)(2) concerning the BDCP's EIR/S's review and analysis of important Delta resources.
- Effects on opportunities to restore habitats in the Cosumnes-Mokelumne high priority habitat restoration area. The new Alternatives 4A (California WaterFix), 2D and 5A, while reducing impacts on Delta communities and their residents' quality of life, also propose new features, including a new forebay and reusable tunnel material storage site, barge landing, and temporary access road adjoining Snodgrass Slough and an outlet tower/safe haven and temporary access road on the McCormack Williamson Tract. These features' compatibility with opportunities for habitat restoration within this area, as called for by the Delta Plan's regulatory policies (CCR 5007), should be assessed.
- Avoiding or better mitigating impacts to water quality, wetlands and other aquatic habitats, and the unique values of the Delta. Some adverse effects of the California WaterFix to the Delta's unique values may be unavoidable, but better mitigation can reduce harm to agriculture, recreation, communities, aesthetics, and cultural resources, so that the magnitude of change is more compatible with protection of the Delta as an evolving place.

The second attachment is the independent review of the recirculated draft BDCP EIR/S prepared by the Delta Independent Science Board (ISB), which we reference and make part of

BDCP/California WaterFix Comments
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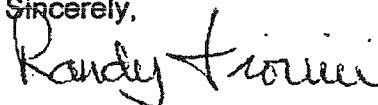
the Council's comments on the draft EIR/S. The ISB completed its review pursuant to Water Code section 85320(c), which directs it to review the BDCP's EIR/S and submit its comments to the Council and Department of Fish and Wildlife. The Delta Reform Act provides that the Delta Plan shall be based on the independent scientific advice provided by the ISB (Water Code section 85308(a)). The ISB's recommendation that the final EIR/S should use best available science, while not required by CEQA, may facilitate DWR and DFW's use of best available science for purposes of the Natural Community Conservation Planning Act, certification that the project is consistent with the Delta Plan's regulatory policy requiring use of the best available science (23 CCR 5002(b)(3)), and/or decisions about the project by DWR and other agencies. As you consider the ISB's comments, please respond as if they had been submitted by the Council.

As you know, Council staff meets regularly with WaterFix staff to discuss Council comments and issues of concern, and we have considered your feedback in preparing these comments. We appreciate the pledge that the final EIR/S and related documents will address several key issues raised in the prior comments of the Council and the ISB on the draft EIR/S. These include:

- The adaptive management process, including monitoring and collaborative science.
- Flow criteria and the water available for other beneficial uses (Water Code section 85320 (b)(2)(A)).
- The potential effects of climate change, including sea level rise and changes in precipitation and runoff, on conveyance alternatives considered in the EIR, including their operation (Water Code section 85320 (b)(2)(C)).
- Sacramento and San Joaquin River flood management (Water Code section 85320 (b)(2)(D)).
- The resilience and recovery of Delta conveyance alternatives in the event of catastrophic loss by earthquake, flood, or other natural disaster (Water Code section 85320 (b)(2)(F)).

The Council supports successful development and implementation of conveyance improvements that fulfill the Delta Reform Act's requirements and the Delta Plan. We offer the opportunity for your staff to meet with ours for additional details on any of the comments in the attachments. Through consultation between our agencies, we believe our comments can be addressed satisfactorily. We look forward to working with you over the coming months as you complete the final BDCP/WaterFix EIR/S. Please contact Dan Ray at (916) 445-4294 if you would like to discuss these comments further.

Sincerely,



Randy Fiorini, Chair
Delta Stewardship Council

RECIRC2505

REVIEW COMMENTS
BAY DELTA CONSERVATION PLAN
July 2015 PARTIALLY RECIRCULATED DRAFT
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT
STATEMENT
Prepared by the
DELTA STEWARDSHIP COUNCIL
October 2015

I. INTRODUCTION

This document presents comments prepared by Delta Stewardship Council (Council) on the July 2015 partially recirculated draft Environmental Impact Report/Environmental Impact Statement (EIR/S) of the Bay Delta Conservation Plan (BDCP). The purpose of our review is to offer constructive suggestions regarding how, in our judgment, the BDCP EIR/S could better meet the requirements of the California Environmental Quality Act (CEQA), the applicable provisions of the 2009 Delta Reform Act, and the Delta Plan's regulatory policies and recommendations.

These comments include:

- A summary of key issues
- A reminder about the Delta Reform Act's provisions with respect to the Delta Stewardship Council's role and DWR's responsibility to certify that its preferred alternative is consistent with the Delta Plan.
- Comments on the recirculated EIR's assessment of impacts and its mitigation proposals for water quality, biological resources, water supplies, agriculture, recreation, community character, aesthetics, and cultural resources.

II. SUMMARY OF KEY ISSUES AND RECOMMENDATIONS

Relative to our review of the recirculated draft BDCP EIR/S, we offer the following summary of key issues and recommendations:

- A. Delta Plan and Delta Reform Act consistency. *Issue:* If the California WaterFix is ultimately chosen as the project, DWR will need to certify that the California WaterFix is consistent with the Delta Plan. In addition, because the BDCP as originally proposed is still a viable alternative, the BDCP EIR should fulfill the requirements of Water Code section 85320(b)(2). *Recommendation:* Continue consultation with Delta Stewardship Council staff as the final EIR/S is completed and certification of consistency with the Delta Plan is contemplated.
- B. Comprehensive project description. *Issue:* The final EIR/S needs a project description that is complete. Important operational aspects of the preferred project are contingent upon the results of Endangered Species Act and State Water Resources Control Board consultation processes;

Recommendation: The final EIR/S's project description should be consistent with and fully informed by regulatory filings for the project.

- C. Adaptive management. *Issue:* The project needs an adequate adaptive management program. *Recommendation:* Consult with the Delta Science Program and affected regulatory agencies to describe an adaptive management program.
- D. Water Quality. *Issue:* Implementation of measures proposed to mitigate potential impacts to water quality for in-Delta water users may prove cumbersome and protracted. *Recommendation:* Identify a water quality monitoring and compliance program in the final EIR/S and/or its mitigation monitoring and reporting plan. Improve the process and better balance the burdens for identifying and implementing operational changes or other corrective actions to mitigate adverse effects on in-Delta water users or the environment.
- E. Impacts on the Opportunities to Restore Delta Habitats. *Issue:* Alternatives 4A, 2D, and 5A include both permanent and temporary features within areas near the Cosumnes – Mokelumne confluence and the lower San Joaquin River floodplain which the Delta Plan identifies as high priorities for ecosystem restoration. *Recommendation:* More fully assess how project features near the Cosumnes – Mokelumne Confluence and the lower San Joaquin River floodplain may affect planned and potential habitat restoration in these areas. Relocate incompatible features, if feasible, and recommend measures to mitigate conflicts that cannot be avoided.
- F. Mitigation of other effects on wetlands and aquatic habitats. *Issue:* Damage to wetlands, aquatic habitats, and associated wildlife and fish populations should be avoided and/or minimized before compensatory mitigation for unavoidable losses is considered. *Recommendation:* More carefully describe mitigation for impacts to wetlands and aquatic habitats.
- G. Evaluation and mitigation of impacts to unique Delta values. *Issue:* The recirculated draft EIR/S does not adequately evaluate, avoid, or mitigate the cumulative impacts of the California WaterFix alternatives to agriculture, recreation, community character, aesthetics, and cultural resources. In some cases, identification of feasible and enforceable measures to mitigate these impacts is deferred. *Recommendation:* The final EIR/S should more thoroughly identify impacts to agriculture, recreation, community character and cultural resources, further consider opportunities to avoid them, and offer specific, feasible, and enforceable mitigation measures for unavoidable impacts. If specific, feasible, and enforceable mitigation measures for adverse effects cannot be identified at this time, specify performance standards that will mitigate the project's significant impacts.

III. DELTA PLAN AND DELTA REFORM ACT CONSISTENCY

Our prior letter on the draft EIR/S identifies information that should be included in the final EIR/S to comply with Water Code section 85320. Appendix G of the partially recirculated draft EIR/S provides a useful overview of how DWR anticipates it will approach certification of the California WaterFix' s consistency with the Delta Plan in conformance with Water Code section 85225. To ensure the project uses the best available science (23 CCR section 5002(b)(3)) and includes adequate provisions to assure implementation of adaptive management (23 CCR section 5002(b)(4)), we urge you to pay special attention to the Independent Science Board's reviews of the draft and partially recirculated draft EIR/Ss. Our comments on both the draft EIR/S and the partially recirculated draft EIR/S identify mitigation measures that may need improvement (23 CCR section 5002(b)(2)). Other comments below call

attention to other aspects of the project where additional information or consideration of further alternatives or mitigation measures may be important to certification of the project's consistency with the Delta Plan.

As the final EIR/S is completed, Council staff anticipates continuing to consult with DWR as provided in Water Code section 85225.5 and 85320(c).

IV. COMPREHENSIVE PROJECT DESCRIPTION

An accurate, complete, and stable project description is essential to the BDCP's EIR and subsequent certification of the project's consistency with the Delta Plan. A large degree of uncertainty exists in the recirculated draft BDCP EIR/S assessment of the operational impacts because:

- Many key factors are contingent upon the results of Endangered Species Act and State Water Resources Control Board consultation processes;
- Decision criteria and the type and range of operational responses to be utilized by the Real Time Operations (RTO) Team have not been clearly defined or are not provided in the recirculated draft EIR/S. These criteria will not be available until publication of the final EIR;
- The recirculated draft EIR/S Section 4.1.2.4 indicates that the collaborative science and adaptive management processes will be relied upon to identify, assess, and develop necessary changes in the new facility and existing south Delta operations. As the ISB points out, these processes are not yet well described and often take many years to implement, particularly in a dynamic ecosystem with multiple stakeholders. The timeliness and results of these program processes could substantially affect the level of impact;
- The importance of monitoring is discussed with respect to evaluating operational impacts, however, no information is provided on the objectives, types, geographic distributions, data management, assessment and reporting for the monitoring program. Presumably the monitoring requirements will be developed through the consultation and permitting process; and
- Changes in operational criteria are unlikely to benefit all special status species equally and may actually be detrimental to some special status species seasonally or geographically. The same will hold true for impacts to beneficial uses of the Delta water. How these decisions will be weighted or prioritized is a complex process that is not addressed in the recirculated draft EIR/S.

The partially recirculated draft EIR/S describes several operational scenarios with criteria that bookend a range of outflows and other parameters. Judging the reasonableness of the range of operational criteria that will guide project operations is difficult because, as discussed in Chapter 5 Water Supply and in Appendix 5A BDCP EIR/S Modeling, at this stage of the environmental assessment and permitting process there are still a large number of unknowns from a water supply standpoint. The two operational scenarios proposed, providing flows to meet Fall X2 objectives (H3) and providing enhanced spring outflows together with flows to meet Fall X2 objectives (H4,) provide outcomes related to Delta exports, Delta outflow and biological opinion flow criteria that meet the project objectives over a range of water year conditions. In general, focusing on the H3-H4 scenarios provides a range of operational conditions that will facilitate the consultation and permitting processes. The biological assessments being prepared

for the project's Endangered Species Act consultation can inform more detailed analysis of operational impacts to the Delta ecosystem associated with these scenarios.

To assure the adequacy of the preferred alternative's description, the final EIR/S should fully consider insights gained from consultation with federal and state Endangered Species Act agencies and with the State Water Resources Control Board about the project's Clean Water Act 401 certification and its proposed change in the SWP's point of diversion. The range of project operations should be described with sideboards that reflect reasonably foreseeable regulatory outcomes.

V. ADAPTIVE MANAGEMENT

Adaptive management should be integral to the description of the California WaterFix initiative because, as noted above, it is central to operational decisionmaking, evaluation of the efficacy of the compensatory habitat restoration that mitigates impacts to wetlands and other fish and wildlife habitats, and assesses the need for adjustment in the flow criteria for the North Delta diversions. DWR's certification of California WaterFix's consistency with the Delta Plan will need to demonstrate the adequacy of the project's adaptive management program (23 CCR 5002(b)(4)). The partially recirculated draft EIR/S's description of substantive BDCP Revisions (Appendix D) does not provide important information about adjustments of the adaptive management program for the California WaterFix alternative, despite significant differences in scope and implementation features from the BDCP.

The adaptive management program should include, as the ISB recommends, species-specific thresholds and timelines for action that address both water management and mitigation of construction impacts; an Adaptive Management Team that includes the membership from the State Water Resources Control Board in addition to the agencies described in the partially recirculated draft EIR/S's Section 4.1.2.4; and as the ISB urges, describe the commitments of funding that effective science-based adaptive management will require.

Appendix D includes a new requirement that if the proposed Adaptive Management Team recommends changing a conservation measure or biological objective, it needs to provide "an analysis of the means by which the adaptive resources available to support adaptive management actions will be used to fund the proposed change, if applicable" (Appendix D, page D.3-133). It is not clear if the Adaptive Management Team needs to identify a funding mechanism for any proposed changes. The \$450 million maximum for the Adaptive Management Fund included in 2013-14 version of the BDCP is omitted from the revised Appendix D. However, with the removal of the text, it is not clear if there is no limit or if there is a minimum amount in the fund. With key decisions about the preferred alternative impending, now is the time to address these and other long-deferred decisions about adaptive management of the project.

VI. WATER QUALITY

The Delta Plan recognizes that managing the Delta's resources to accomplish the coequal goals will be a "balancing act".

"Conditions that affect water quality must be managed and balanced in a way that allows these goals to be met simultaneously. When one use is protected, steps must be taken to minimize impacts on other uses." (Delta Plan pg. 212).

The Council's previous comments recommended improving the assessment and mitigation of impacts to water quality. The partially recirculated draft EIR/S responds partly to these comments with its additional analysis of selenium and mercury and more careful evaluation of alternatives' effects on salinity and *Mycrocystis*. We appreciate this additional analysis and alternative 4A's retention of the current salinity (EC) compliance point at Emmaton. Impacts to water quality for both in-Delta water users and ecosystem purposes appear reduced from those forecast in the draft EIR/S.

Nevertheless, we noted the statement during DWR's August 14, 2015 presentation to the ISB that the models presented in the recirculated draft EIR/S are comparative and not predictive. Therefore, their appropriate and intended use is to allow comparisons between the No Action Alternative and the other alternatives, rather than predicting the actual performance of the California WaterFix. If that is the case, then the partially recirculated draft EIR/S may have limited potential to draw firm conclusions regarding potential impacts on beneficial uses of water by in-Delta water users or aquatic organisms and habitats.

The partially recirculated draft EIR/S does not describe the process for identifying operational water quality impacts or the operational changes that would be implemented as corrective actions. A water quality monitoring and compliance program should be described in the final EIR/S and its mitigation monitoring and reporting plan.

In addition, mitigation measures should propose effective responses if water quality objectives established for the project are violated. The potential mitigation measures referenced in the partially recirculated draft EIR/S and outlined in Section 3B.2.1 of the draft EIR/S place much of the burden on in-Delta water users to identify water quality problems and develop solutions as opposed to having the project proponent assume this burden. The document indicates the project's proponents are committed to assisting in-Delta municipal, industrial, and agricultural water purveyors that may be subject to significant water quality impacts from project operations. The introductory paragraph, however, indicates that alternatives would be developed by the in-Delta water users with input from the project proponents after a thorough investigation and completion of environmental review. The mitigation measures referenced by the recirculated draft EIR/S do not appear to account for the potential adverse effects to in-Delta water users during the time that water quality impacts are investigated and assessed; solutions are evaluated and designed; environmental assessment is performed; permits are acquired; and remedial solutions are implemented. Given the typical timeframe to accomplish these steps for water projects in the Delta, the financial and operational impacts as well as the environmental impacts associated with reoperation or relocation of these diversions could be substantial.

VII. IMPACTS ON THE OPPORTUNITIES TO RESTORE DELTA HABITATS

Restoration of Delta habitat areas is a key to enhancement of the Delta ecosystem consistent with the coequal goals of the Delta Reform Act and the purposes of the BDCP. To encourage restoration, both the BDCP and the Delta Plan identify areas within which habitat restoration is encouraged. These areas, which are similar in both plans, were selected because they provide promising sites for habitat restoration on less subsided flood basins, river corridors, and brackish marshes at appropriate elevations

on the Delta's perimeter. Because locales like these that are suitable for restoration are not common, maintaining them in uses compatible with potential future restoration is important. That is why a Delta Plan regulatory policy (23 CCR section 5007) provides, in part:

- (a) Within the priority habitat restoration areas ... significant adverse impacts to the opportunity to restore habitat ... must be avoided or mitigated.
- (b) Impacts referenced in subsection (a) will be deemed to be avoided or mitigated if the project is designed and implemented so that it will not preclude or otherwise interfere with the ability to restore habitat...
- (c) Impacts referenced in subsection (a) shall be mitigated to a point where the impacts have no significant effect on the opportunity to restore habitat... Mitigation shall be determined, in consultation with the California Department of Fish and Wildlife, considering the size of the area impacted by the covered action and the type and value of habitat that could be restored on that area....

The Delta Plan encourages mitigation by allowing temporary uses with requirements for subsequent removal and cleanup afterward to protect opportunities for habitat restoration, elevation of structures so that water can flow underneath to allow restoration of aquatic habitats dependent on tides or periodic flooding, or location of permanent structures on the edge of habitat restoration areas, rather than in the middle, to improve opportunities for habitat restoration (Delta Plan Figure 4-7. p. 150).

A. Cosumnes–Mokelumne Confluence priority habitat restoration area. The new Alternatives 4A (California WaterFix), 2D and 5A, while reducing impacts on Delta communities and to wildlife and farmland on Staten Island, also propose new features within the Delta Plan's Cosumnes – Mokelumne Confluence priority habitat restoration area, including a permanent new forebay and a temporary reusable tunnel material storage site, barge landing, and access road adjoining Snodgrass Slough and a temporary outlet tower/safe haven and access road on the McCormack Williamson Tract. These features' compatibility with opportunities for habitat restoration within this area, as called for by the Delta Plan's regulatory policies, should be assessed. If feasible, the forebay should be relocated outside the restoration opportunity area. If relocation is infeasible, opportunities should be explored to integrate the forebay's open water and shorelines with surrounding wildlife and fish habitats of the Cosumnes Preserve, including the McCormack-Williamson Tract, Stone Lakes National Wildlife Refuge, State Parks' Delta Meadows property, and Snodgrass Slough's aquatic habitats. If the temporary reusable tunnel material storage site, barge landing, and access road cannot be relocated, appropriate mitigation should consider removal of all project features, included stored tunnel material, promptly upon termination of their use during the project's construction, and restoration of disturbed sites as wildlife and fish habitats compatible with the surrounding landscape. Planning to avoid impacts to restoration opportunities in this area should be coordinated with the barge operations plan that would accompany the barge landing, to assure that barge operations do not rely upon dredging or other maintenance that would be incompatible with eventual restoration of the area's habitat values.

Similarly, the temporary outlet tower/safe haven and access road should be relocated off the McCormack Williamson Tract if feasible. We cannot find a consistent description of this feature or an adequate assessment of its impacts in the recirculated draft EIR/S. Chapter 3 of Appendix A (Description of Alternatives) states that safe havens will be implemented during construction of the conveyance

tunnels, and will involve temporary access roads and disturbance of 1-3 acres of land for a period estimated to be approximately 9-12 months (page 3-41). However, Chapter 17 (Aesthetics and Visual Resources) mentions that these areas will be approximately 10 acres in size (page 17-23). We can find no mention of the impacts of this safe haven on the McCormack-Williamson Tract. Chapter 17 of Appendix A describes the location as "the island located east of Snodgrass Slough and west of the Mokelumne River," without recognizing that this island is in fact the restoration area on the McCormack-Williamson Tract (page 17-24). Chapter 3 of Appendix A (Description of Alternatives) identifies the tract as a priority habitat restoration area, but disregards current restoration efforts (page 3-83). Table 13-11 in Chapter 13 of Appendix A (Land Use) specifically identifies that 11 acres of planned safe haven work area in Sacramento County will occur on land classified as "Agricultural Cropland," rather than "Natural Preserve" or "Open Space/Resource Conservation" areas (page 13-4). It does not appear that the restoration efforts on this tract were considered when planning the location of this particular safe haven area.

Restoration of tidal marsh and riparian habitats on the McCormack Williamson Tract as part of the California EcoRestore initiative is scheduled to begin in 2016 and conclude by 2018, according to the recirculated draft EIR/S's cumulative impact analysis reports (p. 5-3). Further information about the project is available at http://resources.ca.gov/docs/ecorestore/projects/McCormack_Williamson_Tract.pdf.

Analysis of potential conflicts with habitat restoration in the area should also consider effects on timely achievement of North Delta flood management benefits, which are a key element of the restoration project. The analysis should also assess flood risks that the constrained height of McCormack-Williamson Tract's existing levees may pose to the outlet tower/safe haven and access road. Assessment of these flood risks should be coordinated with evaluation of the project's effects on flood management required by Water Code section 85320(b)(2)(E). Further delay in this long-planned, highly visible restoration project would be regrettable.

If these features cannot be relocated outside the priority habitat restoration area or adverse effects on restoration opportunities cannot be adequately mitigated, this potential inconsistency with the Delta Plan should also be acknowledged in Appendix G.

B. Lower San Joaquin River priority habitat restoration area. The recirculated draft EIR/S's Appendix G acknowledges that the operable barrier at the head of Old River is located within the Delta Plan's Lower San Joaquin River priority habitat restoration area. A more thorough explanation should be provided for Appendix G's conclusion that construction and operation of the operable barrier will not substantially reduce restoration opportunities there. This analysis should include consideration not only of the surface area disturbed by the operable barrier's construction, but also the barrier's compatibility with processes, such as periodic flood flows, needed to sustain a mix of tidal marsh, riparian habitat, and wildlife friendly agriculture that the Delta Plan envisions in the area and whether the barriers may contribute to fragmentation of potential restored habitats. Assessment is also needed of the barrier's compatibility with the proposed Lower San Joaquin Flood Bypass, whose potential to reduce flood risks in nearby urban areas is an important objective for this restoration opportunity area. Assessment of

these flood risks should be coordinated with evaluation of the project's effects on flood management required by Water Code section 85320(b)(2)(E).

VIII. MITIGATION OF OTHER EFFECTS ON WETLANDS, AQUATIC HABITATS, AND WILDLIFE AND FISH HABITATS

We were pleased to see the recirculated draft EIR/S's additional assessment of potential effects on sandhill cranes and WaterFix's revisions to the tunnel alignment and its power demands that reduce potential impacts on this important wildlife. This was among the improvements in the recirculated draft EIR/S complimented by the ISB.

The ISB, however, also encourages more attention to measures to avoid or reduce effects on wetlands and other aquatic habitats, as well as reassessment of the extent, location, and timing of habitat restoration that compensates for unavoidable damage. The Delta Plan's implementing regulations require, in part, that covered actions not exempt from CEQA must include applicable feasible mitigation measures identified in the Delta Plan's Programmatic EIR ... or substitute mitigation measures that the agency that files the certification of consistency finds are equally or more effective (23 CCR 5002(b)(2). For adverse effects to sensitive natural communities, including wetlands and riparian habitats, the Delta Plan's mitigation measures generally include:

Avoid, minimize, and compensate for reduction in area and/or habitat quality of sensitive natural communities, including wetlands, by doing the following:

- Selecting project site(s) that would avoid sensitive natural communities.
- Designing, to the maximum extent practicable, project elements to avoid effects on sensitive natural communities.
- Replacing, restoring, or enhancing on a "no net loss" basis (in accordance with U.S. Army Corps of Engineers (USACE) and State Water Resources Control Board (SWRCB) requirements), wetlands and other waters of the United States and waters of the State that would be removed, lost, and/or degraded.
- Where impacts to sensitive natural communities other than waters of the United States or State are unavoidable, compensating for impacts by restoring and/or preserving in-kind sensitive natural communities (Mitigation measure 4-1).

As the ISB notes, the recirculated draft EIR/S does not explain how the project incorporates measures to avoid or minimize effects that would conform to this provision. In addition, the final EIR/s should clarify whether any of the wetland restoration is out-of-kind and how much is in-kind replacement of losses. The ISB agrees that out-of-kind mitigation can be preferable to in-kind when the trade-offs are known and quantified and mitigation is conducted within a watershed context, as described in USACE's guidance. If compensatory wetland mitigation on or near the site of impact is infeasible or ill-advised, offsite opportunities should be considered in a landscape context, including the potential to site mitigation areas within the Delta Plan's priority habitat restoration areas to achieve synergies with other planned restoration projects and to minimize conflicts with agriculture or other uses.

IX. EVALUATION AND MITIGATION OF IMPACTS TO UNIQUE DELTA VALUES

In our comments on the draft EIR/S, we noted that the proposed BDCP conveyance and restoration measures will significantly and adversely affect important attributes of the Delta's regional character, including values that the Council's Delta Plan describes as contributing to making the Delta a distinctive and special place. The Delta Reform Act and Delta Plan anticipate that changes to these attributes will occur and may be necessary to achieve the coequal goals, but seeks to accommodate these changes while preserving the fundamental characteristics and values that contribute to the Delta's special qualities and that distinguish it from other places. We also pointed out that the project's effects on the Delta's agricultural, recreational, and cultural resources should be considered in the context of larger past and likely future trends in the Delta threaten the agricultural, recreational, and cultural values of the Delta. Those observations also apply to consideration of the impacts of the California WaterFix initiative.

California WaterFix reduces some the BDCP's adverse effects on unique Delta values because of the revision to diversion and conveyance facilities in the north Delta, which reduces damage to agriculture, recreation, scenic resources, and Delta communities. Separation of most habitat restoration measures into the California EcoRestore initiative further reduces impacts to agriculture. We appreciate these improvements.

Nevertheless, the new alternatives will still have significant adverse effects on the Delta's unique values that should be more thoroughly assessed, avoided where feasible, and better mitigated.

- A. Agriculture. Agriculture is the Delta's primary land use and a valued resource. The amount of land that will be converted from agricultural use by the California WaterFix's construction is unclear. In part, this is because the recirculated draft EIR/S offers differing estimates of the amount of land needed for reusable tunnel material (RTM) storage. For example, Chapter 3 says 2600 acres are needed for RTM storage, Chapter 14 says 3,630 will be needed for RTM storage, and Appendix 3C says 2,570 will be needed for RTM storage. In addition, the acreage permanently converted from farm use is reported in two overlapping measurements: acres of important farmland (which includes some lands in Williamson Act contracts) and farmland in Williamson Act contracts (which may include some farmland not classified as important). These differing and overlapping estimates should be resolved by reporting the total amount of farmland that will be converted including both important farmland and other agricultural land in Williamson Act contracts.

In addition to the farmland converted by project construction, up to 1400 more acres of farmland may be converted for compensatory habitat restoration to mitigate project effects. WaterFix's construction may also potentially impair water quality for some agricultural users, disrupt agricultural infrastructure, and harm the agricultural economy, according to the recirculated draft EIR/S. The final EIR/S should better describe and more carefully avoid or mitigate all impacts to agriculture arising in several ways, as discussed below.

1. *Impacts of compensatory habitat restoration*. The recirculated draft EIR/S evaluates a variety of impacts on Delta agriculture caused by the compensatory habitat restoration to mitigate project effects. This compensatory mitigation is part of the project's environmental commitments.

However, because the environmental commitments are presented at a programmatic level it is still not possible to fully identify the impacts to agriculture with any degree of certainty. Section 4.3.10 of the recirculated draft EIR/S indicates roughly 15,548 acres of habitat will be restored, including the acreage of farmlands managed especially for sandhill cranes or other wildlife. Because specific locations have not been selected for this restoration, the recirculated draft EIR/S does not identify specific farmlands, or how many acres of them will be impacted.

The final EIR could be improved by more carefully describing how much agricultural land will be converted. For example, the recirculated draft EIR/S's concludes that impact AG-3 "will restore up to 1,400 acres." More careful estimation of requirements for compensatory habitat restoration, as described above, could provide a better basis for identifying the acreage of agricultural easements needed to offset the loss. Information about specific properties to be acquired in the WaterFix right-of-way could also be used to assess project impacts caused by losses of important agricultural infrastructure, such as drainage and irrigation facilities or by fragmenting parcels.

2. *Increased Farm-to-Market Travel Times.* Impact ECON-6 (p. 16-36, lines 2-4 of recirculated draft EIR/S) anticipates an increase in agricultural production costs from "operational constraints and longer travel times due to facilities construction". The final EIR/S should more carefully evaluate how the conveyance construction impacts may affect transportation between key agricultural areas and important processing or marketing facilities.

Chapter 19 (Table 19-25) indicates that the designated "Farm-to-market" corridor (Highway 99 between Bakersfield and Sacramento,) will not be impacted; however, during construction Level of Service (LOS) thresholds will be exceeded (made worse than previous LOS) on 38 other segments of state highways and local roadways (Impact TRANS-1). Further, LOS thresholds will be exceeded to a D or worse on 10 segments for the duration of the construction period. This includes important thoroughfares such as sections of Interstate-5, State Road 4 and 84 (Jefferson Blvd), and important bridges across the Sacramento River. The recirculated draft EIR/S identifies mitigation measures (TRANS 1a-c) to reduce the severity of the impact. However, "the BDCP proponents cannot ensure that the improvements will be fully funded or constructed prior to the project's contribution to the impact," (page 19-122 of recirculated draft EIR/S lines 9-10). The final EIR/S should explain the constraints that limit full funding of these mitigation measures and the basis for determining that mitigation is not feasible.

If all mitigation measures to reduce traffic impacts are not implemented successfully, the impacts to LOS on these roads will remain significant and unavoidable. The impacts of the decrease in LOS on roadways serving key agricultural areas due to construction will likely remain considerable, and the economic effect and any related environmental effects should be acknowledged in Chapter 15, Impacts ECON-5 and ECON-6.

3. *Agricultural Economics.* The recirculated draft EIR/S indicates that construction of the California WaterFix will cause many significant and adverse direct and indirect impacts to agriculture, and that the California WaterFix will significantly alter the agricultural character and regional economy. Impact ECON-3 acknowledges that the project will change the agricultural character

of the Delta region. The long-term footprint of construction and the disruption to infrastructure are expected to decreasing agricultural production valued at \$5.3 million annually, indirectly impact agriculture by increasing production costs (ECON-6), and by causing a decline in agricultural employment during construction by about 40 jobs (Impact ECON 1, Table 16-42). According to the recirculated draft EIR/S, impacts to agriculture under alternative 4 will remain "Significant and Unavoidable." These impacts could be better assessed by considering the regional significance of the decline in agricultural related income (Table 16-42) and the associated loss of jobs in comparison with the \$795 million value of regional crop and livestock production and 13,179 total agricultural jobs reported in the Delta Protection Commission's *Economic Sustainability Plan* (p. 112). It would also be helpful to assess whether these impacts cause such significant losses of a particular crop that they affect the viability of that crop in the region as a whole or have particularly significant impacts to high value crops (e.g., vineyards) or heirloom crops (e.g., pears and asparagus).

4. *Integrating Agricultural Mitigation with Other Regional Conservation Strategies.* Mitigation proposed for agricultural impacts generally offers two options: 1) a conventional approach conserves agriculture by acquiring easements on agricultural land in direct proportion to the amount of agricultural land converted to other uses; or 2) an agricultural land stewardship approach. In the land stewardship approach, restoration is implemented by selecting mitigation measures, in particular agricultural land stewardship options that could be integrated into regional conservation strategies. These strategies should include local HCPs, local land trusts' activities to protect important farmland threatened by development, or actions complementing the California EcoRestore initiative. These regional strategies could: 1) incorporate agricultural considerations into regional environmental commitments; 2) provide a framework for project selection and design; 3) contribute to a system of protected agricultural resources; and 4) provide a framework for evaluating and mitigating impacts to agriculture and other land uses. It could also help avoid or reduce impacts to the most valuable agricultural areas, enable interconnected agricultural zones and habitat corridors, and minimize edge effects. The following techniques should be used in the regional conservation strategies to preserve and protect agriculture:
 - Use easements to protect land where development threats are greater. For example, at a minimum, losses of farmlands converted to non-farmed habitat could be mitigated by securing conservation easements that protect other agricultural lands threatened by development, such as land in the Delta's secondary zone. Lands in the primary zone, on the other hand, are already protected from urban development by state law. The Delta Plan proposes mitigation for farmland losses at a ratio of one acre protected for each acre converted to non-farm use.
 - Identify mitigation within the regional conservation strategy framework so that the effects on drainage, cropping systems, etc., can be integrated with restoration strategies.
 - Implement safe harbor agreements, as described on pages 143 and 186 of the Delta Plan, and propose other good neighbor arrangements.
5. *Recommendations from the Delta Plan.* Potential mitigation measures included in the Delta Plan's recommendations for supporting the Delta's agricultural economy should be considered

to mitigate environmentally-significant economic impacts to agriculture. For example, the Delta Plan recommends that local governments and economic development organizations, in cooperation with the Delta Protection Commission and the Delta Conservancy, encourage value-added processing of Delta crops in appropriate locations (DP R8 Promote Value-Added Crop Processing). Similarly, DP R9 (Encourage Agritourism) recommends support for agritourism, particularly in and around Delta Legacy Communities.

- B. Recreation. Five million people live within a 20 minute drive of the Delta and Suisun Marsh, the typical distance Californians drive to reach a favorite recreation area. About 12 million visitor days occur in the Delta annually. Demand for recreation that can be provided in the Delta is growing, both with the forecast doubling of the region's population over the next 50 years, and with the potential to attract visitors from other regions. Protecting these valued recreation opportunities is important and measures to do so should be included in the final EIR/EIS. Four types of impacts to recreation need to be addressed, as discussed below.

As measures to mitigate these affects to recreation are proposed and implemented, DWR should consider its responsibilities regarding fish, wildlife, and recreation in state water projects (Water Code sections 11910-11915), especially the duty to coordinate with the Department of Parks and Recreation and local governments (Water Code section 11910-11910.1).

1. *Impacts to recreation facilities in construction zones*. The recirculated draft EIR acknowledges that ten or more years of conveyance construction will result in the long-term reduction of recreational opportunities and experiences in the Delta both on land and in water (Impact ECON 5, REC 2 and 3). Traffic delays, disturbance, noise, and water quality impacts may reduce visits to, or prevent access to specific recreational sites. This, in turn, may cause local recreation related businesses to suffer or close from reduced spending, with potential cumulative effects to private visitor-serving facilities vulnerable to a decline in regional recreational-related economic activity. Nine facilities are within areas the recirculated draft EIR/S identifies. Four are public recreation areas: State Parks' Delta Meadows property, the Cosumnes Preserve, Stone Lakes National Wildlife Refuge, and the Clifton Court Forebay. Five are marinas: Bull Frog Marina, Clarksburg Marina, Lazy M Marina, New Hope Landing Trailer Park and Marina, and Wimpy's Marina. In addition, declining levels of service on roads affected by construction traffic may affect access to and use of additional 101 public recreation areas and marinas within 1 mile of those roads.

Though proposed mitigation measures offer noise abatement programs, detours and temporary roads around construction, protection of navigation on affected waterways, and other activities to minimize disturbances, the impacts of California WaterFix conveyance construction activities on recreation in construction zones are still significant. A more comprehensive assessment of impacts is warranted, and additional mitigation should be offered to offset the impacts that cannot be avoided. For example, impact ECON-5 discusses the qualitative effects on recreational economics as a result of constructing conveyance, and Impacts REC 1-4 discusses general impacts qualitatively. Quantifying the effects on recreational uses and opportunities, for example, by reporting affected facilities' annual visitation levels or recreational capacity (e.g., number of berths or overnight spaces) would enable comparison of alternatives to assess which

alternative most significantly impacts recreation in the Delta (recirculated draft EIR/S section 16.3.3.9 pages 16-33 and 16-34) and could facilitate proposing mitigation measures that are properly scaled to the magnitude of the impacts. Other mitigation measures that should be considered include promotion, in cooperation with organizations like the Delta Chamber of Commerce or other Delta marketing entities, of alternate access routes to affected recreation areas or areas unaffected by construction. CalTrans' efforts in cooperation with Lake Tahoe tourism agencies during the reconstruction of Highway 50 may provide a model.

2. *Impacts on Recreational Boating.* The Delta Protection Commission's *Economic Sustainability Plan* (2012) and California State Parks' *Recreation Proposal for the Sacramento-San Joaquin Delta* (2011) indicate that boating comprises 60 percent of Delta recreation-days and contributes 80 percent of tourism spending. The recirculated draft EIR/S finds that the construction and operation of conveyance facilities (which will occur in or near recreational boating corridors) will have significant and unavoidable impacts on long term recreational boating opportunities by disrupting boat passage at these sites (Impact REC-3, page 4.3.11-5, recirculated draft EIR/S Sec 15.3.3.9 pages 15-22 through 15-28):

- Three intakes on the Sacramento River.
- Clifton Court Forebay (siphons).
- Head of Old River Barrier.
- Snodgrass Slough, Potato Slough, San Joaquin River, Middle River, Connection Slough, Old River, West Canal.

The scale of these impacts could be better assessed if the length of waterways affected by construction were more clearly described and considered in relation to Delta's 700 miles of navigable waterways. The recirculated EIR/S acknowledges that many sites on the water will also likely see a decline in use during the construction period due to construction noise and/or geotechnical testing as described in impact REC-2. The proposed mitigation emphasizes traffic and aquatic weeds management, but specific mitigation for these negative impacts on boating access should also be provided. Potential approaches could include compensatory improvements to boating facilities that provide access to other Delta regions unaffected by the WaterFix initiative.

3. *Impacts to driving for pleasure.* Driving for pleasure is among Californians' favorite recreations, and the project's effects on it should be addressed. Forty-five percent of Californians participate in driving on paved roads for pleasure, sightseeing, and the enjoyment of natural scenery, according to the Department of Parks and Recreation's *Survey on Public Opinions and Attitudes on Outdoor Recreation in California (SPOA) 2012, Complete Findings* (January 2014). Highway 160, a state Scenic Highway, and the Delta Loop extending from Hwy 160 through Brannan Island and Perry's Island Roads to Highway 12 are key routes for recreational drivers. Construction detours, aesthetic impacts, and construction-related congestion on Highway 160 and Highway 12 will affect both of these recreational driving routes. The final EIR/S should report the miles of these routes affected by construction impacts. In addition, the EIR should assess impacts that noise, traffic congestion, and damage to scenic resources caused by the California WaterFix

alternatives will have on recreational driving. One useful measure would be to assess what portion of a typical 65 minute recreational drive from Freeport to Antioch along Highway 160 would be impaired by construction detours, aesthetic impacts, and traffic congestion along the route. In addition, the final EIR/S could report the typical construction-related delay a recreational driver would likely encounter trying to reach the Delta Loop. Appropriate mitigations could include landscape treatments along routes degraded by the project, compensation for unavoidable effects by removing aesthetic detractants along parts of the route not affected by the project, development of features, such as vista points, that could be enjoyed by motorists on portions of these pleasure driving routes that are unaffected by the project, support for locally-developed wayfinding systems that help motorists use and enjoy those portions of these pleasure driving routes, or other measures.

4. *Impacts of Construction Work Force Housing Demand on RV Parks and Resorts.* Housing for construction workers may include extended use of recreational vehicle parks and hotels and motels (recirculated draft EIR/S p 16-29 and 16-30), which could displace people seeking recreational opportunities in the Delta. Housing for migrant farm labor may also be affected. The extent of this potential impact to recreation is unclear and no mitigation is currently provided. While the EIR/S does not anticipate a large influx of out-of-area workers, this impact to recreation and need for mitigation should be more thoroughly evaluated.
5. *Mitigation for Recreation Impacts.* The final EIR/S should provide explicit mitigation measures for the significant, unavoidable recreation impacts caused by the California WaterFix construction and operation. Determinations of appropriate mitigation should be made in consultation with the Department of Parks and Recreation, the Delta Protection Commission, and local governments, and appropriate mitigation commitments should be included in the final EIR/S. Potential mitigation measures include the Delta Plan's recommendations for encouraging recreation and tourism. For example, the Delta Plan recommendation DP R11 (Provide New and Protect Existing Recreation Opportunities) asks ecosystem restoration agencies to provide recreation opportunities at new facilities and restored habitat areas whenever feasible, and to protect existing recreational facilities using California State Parks' *Recreation Proposal for the Sacramento-San Joaquin Delta and Suisun Marsh* (2011) and the Delta Protection Commission's *Economic Sustainability Plan* (2012) as guides.

Enhancing recreational access in the vicinity of proposed intakes (recirculated draft EIR/S 3B.3.2, page 3B-75) after construction is completed is a good opportunity to attract visitors to the Delta, and to highlight the legacy of water engineering, which would fit in an overall Cultural Resources Preservation Plan. This environmental commitment could be improved with a reference to good examples of the idea in practice.

Appendix 3B states that Environmental Commitment 3B.3.3 (Fund Efforts to Carry-out the Recreation Recommendations Adopted in the Delta Plan) no longer applies to the new preferred Alternative 4A (or 2D and 5a) because the impacts of the new alternatives will be less than those in the BDCP. The EIR lacks, however, any quantitative assessment of recreation impacts to support this conclusion. On the contrary, a significant reduction in recreation impacts seems unlikely because the extensive areas of restored habitat no longer provided by the preferred

RECIRC2505

alternative would have offered many opportunities for nature-oriented outdoor recreation, while adverse effects from construction of conveyance improvements continue to be significant. Because there will be considerable significant and unavoidable impacts to recreation in the Delta, this environmental commitment should apply to the proposed Alternative 4A.

The mitigation that applies to the remaining alternatives in Commitment 3B.3.3 is an example of the vague and unenforceable nature of some proposed mitigation measures. Of the six actions listed, three could not feasibly be implemented during the construction period because they either depend on 1) the outcomes of actions that occur during construction (reusable tunnel material); or 2) later actions no longer included in the preferred alternative (Barker Slough restoration). Three others, Wright- Elmwood Tract and Brannan Island SRA and improvements to the Yolo Bypass Wildlife Area, are distant from the conveyance construction zone where impacts would occur, and therefore do little to lessen or compensate for the project's effects. California State Parks staff familiar with its *Central Valley Vision* and Delta planning should be consulted to assess how a contribution of funds could facilitate meaningful progress at Delta Meadows-Locke Boarding House.

C. Community Character. The Delta's Legacy Communities are valued resources, appreciated by both their residents and by visitors. Special care to protect them is warranted.

Construction of the conveyance facilities will result in numerous impacts, which are described in various places throughout the EIR/S. However, the scale of collective impacts in the construction zone over ten or more years of construction is difficult to estimate. Because the collective construction impacts will have a major effect on numerous resource categories, the final EIR/S should aggregate the description of impacts that affect community character associated with each alternative's construction activities in one location and summarize them, including the time frames for each impact. In this aggregation, the final EIR/S should discuss the combined footprint of construction impacts affecting each community, including effects on agriculture, recreation, noise, traffic congestion, aesthetic resources, and cultural resources. Each alternative should be compared to enable improved evaluation of each alternative's direct and indirect effects.

These combined effects of construction appear especially adverse at Hood and Clarksburg. Other Legacy Communities along Highway 160 are also likely to suffer adverse effects from declining recreation and tourism and highway congestion. South Delta communities will also be affected, especially by construction-related highway congestion along key routes that link residents of Stockton to jobs in Contra Costa County and the Bay area. Access between Contra Costa County's Legacy Communities and the urban areas of the county will also be impaired.

The recirculated draft EIR/S acknowledges that construction and implementation of the California WaterFix will result in significant changes in character of these communities caused by: 1) declining property values; 2) building abandonment near construction activities with associated loss of tax revenue; and 3) changes in the agricultural landscape, regional economy, labor, and employment (impact AG1, 2, and ECON-1 and 3). The recirculated draft EIR/S also anticipates declining economic stability in communities closest to construction activities, such as Hood and Clarksburg, and in those most heavily influenced by agriculture and recreation, which include the remaining towns along Hwy

160 and in eastern Contra Costa County. These indirect and secondary impacts caused by construction of the conveyance facility will have physical effects on the Delta environment that should be more clearly evaluated and mitigated in the final EIR/S. For example, impacts that cause building abandonment are physical impacts that warrant mitigation. Actions to reduce or mitigate adverse impacts should be taken.

The recirculated draft EIR/S highlights that “notable decreases in population or employment, even if limited to specific areas, sectors, or the vacancy of individual buildings, could result in alteration of community character stemming from a lack of maintenance, upkeep, and general investment.” The recirculated draft EIR/S offers a list of environmental commitments to reduce these effects (16.3.3.9, pages 16-32, lines 17-19), and Appendix 3B); however the environmental commitments may be insufficient.

Precedents elsewhere from local housing authorities and redevelopment agencies may provide successful examples of mitigation that could be offered to further reduce the effects of these significant changes on the character of Delta communities. Examples from blight elimination programs could offer mitigation for community improvement and enhancement including making contributions toward community facilities, or funding programs to curb foreclosures or to address other conditions, such as flood risk, that also threaten the affected communities. A programmatic approach to mitigating these impacts could be provided through funds contributed to the Delta Investment Fund established in Public Resources Code section 29759. The funds provided to North Coast communities by the Redwood National Park Expansion Act may provide an example for a mitigation program for the Delta.

1. *Aesthetics*. Scenic Highway 160 and other riverside roads are important resources, supporting recreational travel, providing a pleasing backdrop for recreational boating, and contributing to the setting of the Delta’s Legacy Communities. The recirculated draft EIR/S indicates that permanent visual changes in the riverside landscape near intakes will dramatically alter the Delta’s scenic character along scenic Highway 160, at Clarksburg, Courtland, and Hood. However, in the current assessment, the magnitude of the visual impacts California WaterFix will have on Highway 160 from both the water and from the road is unclear. The recirculated draft EIR/S’ narrative description of impacts should be enhanced with illustrative images of these impacts as viewed by travelers on Scenic Highway 160 and by recreational boaters. The illustrative images should show conditions before construction and impacts both during construction and after construction is complete. The impacts described in table 17B of the recirculated draft EIR/S suggest that at least nine miles of views along Scenic Highway 160’s 50 mile length (18 percent) will be affected by construction of the intakes and the rerouting of the highway. Though the recirculated draft EIR/S identifies disrupted views at certain observation points, the description of intakes could better communicate the magnitude of the impacts by quantifying the total length of disrupted views along Scenic Highway 160; the final EIR/S should then offer specific mitigation to offset the impacts consistent with CalTrans’ practices for scenic highways and/or the Federal Highway Administration’s report *Scenic Byways: A Guide for Roadside Improvements*.
2. *Cultural Resources*. The entire Delta region is rich in cultural resources with archeological significance, and the recirculated draft EIR/S identifies major impacts in Chapter 18, most of which are considered significant and unavoidable. While the recirculated draft EIR/S identifies specific sites

of cultural value, the final EIR/S should consider whether areas significantly affected by the California WaterFix construction may qualify for consideration as significant cultural landscapes under the Secretary of the Interior's *Guidelines for the Treatment of Cultural Landscapes*. In cases where the impacts would remain significant and unavoidable, the California WaterFix could offer additional mitigation adequate to preserve and protect the Delta's historic and cultural resources.

Recognizing that impacts to cultural resources from the California WaterFix will likely be similar to impacts caused by other large infrastructure projects in similar environments, the final EIR/S could draw on experience from other infrastructure projects to describe a range of possible impacts on cultural resources and commit to a range of appropriate mitigation measures. There is precedent from large infrastructure projects across the country under section 106 of the National Historic Preservation Act to provide additional mitigation or compensation for lost cultural resources. For example, the California WaterFix could:

- Offer financial support to relocate significant resources to a museum(s).
- Support archaeological research by local universities focused in the Delta.
- Offer financial support to facilitate the listing of eligible artifacts, sites, or structures on the National Historic Registry.
- Offer financial support to preserve or rehabilitate deteriorating buildings and structures of historical significance in the Delta such as in the Locke Historic District, the Japanese School in Clarksburg, or the Bacon Island Road Bridge.

The *Guidelines* developed by the Secretary of the Interior for construction in culturally sensitive landscapes offer an opportunity to better offset project impacts and preserve the Delta's cultural resources than the currently proposed mitigation measures. As written, specific mitigation treatments in the recirculated draft EIR/S are offered on site-by-site, or for nationally- and state-registered buildings or structures, resource-by-resource. However, the Delta's true cultural resources go beyond those identified on the historic registry and the values that make the Delta a special place are not likely to be captured by these piecemeal mitigation measures.

The Secretary of the Interior's *Guidelines* provide direction for the overall treatment and management of the landscape to preserve the Delta's cultural significance as a whole in the face of this large construction project. Using this approach and identifying overarching goals and objectives in the Delta may help ensure that project design, construction, operation, and associated mitigation can be targeted to protect, preserve, and maintain the Delta as an evolving place. An approach in the Delta, for example, could emphasize the region's agricultural sustainability, and rural heritage; its unique legacy towns; and its recreational values, amongst others. The overall treatment plan could seek to preserve the ecological diversity and the rural landscapes that attract visitors and residents to the Delta. Construction, operation, and mitigation of the California WaterFix and its environmental commitments could then be implemented in a way that contributes to achieving these goals and objectives.



San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT



November 2, 2015

BDCP/WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812

REVISED COMMENT LETTER

**Project: Partially Recirculated Draft Environmental Impact Report
(RDEIR)/Supplemental Draft Environmental Impact Statement (SDEIS) on
the Bay Delta Conservation Plan/California WaterFix**

District CEQA Reference No: 20150641

To Whom It May Concern:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the Partially Recirculated Draft Environmental Impact Report (RDEIR)/Supplemental Draft Environmental Impact Statement (SDEIS) for the Bay Delta Conservation Plan/California WaterFix. The Bay Delta Conservation Plan/California WaterFix is a conservation strategy for the Sacramento-San Joaquin Delta (Delta) intended to advance the planning goal of restoring ecological functions of the Delta and improving water supply reliability in the state of California. The RDEIR/SDEIS identifies 3 additional alternatives in addition to the 16 alternatives presented in the DEIR/DEIS. For the purposes of the California Environmental Quality Act (CEQA), the Department of Water Resources (DWR) has identified Alternative 4A as their preferred option. As a result, the District has reviewed Alternative 4A which includes the following: (1) the construction of three intakes, (2) construction of an intermediate forebay, and (3) a conveyance facility that would consist of buried pipelines and tunnels. The District offers the following comments:

1. Voluntary Emission Reduction Agreement (VERA)

The District recommends that the project proponent commit to entering into a VERA rather than expressing a non-enforceable commitment to a "good faith effort" to mitigate criteria pollutants.

As stated in the District's comment letter issued on June 12, 2014 for the Draft EIR/EIS and July 5, 2013 for the Administrative Draft EIR/EIS the District would like to reiterate its recommendation.

Seyed Sadredin
Executive Director/Air Pollution Control Officer

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The RDEIR/SDEIS demonstrates through Mitigation Measure AQ-4a (page 22-299) the "DWR will undertake in good faith effort to enter into a development mitigation contract with SJVAPCD in order to reduce criteria pollutant emissions generated by construction of the water conveyance facilities associated with BDCP within the SJVAPCD." The District recommends that DWR commit to entering into a development mitigation contract prior to finalizing the EIR/EIS rather than expressing a non-enforceable commitment to a "good faith effort" to mitigate criteria pollutants. This would allow DWR to fully disclose to the public the extent of the actual mitigation proposed.

Therefore the project proponent or DWR should engage in discussion with the District to adopt a Voluntary Emission Reduction Agreement (VERA) prior to the finalization and certification of the environmental document.

The District has been contacted in the past to discuss the VERA but the communication has halted. The District encourages DWR to contact the District again as soon as practical to restart this process and expand the discussion into the negotiation of the terms of the VERA. Based on District's experience with entering into a VERA, ample amount of time beyond the mentioned two-month timeframe should be planned to discuss the details of the VERA.

2. Alternative Mitigation Strategy

The development of an alternative mitigation strategy should be approved by the District prior to implementation.

The RDEIR/RDEIS demonstrates through Mitigation Measure AQ-4b (page 22-301) "Should DWR be unable to enter into what they regard as a satisfactory agreement with SJVAPCD by Mitigation Measure AQ-4b, or should DWR enter into an agreement with SJVAPCD but find themselves unable to meet the performance standards set forth in Mitigation Measure AQ-4a, DWR will develop an alternative or complementary offsite mitigation program to reduce criteria pollutant emissions generated by the construction of water conveyance facilities associated with BDCP."

As commented before, the District would like to clarify that since the air quality impacts would be occurring within the jurisdiction of the District, the development of the alternative mitigation strategy should obtain approval from the District before implementation, which should include verification of the construction emissions data required to be submitted to DWR by the contractor. The District has statutory authority over air quality and has developed plans to attain state and federal standards that include emissions inventories to identify the sources and quantities of air pollutant emissions, evaluate how well different control methods have worked, and demonstrate how air pollution will be reduced in the San Joaquin Valley (Valley).

The District has developed incentive program around several core principles: cost-effectiveness, integrity, effective program administration, excellent customer service and accountability. The goal of the incentive program is to assist the District in

improving air quality in the Valley. Furthermore, the District's incentive programs are regularly audited by independent outside agencies including professional accountancy corporations on behalf of the federal government, the California Air Resources Board (ARB), California Department of Finance and the California Bureau of State Audits.

Using developer funds to reduce emissions through our incentive program allows the District to track and verify the emissions reductions achieved, which in turn allows the District to certify to project proponents that the mitigation has been achieved, lending the District's expertise in such matters to any necessary defense of the CEQA document and associated air quality mitigation. On the contrary, mitigation efforts performed by others, outside the District's oversight, have generally come up far short in quantity of emissions reductions generated, and in verifiability of those reductions, leaving the CEQA Lead Agency vulnerable to legal action.

The District recommends the mitigation for the BDCP be carried out via Mitigation Measure AQ-4a (i.e., entering into a VERA with the District) and thus the District recommends that the applicant commit to entering into a VERA instead of committing into a good faith effort to do so.

3. Fugitive Dust Emissions

The District recommends the RDEIR/RDEIS include a discussion regarding fugitive dust resulting from the potential overdraft of water, including all feasible mitigation measures to reduce any resulting air quality impacts that are found to be significant.

The RDEIR/RDEIS does not discuss fugitive dust resulting from the potential overdraft of water, thus resulting in a potentially dry basin. Although the air quality in the Valley has improved significantly, the Valley faces many air quality challenges to meet the health-based air pollution standards. The District is currently designated as extreme nonattainment for the 8-hour ozone standard, attainment for PM10 and CO, and attainment for PM2.5 for the federal air quality standards. At the state level, the District is designated as nonattainment for the 8-hour ozone, PM10, and PM2.5 air quality standards.

As commented before, the District recommends the RDEIR/RDEIS include such discussion and include all feasible mitigation measures to reduce any air quality impacts of such an overdraft that are found to be significant.

4. District Attainment Plans

The District has adopted several attainment plans in addition to the ones discussed in the RDEIR/SDEIS and suggests that these additional plans be included.

Appendix A, Chapter 22 discusses the District's various air quality plans, including the 2007 Ozone Plan and 2008 PM2.5 Plan. However, the District has also adopted the 2012 PM2.5 Plan, 2013 Plan for the Revoked 1-Hour Ozone Standard, and 2015 Plan for the 1997 PM2.5 Standard.

Additional information on the District's attainment plans can be found online at:

- 2012 PM2.5 Plan:
http://www.valleyair.org/Air_Quality_Plans/PM25Plans2012.htm
- 2013 Plan for the Revoked 1-Hour Ozone Standard:
http://www.valleyair.org/Air_Quality_Plans/Ozone-OneHourPlan-2013.htm
- 2015 Plan for the 1997 PM2.5 Standard:
http://www.valleyair.org/Air_Quality_Plans/PM25Plans2015.htm

5. Health Risk Assessment (HRA)

Since the HRA analysis is based on the 2015 OEHHA guidance, the risk estimate for the project within the District's jurisdiction should be compared to the significance threshold of 20 in a million.

The analysis uses the methodology based upon the 2015 OEHHA guidance manual in conjunction with the District's previous significance threshold of 10 in a million. The District's implementation of the 2015 OEHHA guidance utilizes a new significance threshold of 20 in a million. Since the analysis is based on the 2015 OEHHA guidance, the risk estimate for the project within the District's jurisdiction should be compared to the significance threshold of 20 in a million to be consistent.

6. District Rules and Regulations

The project will be subject to all applicable District rules and regulations including Rule 9510 (Indirect Source Review).

A portion of the project will occur within the District's air basin, specifically in San Joaquin, Stanislaus and Merced Counties; therefore, will be subject to District rules and regulations including Rule 9510 (Indirect Source Review). Since the list of rules in the RDEIR is not all encompassing, the District would like to provide the following additional information:

- In the event an existing building will be renovated, partially demolished or removed, the project may be subject to District Rule 4002 (National Emission Standards for Hazardous Air Pollutants).
- Certain components of this project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review), and therefore may require District permits. Prior to commencement of construction for these, the project proponent should submit to the District

an application for an Authority to Construct (ATC). For further information or assistance, the project proponent may contact the District's Small Business Assistance (SBA) Office at (209) 557-6446.

- The project would equal or exceed 9,000 square feet of space within the District boundary; therefore, the District concludes the project is subject to Rule 9510.

District Rule 9510 is intended to mitigate a project's impact on air quality through project design elements or by payment of applicable off-site mitigation fees. Any applicant subject to District Rule 9510 is required to submit an Air Impact Assessment (AIA) application to the District no later than applying for final discretionary approval, and to pay any applicable off-site mitigation fees before issuance of the first building permit. If approval of the subject project constitutes the last discretionary approval by your agency, the District recommends that demonstration of compliance with District Rule 9510, including payment of all applicable fees before issuance of the first building permit, be made a condition of project approval. Information about how to comply with District Rule 9510 can be found online at: <http://www.valleyair.org/ISR/ISRHome.htm>.

- The above list of rules is neither exhaustive nor exclusive. To identify other District rules or regulations that apply to this project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (209) 557-6446. Current District rules can be found online at the District's website at: www.valleyair.org/rules/1ruleslist.htm.

The District appreciates the opportunity to comment on the RDEIR/SDEIS. If you have any questions or require further information, please call Sharla Yang at (559) 230- 5934.

Sincerely,

Arnaud Marjollet
Director of Permit Services



Brian Clements
Program Manager

AM: sy

From: Brian Clements <Brian.Clements@valleyair.org>
Sent: Monday, November 02, 2015 3:25 PM
To: BDCPcomments
Cc: Arnaud Marjollet; Patia Siong; Chay Thao; Sharla Yang
Subject: REVISED COMMENTS for the Bay Delta Conservation Plan/California WaterFix RDEIR/SDEIS
Attachments: 3471_001.pdf

To whom it may concern,

Attached is a REVISED COMMENT LETTER from the San Joaquin Valley Air Pollution Control District regarding the Bay Delta Conservation Plan/California WaterFix RDEIR/SDEIS.

Please feel free to contact me should you have any questions or concerns, thank you.

Sincerely,

Brian Clements
Program Manager - Permit Services Dept.
San Joaquin Valley Air Pollution Control District
1990 E. Gettysburg Ave., Fresno, CA 93726-0244
Phone: 559-230-5921, Fax: 559-230-6061
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From: Hooper, Dana <Dana.Hooper@usfoods.com>
Sent: Thursday, October 29, 2015 5:59 PM
To: BDCPcomments
Subject: CA Water Fix Comments Template.docx
Attachments: CA Water Fix Comments Template.docx

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October 29, 2015

BDCP/WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812

ATTN: Governor Jerry Brown

Subject: Oppose the Delta Tunnels/California Water Fix (Alternative 4A)

I am writing to express my strong opposition to the Delta Tunnels plan.

The Delta Reform Act of 2009, in which the California State Legislature committed to the “coequal goals” of providing a more reliable water supply for California AND protecting and restoring the cultural, recreational, natural resource, and agricultural values of the Delta, cannot be upheld if the Delta Tunnels come to pass.

The California Water Fix does not meet the restoration goals of the Delta Reform Act; it is simply a plan to export more water out of the San Francisco Bay-Delta estuary. The Delta Tunnels will also fail to provide more reliable water because the Delta watershed is already oversubscribed by five times in normal water years.

As a fisherman I am extremely concerned about the effect of the Delta Tunnels on salmon and other pelagic fish that rely on the Delta.

My objections to the tunnels are threefold. The California Water Fix does not address the environmental, public health or economic impacts of the proposed Delta tunnels project. Also, the plan ignores alternatives that would save California tax and ratepayers billions of dollars, while investing in the jobs and local water sources that build sustainability.

My environmental concerns with the plan are:

- The impact on wildlife and plant species in the Delta that depend on freshwater include the Delta smelt, chinook salmon, steelhead, San Joaquin kit fox, and tricolored blackbird, protected species already on the brink that will face decimation due to a diminishing food-web. The recent decimation of two years of winter-run salmon has been caused in part by mismanagement of water, specifically by exporting too much water from north state reservoirs and leaving too little for the fish to survive. The Delta Tunnels would only allow more transfers, possibly resulting in the extinction of these magnificent fish.
- At sea, even the ESA-listed South Pacific Puget Sound Orca Whales depend on migrating Delta species that will be harmed by less water flowing through the Delta.

- The tunnels plan ignores Section 7 of the Endangered Species Act which prohibits federal agency actions that are likely to jeopardize the continued existence of any endangered species or that “result in the destruction or adverse modification of [critical] habitat of [listed] species.” As noted above, listed winter-run salmon (and Delta Smelt, as well) are already jeopardized without the tunnels. They would be placed in even greater jeopardy with the tunnels in place.
- Because the tunnels will take water around the Delta rather than through it, salt water intrusion will become more frequent. This is already affecting the Delta, but it will become worse and further degrade the Delta environment, rather than enhance it as the co-equal goals of the Delta Reform Act of 2009 require.

My public health concerns with the plan are:

- The tunnels will cause increased contamination of municipal water and wells for the millions of rural and urban residents living in the five Delta counties.
- The tunnels plan fails to model for potential increases of carcinogens and other formation of byproducts that would cause cancer and other serious health effects.
- Environmental justice communities, who depend on subsistence fishing, will also face food and health insecurities as a result of increased contaminants, specifically mercury contamination, in fish and wildlife populations.

My economic concerns with the plan are:

- For large metropolitan cities such as Los Angeles and San Jose that depend on export water, water rates and/or property taxes will go up, but they will get no additional water.
- The major benefit of the Tunnels would accrue to water districts and farmers in the west side of the San Joaquin Valley while the major costs to repair the environmental damage they would cause would fall to the taxpayers. This fundamental unfairness alone should cause you to remove your support of this disastrous plan.
- No analysis has been done on how the lack of fresh water flows will impact San Francisco Bay tourism and recreation. These industries depend on Delta fresh water flows for their crab and salmon fisheries, wildlife sighting, boating, and their restaurant economy. This industry is worth billions annually.
- Salinity intrusion is already impacting the western Delta farms and removing Sacramento River freshwater from the system will make matters worse. Delta farmers cannot irrigate crops with salt water and they certainly cannot plant crops in contaminated soils. The Delta Ag economy, which consists of generations of family farms and farm workers, generates \$5.2 billion for the California economy, annually.
- California coastal fishing communities depend on thriving wildlife. This historic industry is worth billions annually, with the salmon industry worth \$1.5 billion annually alone. Thousands of jobs and livelihoods are tied to these industries.

- The operation and construction of the tunnels will obstruct and disable navigable waterways for boating, marinas and other types of leisure activities, in addition to creating conditions of low water flow that will foster invasive aquatic species, such as water hyacinth. Poor water quality also creates unsafe recreation.

Recreation and tourism in the Delta generate \$750 million annually.

Far less expensive and less environmentally destructive alternatives to the Delta Tunnels were largely ignored. The plan does not seriously consider any alternatives other than new, upstream conveyance. The decision-making process (from the outset) has tilted in favor of increasing water exports from the Delta. This is mostly due to the composition of the group that devised the Delta Tunnels plan. Delta residents and others with better ideas were not included in the planning. Once again, this fundamental inequity should cause you to remove your support of this plan.

There are better alternatives that would provide more immediate results with a lower outlay of dollars. There are also better alternatives that would actually enhance the delta rather than destroy it. Our tax and ratepayer dollars would be much better spent on:

- More aggressive water efficiency programs statewide that would apply to both urban and agricultural users.
- Funding water recycling and groundwater recharge projects statewide that would be billions of dollars less expensive for rate payers than constructing a new version of the Peripheral Canal or major new surface storage dams. Meanwhile, these projects move communities towards water sustainability.
- Retiring thousands of acres of impaired farmlands that generate wastewater pollution in the western and southern San Joaquin Valley and using those lands for more sustainable and profitable uses, such as solar energy generation.
- Improving Delta levees in order to address potential earthquake, flooding, and future sea level rise concerns at a cost of \$2 to \$4 billion; this is orders of magnitude less expensive than the major conveyance projects that are currently being contemplated.
- Increasing freshwater flows through the Delta to reduce pollutants so ecosystems and wildlife can be restored.
- Installing fish screens at the south Delta pumps to reduce the current salvage of marine life.
- Considering a through-Delta project that would transfer water through the delta before exporting it to farms in the San Joaquin Valley. This would automatically protect the delta by removing the incentive to export water when salinity intrusion extends too far, precisely with the delta needs protection from excessive transfers.

In Summary

The Delta has problems that need to be addressed, but the CA Water Fix tunnels are a 20th century idea that won't fix them. It won't produce more water, more reliable supplies, or improved conditions for the environment in the Delta.

RECL2507

The new EIR/EIS has not adequately addressed my above stated concerns. That is why I oppose the Delta Tunnels/California Water Fix (Alternative 4A).

Reclamation and DWR should prepare and circulate a new Draft EIR/EIS that will include alternatives that reduce water exports and increase Delta flows for consideration by the public and decision-makers. Such alternatives have a far better chance of complying with the Delta Reform Act and the federal Endangered Species and Clean Water Acts.

Sincerely,

Dana Hooper



October 30, 2015

BDCP/CA WaterFix Comments
P.O. Box 1919
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BDCPComments@icfi.com

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

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

Michael Tucker
National Marine Fisheries Service
Delta Policy and Restoration Branch
650 Capitol Avenue, Suite 5-100
Sacramento, CA 95814

**Re: Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft
Environmental Impact Report/Supplemental Environmental Impact Statement**

Dear Secretary Laird, Secretary Jewell and Mr. Tucker,

The Delta Caucus is comprised of the five Delta County Farm Bureaus -- Contra Costa, Sacramento, San Joaquin, Solano and Yolo. In 2008, these five Delta County Farm Bureaus joined to form the Delta Caucus to protect and promote the viability and sustainability of Delta agriculture. On June 1, 2014, this group submitted comments to the BDCP DEIR, which are attached to this letter for reference and inclusion as they relate to the RDEIR and California WaterFix.

One of the major faults of the RDEIR and California WaterFix is its lack of presenting informative and clearly articulated information to the public. As required, the purpose of an EIR is not only to protect the

environment but also to show the public that it is being protected. Neither the RDEIR nor the two previously held July 2015 public workshops came close to achieving that requirement. The renaming of the Bay Delta Conservation Plan (BDCP) to California WaterFix has resulted in public confusion. To compound this confusion, the RDEIR cross references the BDCP with multiple figures, appendices, and text resulting in a confusing mix of new, old, and partially edited sections. Failure to integrate text, figures, and appendices violates CEQA and NEPA and that alone should halt the environmental review process until one consistent document is provided that allows the public to be engaged.

The Delta Caucus' prior comments focused on the tremendous damage that the BDCP would inflict on Delta agriculture. The revised Alternative 4, described in the Recirculated Draft, makes minor changes to the BDCP Preferred Alternative 4, but does not result in any significant reduction in negative impacts to Delta agriculture. The new alternatives 4A, 2D, and 5A eliminate negative impacts to Delta agriculture associated with the conversion of and restrictions on Delta agricultural caused by the implementation of BDCP Conservation Measures 2-21. However, new alternatives 4A, 2D and 5A will still inflict substantial negative impacts on Delta agricultural resources.

Consistent with comments previously submitted, these comments will focus on the following:

1. Consistency of the California WaterFix with laws and regulations protecting Delta agricultural resources
2. Collective negative impacts of California WaterFix on Delta agriculture
3. Unidentified/minimized impacts
4. Analysis of proposed mitigation
5. Inadequate study of alternatives

1. Consistency with laws and regulations protecting Delta agricultural resources:

New alternatives described in the RDEIR are inconsistent with County General Plans, the Delta Protection Commission's Land and Resource Management Plan and its Delta Economic Sustainability Plan, and the Delta Stewardship Council's Delta Plan.

The Delta Reform Act, §29702 states, "*The co-equal goals shall be achieved in a manner that protects and enhances the Delta's unique cultural, recreational, natural resources and agriculture as an evolving place.*" The new alternatives described in the RDEIR do not achieve the co-equal goals as defined in the Delta Reform Act of 2009, and do major damage to agricultural resources of the Delta by:

1. Converting agricultural lands to industrial uses
2. Disrupting agricultural operations during construction
3. Damaging agricultural infrastructure
4. Changing flow patterns downstream of diversion sites

The California WaterFix and the new alternatives 4A, 2D and 5A will violate plans and laws enacted to protect agricultural resources in the Delta.

As cited on page 11 of the California Department of Water Resources (DWR) permit (33 C.F.R. 325) application to the Army Corps of Engineer submitted on August 24, 2015,

“Changes in water inflow and outflow throughout the Delta affect the water quality within the Delta, particularly with regard to salinity. It has been estimated that seawater is pushing 3 to 15 miles farther inland since development began in the Delta over 159 years ago (Contra Costa Water District 6/2010).”

Figure 7b of the Delta Vision Report details a steep decline in Delta outflow from 81% of unimpaired flow during 1930-1949 to 48% between 1990-2005. During the same time periods, State Water Project (SWP) and Central Valley Project (CVP) exports (not including Contra Costa Water District diversions) went from 0 to 17% and in-Delta watershed diversions (before reaching the Delta) increased from 14% to 31% (some of these are exported from the Delta watershed). As a result, water quality in the Delta and the San Francisco Bay has been severely impacted.

The importance of protecting water quality in the Delta has resulted in plans, decisions and contracts establishing water quality and flow standards. The SWP and CVP are responsible for achieving both flow and salinity standards. DWR is responsible for maintaining standards of the North Delta Water Agency Contract.

Implementation of the preferred Alternative 4 as described in the Draft BDCP, would result in reduced Delta outflow, increased seawater intrusion, and frequent violations of water quality standards as described in the United States Environmental Protection Agency comment letter dated August 26, 2015.

The California WaterFix RDEIR claims that water quality impacts have been reduced to less than significant. This conclusion is reached by adjusting water quality models used by the BDCP and by removing Conservation Measures 2-21, even though it is expected that some of the restoration and conservation activities will still occur under Biological Opinions and California EcoRestore. As pointed out in comments submitted by MBK Engineers and Dan Steiner, the BDCP model provides *“very limited useful information to understand the effects of the BDCP.”* Furthermore, modeling used in the California WaterFix RDEIR is not reliable as acknowledged on page 2-10 lines 13-15 of the RDEIR, *“Finally understanding the uncertainties and limitations in modeling...”* The very optimistic and unsubstantiated conclusion on RDEIR page 2-10 lines 25-27 reads, *“Thus, it is likely that some objective exceedances simulated in the modeling would not occur under the real-time monitoring and operational paradigm that will be in place to prevent such exceedances.”* Project proponents continue to assert the California WaterFix will be operated in accordance with Biological Opinions and D-1641, and therefore, current conditions in the Delta will be maintained and significant impacts will be avoided. However, the current water quality conditions required by the Biological Opinions and D-1641 were developed to govern the current export facilities and do not account for changes in operation by the California WaterFix. Because the California WaterFix will change flow and water quality in and through the Delta, the impacts need to be understood and clearly articulated. Instead, the RDEIR relies on the BDCP’s inaccurate model and assumptions concluding that impacts to water quality will be less than significant.

The BDCP DEIR and the California WaterFix RDEIR fail to address consistency with the State Plan of Flood Control as required by Water Code §85320 (b)(2)(E) which requires that BDCP studies include *“the potential effects on Sacramento River and San Joaquin River flood management.”* The BDCP DEIR and California WaterFix RDEIR rely on inadequacies of Delta levees as a primary excuse for building the twin tunnels. The California WaterFix is a dual conveyance project (through Delta and

North Delta Diversion), and levees will perform a key role in project performance. Levee inadequacies as detailed in the BDCP DEIR and California WaterFix RDEIR are not addressed, and therefore, the project and the RDEIR are incomplete.

2. Collective Negative Impacts of the California WaterFix on Delta Agricultural Resources

With the exception of the reduced impacts resulting from removing BDCP conservation measures 2-21 and the questionable reclassification of some impacts from significant and unavoidable to less than significant, very little has changed from the Delta Caucus' previous comments. The California WaterFix will have tremendous negative unmitigated impacts on Delta agricultural resources. So-called short-term impacts will result in an irreparable, permanent loss of agricultural resources, irrigation water of sufficient quality to some of the strongest priority users will be impaired, productive and diverse agricultural land will lie fallow, businesses that depend on agriculture will close, and agriculture employment will decline. While some of these collective impacts are recognized and discussed in Section 5.2.1.10 of the RDEIR, there is no effort to quantify or reduce the combined impacts. Proposed mitigation, such as developing an Agricultural Land Stewardship Plan (please see the attached June 1, 2014 comment letter), is inadequate and the combined negative impacts remain significant and unavoidable. All four agricultural impacts, AG1-4 RDEIR pages ES82-83, are recognized as significant and unavoidable. In addition, as detailed on pages ES 88-90, there are 19 impacts to the Delta economy. One is categorized as less than significant, and the remaining 18 are categorized as no impact. This lack of regard for agricultural resources and the Delta economy will result in economic devastation and will destroy the viability, sustainability and resiliency of the Delta economy, its businesses, communities, and the livelihood of its residents.

3. Unidentified Impacts

Even though some of the unidentified impacts described in the Delta Caucus' previous comments to the BDCP DEIR/EIS have been resolved, the California WaterFix RDEIR is incomplete because it has not recognized, analyzed, and mitigated for unidentified impacts 1, 2, 3, 4, 6, 9, and 10 as stated in the attached comment letter.

In addition, water quality impacts as presented in the California WaterFix RDEIR are inadequate and incomplete. Without meaningful and accurate analysis of how the California WaterFix will change flow and water quality throughout the Delta, conclusions that water quality impacts are less than significant are unsubstantiated. Water flow and quality analysis should also include expected actions in the Yolo Bypass as required under the Biological Opinions and California EcoRestore.

According to DWR's August 24, 2015 application to the Army Corps of Engineers, 2,099,259 cubic yards of tunnel muck will be generated during construction of California WaterFix (page 12). The tunnel muck, now called reusable tunnel material (RTM), will be stacked from 6 to 15 feet high (page 6) in 11 disposal sites (page 4). DWR indicates, that if feasible, the tunnel material will be used during construction of various habitat restoration efforts (page 6). There are no provisions for permanently storing or disposing of tunnel muck if reuse is infeasible. In contrast, the California WaterFix RDEIR chapter 3 (page 3-43), states that as much as 31 million cubic yards of tunnel muck will be excavated and recognized as a potential problem. The magnitude of the impact is minimized by assuming the

material can be reused. The claim made in the RDEIR, page D.3-98 lines 10-11, that more than 99% of the tunnel muck will be suitable for reuse is unsubstantiated and is contradicted by designing storage areas for either permanent or temporary storage. Page D3-96 lines 25-26 indicates temporary storage areas will be designed for RTM while lines 30-31 state that material will be temporarily or permanently stored in designated storage areas. On page D.3-99, lines 18-19 RTM will be placed in either lined or unlined storage areas suitable for long-term storage at an assumed depth of 6 feet (page D.3-97 line 29). In addition, the provision for reuse is qualified by terms such as *"if feasible"* and *"to the extent practicable"*. The definition of RTM on page D.3-96 line 19 describes RTM as *"...appropriate for reuse based on chemical characterization and physical properties."* Piles of 31 million cubic yards of tunnel muck stacked 15 feet high will result in significant negative impacts not recognized or provided for in the California WaterFix RDEIR.

Finally, the Delta Caucus' previous comments pointed out that the CEQA required Draft Implementation Agreement was not available. Since then, a Draft Implementation Agreement has been released but is incomplete because it does not include operating information and financial commitments. In addition, the Draft Implementation Agreement does not seem to be consistent with changes in new alternatives as contained in the California WaterFix. A complete draft must be available for public review and comment and should restart the beginning of the public comment period.

4. Analysis of Proposed Mitigation

The Delta Caucus' prior comment letter pointed out that CEQA requires that mitigation be feasible, fully enforceable, adequately financed, and monitored. Mitigation measures that are discretionary, deferred, unfunded and that may not be feasible are not adequate mitigation. In addition, because of inadequate analysis especially relating to water quality and tunnel muck impacts, agricultural, economic, water quality, and aesthetic impacts need to be reassessed, and adequate mitigation needs to be developed.

AG-1 *"develop an Agricultural Lands Stewardship Plan (ALSP) to maintain agricultural productivity and mitigate for loss of Important Farmland and land subject to Williamson Act contracts or in Farmland Security Zones"* remains the primary mitigation measure for agricultural and economic impacts. As pointed out in prior comments, the ALSP is merely conceptual and does nothing to mitigate for the very real impacts that Delta family farmers will face. In fact, as presented in the BDCP DEIR/EIS, the ALSP could result in advancing isolated conveyance rather than mitigating for impacts to agricultural resources. Mitigation measure AG-1 is inadequate because the ALSP is not defined, not feasible, not enforceable, and not funded.

5. Inadequate Study of Alternatives

Since 2006, a great deal of effort has been spent designing what today has become the twin tunnels project, Alternative 4 in the BDCP. Alternative 4 has now been modified to become alternative 4A, the preferred alternative of the California WaterFix. DWR has already applied for permits to divert water in the north Delta and has already applied to the Army Corp of Engineers in preparation for constructing California WaterFix. The twin tunnels project is being advanced even before public comment closes on

the California WaterFix RDEIR. DWR has ignored or rejected all alternatives not involving tunnels and north Delta diversion.

All alternatives as presented in the BDCP and as proposed by the public have not been studied in equal detail. DWR continues to implement the twin tunnels project before the close of comments on the California WaterFix, implying that CEQA/NEPA public participation is simply a formality. The CEQA/NEPA process is meant to provide meaningful participation and input into this project that will have long-term environmental, economic and human impacts on the Delta, its residents, and the citizens of California.

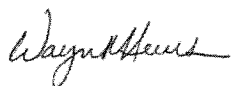
Conclusion

California WaterFix will devastate the Delta. The twin tunnels project will not make California's water supply more reliable, will not restore the Delta environment and will not reduce reliance on the Delta. The twin tunnels project will damage Delta resources to include agriculture and will waste valuable resources which could be employed to implement projects to advance water reliability for California—projects that impact the supply/demand equation by reducing demand and increasing supply. The Delta Caucus believes that there are more efficient and effective ways to improve water reliability for California and improve conditions in the Delta and remains committed to ensuring that Delta agricultural resources are protected and enhanced in accordance with the Delta Reform Act of 2009.

Sincerely,



Russell van Loben Sels, Chair
Delta Caucus



Wayne Reeves, President
Contra Costa County Farm Bureau



Jim Viethier, President
Sacramento County Farm Bureau



Jack Hamm, President
San Joaquin Farm Bureau



Ryan Mahony, President
Solano County Farm Bureau



Jeff Merwin, President
Yolo County Farm Bureau

Attachment A: BDCP Draft EIR/EIS comments submitted July 1, 2015

Attachment B: BDCP Draft EIR/EIS Questions

cc.

U.S Senator Dianne Feinstein
 U.S. Senator Barbara Boxer
 Representative John Garamendi
 Representative Mike Thompson
 Representative Doris Matsui
 Representative Ami Bera
 Representative Jerry McNerney
 Representative Jeff Denham
 Representative George Miller
 State Senator Richard Pan
 State Senator Lois Wolk
 State Senator Cathleen Galgiani
 State Senator Tom Berryhill
 State Assemblymember Joan Buchanan
 State Assemblymember Jim Cooper
 State Assemblymember Susan Eggman
 State Assemblymember Ken Cooley
 State Assemblymember Jim Frazier
 State Assemblymember Bill Dodd
 Contra Costa County Board of Supervisors
 Sacramento County Board of Supervisors
 San Joaquin County Board of Supervisors
 Solano County Board of Supervisors
 Yolo County Board of Supervisors



July 23, 2014

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

Submitted via email: BDCP.comments@noaa.gov

Re: Draft Bay Delta Conservation Plan and associated Draft Environmental Impact Report/Environmental Impact Statement (BDCP Draft EIR/EIS)

Dear Mr. Wulff:

The Delta Caucus is comprised of the five Delta County Farm Bureau's; Contra Costa, Sacramento, San Joaquin, Solano and Yolo. Since 2008, the five Delta County Farm Bureau's joined to form the Delta Caucus and has been engaged to protect and promote the viability of Delta agriculture and represent the family farmers and ranchers who live and farm in the Delta.

We appreciate the opportunity to comment on the Draft BDCP and the related EIR/EIS. Please accept our comments and related questions (Attachment A) on behalf of our combined organization and as if submitted by each of the individual County Farm Bureaus as listed above.

The proposed BDCP will have tremendous negative impacts on Delta agricultural resources. The primary negative impacts will be caused by conversion of agricultural lands to other uses, degraded water quality caused by intrusion of salt water into the Delta and negative impacts to infrastructure such as flood control and drainage. In addition, there will be severe secondary impacts to Delta agricultural resources caused by the cumulative impacts which will irreparably impair the Delta economy. Some of the negative impacts have been identified and studied in the Draft EIR/EIS, but many have not. Mitigation to diminish the severity of identified impacts has been proposed, but is inadequate to provide for a vibrant and viable Delta agricultural economy.

Key ingredients for viable and resilient Delta agriculture are land, high quality water, and infrastructure. Our comments will focus on the impact of the BDCP to these key requirements and are organized around the following:

1. Consistency of the BDCP with laws and regulations protecting Delta agricultural resources.
2. Collective negative impacts of the BDCP on Delta agriculture.
3. Unidentified impacts.
4. Analysis of proposed mitigation.
5. Inadequate study of alternatives.

The Regulatory Landscape...Land

County General Plans value and protect Delta agricultural resources and recognize that agriculture is the foundation of the Delta economy.

The Delta Protection Act of 1992 in Section 29703 (a)(c) describes the Delta as an agricultural region of great value and states that the Primary Zone should be protected from the intrusion of non-agricultural uses. This Act created the Delta Protection Commission and directed it to create the Land and Resource Management Plan, which has five land use policies that protect agricultural resources. In addition, pursuant to the Delta Reform Act, The Delta Protection Commission prepared the Delta Economic Sustainability Study, which clearly shows that agriculture is the backbone of the Delta's economy.

The Delta Reform Act established the co-equal goals of water supply reliability and ecosystem restoration and conditioned their achievement on the protection and enhancement of Delta resources to include agriculture. Section 29702 (a) states that "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources and agricultural values of the Delta as an evolving place." The Delta Reform act also created the Delta Stewardship Council and directed it to develop the Delta Plan. Chapter 5 of the Delta Plan establishes policies and goals to protect Delta agricultural resources (Delta Plan: Pages 183 and 192-198).

While the draft EIR/EIS mentions the applicable laws and regulations, it does not demonstrate consistency with county general plans, the Delta Protection Act or the Sacramento- San Joaquin Delta Reform Act.

The Regulatory Landscape...Water

The establishment and operation of the State Water Project (SWP) and the Central Valley Project (CVP) are based on water law that, among other things, establishes the common pool principle, area of origin priorities, and limits water exports to surplus water.

Because of the changing definition of surplus water and the need to recognize environmental needs in that equation, a series of steps has been taken over time to establish standards to protect water and Delta environmental quality.

- The 1995 Bay Delta Plan established salinity standards throughout the Delta.
- The Water Resources Control Board in Decision 1641 (D-1641) Chapter 10 assigned responsibility for achieving salinity standards to the SWP and CVP, and because salinity intrusion into the Delta is determined by outflow, Chapter 13 also assigns responsibility for achieving flow standards to the SWP and the CVP.

The BDCP Draft EIR/EIS acknowledges:

- The importance of flow to control salinity intrusion into the Delta (ES-12 line 1).
- That outflow under alternative 4 will be reduced up to 864,000AF.
- The result will be increased seawater intrusion (8-408lines 36-38).
- In addition, modeling shows increased salinity will occur in much of the Delta (8-436-438).
- The result will be regular violations of water quality standards (acknowledged as violation 8H-1 line 17).

The Delta Protection Commission recognized that water quality is a key consideration in protecting the resources of the Delta and included policies to protect Delta water in its Land and Resource Management Plan.

In 1981, the State of California and the North Delta Water Agency entered into a contract that established salinity standards in the North Delta and other terms and conditions that have not been addressed or analyzed in the Draft EIR/EIS.

The Delta Reform Act of 2009 included a mechanism for the BDCP to be included in the Delta Stewardship Council's Delta Plan. Water Code Section 85320 lists requirements that BDCP must achieve

in order to be included in the Delta Plan. The Draft EIR/EIS claims consistency (Appendix 31), but does not achieve the conditions of Water Code 85320 (b)(2)(A) which requires that a series of studies be completed which "...will identify the remaining water available for export and other beneficial uses." The studies may have been performed, but the amount of water available for export has not been determined and is one of the key uncertainties of the BDCP.

In addition, the Delta Reform Act of 2009 as explained in Water Code Section 85021 requires that reliance on the Delta in meeting California's future water needs be reduced. Certainly a 50-year permit will be operating in the future, and therefore, the BDCP should demonstrate that it reduces reliance on the Delta through strategies such as regional self-reliance, local and regional water supply projects, and other strategies. On the contrary, the BDCP seems to increase rather than reduce dependence on the Delta as a source of future water.

Even though the BDCP Draft EIR/EIS recognizes and explains many of the laws, regulations, and contractual agreements controlling water exports from the Delta, it is meaningless. The document fails to address the operational concerns of those within the Delta and offers no commitment to operate the BDCP in a manner that is consistent with prevailing California water law and issues of priority. The BDCP must be consistent with California water policy, laws, and regulations.

The Regulatory Landscape...Infrastructure

The BDCP Draft EIR/EIS states that the Central Valley Flood Control Board (CVFCB) has no jurisdiction or authority over construction, operation or maintenance of CVP or SWP (6-35 lines 40-41). Flood control is a key element of the infrastructure necessary to protect agricultural values in the Delta. The BDCP and any plans which emerge regarding flood control structures such as the Yolo Bypass and Levees throughout the Delta must be analyzed and be consistent with the State Plan of Flood Control administered by the CVFCB and other state and federal agencies with jurisdiction over Delta flood control. In addition, Water Code Section 85320 (b) states, "The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following" and 85320 (b)(2)(E) requires that BDCP studies include "the potential effects on the Sacramento River and San Joaquin River flood management." This analysis has not been performed.

In addition, the BDCP has not performed the analysis to determine consistency with the State Plan of Flood Control and therefore, is not consistent with local, state, and federal regulations regarding flood control in the Delta. Until the BDCP has performed the analysis and determined that its proposed actions are consistent with the State Plan of Flood Control, there should be no State or Federal funding to support the project.

Cumulative Effect of BDCP on Delta Agricultural Resources

As stated earlier, the BDCP will have tremendous negative impacts on Delta agricultural resources. As shown in Table 3-4 in Chapter 3, page 22 of the Draft EIR/EIS, in Table 6-2 Chapter 8, page 6 of the Bay Delta Conservation Plan Public Draft, and in Table 8-1 of the Bay Delta Conservation Plan Public Draft, 150,000 acres of agricultural land will be acquired, converted, restricted or otherwise impacted by BDCP. In analyzing the BDCP's impact on agricultural resources, any action that converts agricultural land to other uses or which will negatively impact the viability and resiliency of the land in the future will negatively impact Delta agricultural resources. Certainly there are different levels of negative impacts such as conversion to marshland versus restriction to field crop, but each of these actions will negatively impact the resource as a whole.

Many of the negative impacts are recognized in the BDCP draft EIR/EIS; however, because of the way the document is organized and because of the size of the document, the total impact of the BDCP on

agricultural resources is indecipherable. For example, water quality impacts will negatively impact agricultural resources, but Chapter 14 (Agricultural Resources) refers the reader to other chapters to try to figure out what the impact on agricultural resources might be (14-12 lines 24-26). Increased salinity in many Delta areas as shown by the modeling (8-437 and Appendix 8H) will have a major impact on Delta agricultural resources, yet in Chapter 14 we are again referred to other chapters (14-15, lines 14 & 15), and there is only a general discussion indicating that increased salinity will affect crop selection and production, but the real impact detailing how increased salinity caused by the BDCP will negatively impact resources of the Delta, including agriculture, is not explained in the analysis.

The Delta Protection Commission recently completed a Delta Economic Sustainability Study, which concluded that agriculture is the major economic force in the Delta and while converting thousands of acres agricultural lands to other uses will certainly negatively impact Delta agricultural resources and the Delta economy, the total impact of this is not considered in the document. A cursory review of impacts identified in the executive summary suggests that the 64 impacts listed below impact agricultural resources and that approximately 20 of them are classified as significant and unavoidable.

Surface Water: SW 4, 5, 6, 8, 9
Ground Water: GW 1, 2, 3, 4, 5, 6, 7, 8, 9
Water Quality: 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 22, 25
Soils: Soils 2, 7
Agricultural Resources: AG 1, 2, 3, 4
Socioeconomics: ECON 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 17, 18
Noise: NOI 1, 2, 10
Hazards and Hazardous Materials: HAZ 1, 2
Public Health: PH 1, 2, 5
Land Use: LU 1, 2, 4, 5
Transportation: TRANS 1, 2, 3, 8, 9, 10

The EIR/EIS makes no effort to measure the cumulative effect of all of these many impacts and the devastation they will have on the agricultural resources of the Delta, its legacy communities, businesses, and residents. The effect of these 64 negative impacts must be evaluated both separately and collectively in order to insure that mitigation is adequate to fully mitigate for the negative impacts of the project in its totality. The effects of one negative impact will increase the severity of others. For example, if 50,000 acres are converted from agricultural production to other uses, 50,000 acres are subject to crop restrictions, 50,000 acres go out of production because of water quality impacts, another 20,000 acres go out of production from more frequent flooding of the Yolo bypass, 15,000 acres go out of production because of construction impacts, and another 10,000 go out of production because of traffic, noise and other construction related interference, the combined effects becomes greater than each impact considered separately. In addition, the ability to finance special district operations which provide key agricultural infrastructure such as flood control, drainage and water delivery will be impaired, and more agricultural land will be impacted, businesses that depend on agriculture will close, agricultural jobs will decrease, and the Delta economy will begin a downward spiral. The combined effects of the negative impacts will be devastating. These 64 negative impacts, 20 of which are significant and unavoidable, will destroy the viability, sustainability and resiliency of the Delta economy, its businesses, communities, and the livelihood of its residents.

Unidentified Impacts

The BDCP Draft EIR/EIS is incomplete because it has not recognized, analyzed, and mitigated for the following impacts:

1. During construction, BDCP will cause ten years of major disruptions to residents, agriculture and other businesses with noise, water supply interruption, traffic, and other negative impacts referred to as "short term impacts". Because the combined effect of these impacts could have

long- term implications for Delta agricultural resources, and its residents and businesses, construction impacts must be studied as both short and long-term and appropriate mitigation needs to be developed.

2. During construction, in order to de-water construction sites, there will be large amounts of drainage water generated. According to the EIR/EIS, the drainage water will be treated if necessary and discharged into "local drainage channels or rivers" (6-58). How will drainage water be treated? Will treating drain water impact Reclamation Districts and agricultural resources? Will drainage water be discharged into Reclamation District drainage systems? How much drainage water will there be, and do Reclamation Districts have the capacity to remove the extra drainage water? How will the impacts be mitigated?
3. There must be assurances that construction does not impact flood control infrastructure. It is acknowledged that levee roads will suffer damage from construction activities, however, damage to the levees themselves is not considered. To the extent that there is damage to underlying levees, it must be mitigated to eliminate the risk of flood to the Delta communities.
4. Because coffer dams will impede river flows and increase upstream river elevations (6-58), flood risk may be increased. This impact must be analyzed and mitigated.
5. The Yolo Bypass is a flood control structure. Because CM-2 may reduce flood-flow capacity, the CVFCB, must determine that CM-2 is consistent with the State Plan of Flood Control. Any reduction in flood-flow capacity must be identified and mitigated.
6. As reported in Bulletin 125 Studies conducted in 1967 concluded that increased river elevations will increase seepage into agricultural lands. The full effect of increased seepage caused by coffer dams (6-58) must be analyzed and mitigated.
7. Construction and operation of CM 2-22 will result in increasing populations of endangered species and other conditions which will impact neighboring agricultural resources. Farmers must be indemnified from liability for agricultural practices that are necessary to farm, such as but not limited to pumping water.
8. Water quality impacts WQ7, WQ8 and WQ11 all deal with increased salinity in Delta water downstream from the proposed northern intakes. This impact is not adequately analyzed with respect to its effect on agricultural resources. The data shows the number of days standards will be violated and the percent of days in violation (Appendix 8H). This data must be analyzed to demonstrate the magnitude of the violations and the resulting impacts on agricultural resources.
 - a. Increased EC may result in changing cropping patterns to less profitable crops or fallowing land. Corn is an important crop for agricultural viability and also for migratory waterfowl. The crop demands high quality water and may no longer be a viable crop choice if EC is too high.
 - b. It is misleading to compare Sacramento River E.C. data at Emmaton (existing conditions) to data as measured at Three Mile Slough for the BDCP alternatives (Appendix 8H-5). It would be more appropriate to compare E.C. data at the same location, and there is a high probability that the true comparison would show a greater magnitude of increased EC caused by operation of the BDCP.

- c. We find the use of the phrase “anomaly” to also be incredibly misleading and ill-defined. Appendix 8H, page 1, line 17 indicates that there may be some modeling anomalies that have masked or distorted results. Modeling is an essential part of the EIR and if the modeling contains errors, omissions or is outdated, the EIR inaccurately describes impacts and evaluates mitigation. Because modeling is such an essential part of the project’s description, there is no room for anomalies, errors, omissions or other factors which have distorted the project’s description.
 - d. The BDCP EIR acknowledges that it will violate water quality and flow standards as required under D-1641. It identifies these violations as significant and unavoidable impacts. The legal questions that come with a project such as this must be addressed. The water quality and the protection of area of origin diverters are a settled matter of California law. The BDCP must demonstrate compliance with the law. To describe a violation of the law as a significant and unavoidable impact is unacceptable.
9. The impact of the BDCP on the terms and conditions of the North Delta Water agency contract with the State of California and the subsequent effect on the agricultural resources within the boundaries of the North Delta Water Agency must be addressed in the EIR.
10. The employment of the “Decision Tree” and “Adaptive Management” results in deferring major decisions about how BDCP is built and operated. The project is not clearly defined and the employment of the “Decision Tree” and “Adaptive Management” result in failure to adequately describe the project, disclose impacts, and design proper mitigation. The public cannot adequately comment on the Draft EIR/EIS when the employment of the “Decision Tree” or “Adaptive Management” could result in major changes to the project or the operation of the project.
11. The programmatic study of CM2-22 defers comprehensive description and analysis of major components of BDCP and results in failure to adequately describe the project, disclose impacts and design proper mitigation.
12. The Implementation Agreement (IA) has not yet been released. On 5/29/14, DWR announced that a draft IA is being prepared for release, but that it does not contain operating information or financial commitments. Without that information the soon to be released IA fails to meet HCP and CEQA guidelines. A complete draft IA must be available for public review and should restart the beginning of the public comment period as it may impact the validity of previously submitted comments.

Analysis of Proposed Mitigation

The California Environmental Quality Act (CEQA) requires that mitigation be feasible (section 15126.4(a)(1) as defined (Section 21061.1), fully enforceable (section 15126.4(a)(2) and adequately financed and monitored (section 15097).

Many proposed mitigation measures in the BDCP Draft EIR/EIS are inadequate. For example WQ11 states “Avoid, minimize, or offset as feasible reduced water quality conditions.” This mitigation

measure is discretionary, deferred, unfunded and may not be feasible. Mitigation for WQ11 is expanded by WQ11a "Conduct additional evaluation and modeling of increased EC levels following initial operations of CM1." This mitigation measure is inadequate because it only studies the condition creating the impact and does not offer a feasible, funded, legally binding action to offset or mitigate the impact.

Another example of inadequate mitigation is the Agricultural Land Stewardship Plan (ALSP) proposed as mitigation for AG 1,2,3,4 and ECON 6,7,12,13, and 18. "Agricultural land stewardship means farm and ranch landowners—the stewards of the state's agricultural land—producing public environmental benefits in conjunction with the food and fiber they have historically provided while keeping land in private ownership (California Water Plan Update 2005, Agricultural Land RMS)." Continued agricultural production is a key element of the definition of agricultural land stewardship. In the BDCP draft EIR/EIS, BDCP proponents are tasked with developing ALSPs by choosing from a group of strategies to offset impacts. Some of the suggested strategies are:

1. Strategy A: Have farmers manage habitat land (14B-14).
2. Strategy C: Designate habitat production as agricultural production (14B-14).
3. Strategy E: Work with counties to include habitat lands in Williamson Act Preserves (14B-15).
4. Strategy Q: Consider opportunities to develop sustainable agricultural land community in the Delta Region consistent with ecosystem conservation and restoration (14B-17).

None of these strategies is consistent with the definition of agricultural land stewardship because they do not provide for production of food and fiber. The ALSP is inadequate as mitigation because it allows the project proponents to choose from a group of strategies, some of which advance biological goals of the BDCP rather than mitigate for impacts to agricultural resources. In addition, ALSP mitigation is inadequate because it is not defined, and therefore, is not feasible. It is not enforceable nor is it funded.

Even though the BDCP will negatively impact up to 150,000 acres of Delta agricultural resources (Table 3-4, Chapter 3 page 22 Draft EIR/EIS), Appendix 8A of the Bay Delta Conservation Plan Public Draft (8.A.7.1 page 8-A-169 line 11) states, "EIR/EIS mitigation requirement would be 1,752 acres." This analysis is based upon permanent conversion of approximately 45,000 acres of important farmland inappropriately offset by 43,174 acres placed in a cultivated land reserve to benefit covered species impacted by the BDCP. Because both converting agricultural resources to other uses and restricting agricultural resources in a cultivated land reserve (BDCP chapter 3, Section 3.4.11) negatively impacts agricultural resources, concluding that 1,752 acres constitutes adequate mitigation is ludicrous. Mitigation must reduce, minimize or offset negative impacts caused by the project. Negative impacts should be cumulative, not offsetting.

Mitigation as proposed in the BDCP draft EIR/EIS that is discretionary, deferred, unfunded, not enforceable, ungoverned or where feasibility has not been determined, is inadequate. In addition, in cases where mitigation does not meet minimum CEQA guidelines, "impact after mitigation" must be reevaluated to determine significance.

Inadequate Study of Alternatives

The development of the BDCP began in 2006. Between 2006 and the release of the 2013 Draft EIR/EIS, a great deal of effort has been spent designing Alternative 4. Alternative 4 changed from a canal to tunnels, from five (5) diversion sites to three (3), from 15,000 cfs to 9,000 cfs, from tunnel

muck disposal sites to treatment and reuse of excavation material to name a few of the changes. The other alternatives remained static. Alternative 4 has been pursued through the courts in an effort to gain access to private property in order to conduct onsite surveys of environmental and geophysical conditions and has been described in detail in informational material throughout the process leading up to the release of the BDCP Draft EIR/EIS. On May 12, 2014, a month before close of comments on the Draft BDCP EIR/EIS, the Department of Water Resources (DWR) announced that a new organization has been created within DWR to continue moving the twin tunnel project forward. The new entity will be responsible for designing and constructing the project. All the other alternatives presented in the Draft BDCP EIR/EIS have received very little real analysis and have been presented simply as a formality to satisfy legal requirements and will receive no consideration by the new entity created to plan and build the twin tunnel project. In addition, several alternatives suggested by the public have been dismissed with very little, if any, analysis.

Because of the preferential analysis and focus on Alternative 4, not all alternatives were studied in equal detail nor have any of the alternatives presented by the public been analyzed in equal detail. Continuing to design the twin tunnels (alternative 4) and establishing an entity to construct the project long before close of comments on the Draft EIR/EIS implies that the CEQA/NEPA process is just a formality and the process is not meant to provide meaningful public participation and input on projects that will have long-term environmental, economic and human impacts. The bottom line is that alternatives have been proposed, left unstudied and could potentially supply similar benefits without the devastation of the Delta communities, agricultural resources and local economies.

Conclusion

The more water that is taken from the Sacramento-San Joaquin River Delta, the more economic and environmental damage will occur. Over the last two decades, Delta outflow has been regulated to protect the Delta water quality and natural resources include agriculture. The BDCP will reverse the steps taken to protect the health of the Delta and its economy by providing the means to increase water exports, reduce Delta outflow, and increase saltwater intrusion. The BDCP Draft EIR/EIS confirms that the preferred alternative will devastate Delta agricultural resources, the Delta economy and Delta communities. The Delta Caucus is convinced that there are better, more affordable projects to advance water reliability for California--projects that will impact the supply/demand equation by reducing demand and increasing supply. Regional self-reliance and increased water storage is key to reliability of water supplies in the future. Neither of these key elements is included in the Draft BDCP. The Delta Caucus remains committed to ensuring that Delta agricultural resources are protected and enhanced in accordance with the Delta Reform Act of 2009 and searching for solutions which will achieve the Delta Reform Act's co-equal goals without sacrificing Delta agricultural resources.

Attachment A provides a list of questions that should be addressed in preparing the BDCP Final EIR/EIS. Again, we wish to express our appreciation for your consideration of our comments and concerns as they relate to the BDCP Draft EIR/EIS.

Sincerely,



Russell van Loben Sels, Chair
Delta Caucus

RECIRC2508

Attachment A

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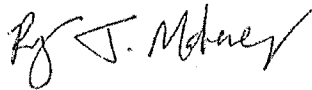
Wayne Reeves, President
Contra Costa County Farm Bureau



Walter Hardesty, President
Sacramento County Farm Bureau



Jack Hamm, President
San Joaquin Farm Bureau Federation



Ryan Mahony, President
Solano County Farm Bureau



Jeff Merwin, President
Yolo County Farm
Bureau

Attachment A: BDCP Draft EIR/EIS Questions

cc.

U.S Senator Dianne Feinstein
U.S. Senator Barbara Boxer
Representative John Garamendi
Representative Mike Thompson
Representative Doris Matsui
Representative Ami Bera
Representative Jerry McNerney
Representative Jeff Denham
Representative George Miller
Senate President Pro tem Darrell Steinberg
State Senator Lois Wolk
State Senator Cathleen Galgiani
State Senator Tom Berryhill

State Senator Mark DeSaulnier
State Assemblymember Joan Buchanan
State Assemblymember Roger Dickinson
State Assemblymember Susan Eggman
State Assemblymember Richard Pan
State Assemblymember Jim Frazier
State Assemblymember Mariko Yamada
Contra Costa County Board of Supervisors
Sacramento County Board of Supervisors
San Joaquin County Board of Supervisors
Solano County Board of Supervisors
Yolo County Board of Supervisor

1. Is the BDCP consistent with County General Plans?
2. Is the BDCP consistent with the Delta Protection Act of 1992?
3. Is the BDCP consistent with the Sacramento-San Joaquin Delta Reform Act?
4. Is the BDCP consistent with California water law?
5. Is the BDCP consistent with rules and regulations controlling salinity in the delta?
6. Is the BDCP consistent with rules and regulations controlling water flows in the delta?
7. Is the BDCP consistent with Delta Protection commission water policies?
8. Is the BDCP consistent with the contract between the State of California and the North Delta Water Agency?
9. Does the BDCP reduce reliance on the Delta as a future water source in accordance with the Delta Reform Act?
10. If the amount of water available for export has not been determined, is the BDCP consistent with the Delta Reform Act?
11. Can the BDCP be incorporated in the Delta Plan? Is the BDCP eligible for public funding if it has not complied with the studies required in the Water Code 85320(b)(2)?
12. Why does mitigation not include a commitment to operate the BDCP in a manner that maintains flow and salinity standards as to establish by the California Water Resources Control Board as currently expressed in D-1641?
13. During construction, in order to de-water construction sites, there will be large amounts of drainage water generated. According to the EIR/EIS, the drainage water will be treated if necessary and discharged into "local drainage channels or rivers" (6-58). How will drainage water be treated? Will treating drain water impact Reclamation Districts and agricultural resources? Will drainage water be discharged into Reclamation District drainage systems? How much drainage water will there be, and do Reclamation Districts have the capacity to remove the extra drainage water? How will the impacts be mitigated?
14. Will construction activities negatively impact flood control structures? While it is acknowledged that roads will suffer damage from construction activities, damage to underlying levees is not considered. What damage will occur, how could agricultural resources be affected, and what mitigation is required?
15. Will in-stream construction activities increase the risk of flood? In-stream construction is limited to June 1 to October 1 unless otherwise authorized (Appendix 3C-4)? Will Reclamation Districts be authorizing agencies? Because coffer dams will impede river flows, and increase the

- upstream flood elevation (6-58) flood risk will increase. How will this increased flood risk be mitigated?
16. The Yolo Bypass is a flood control structure. Is the purpose of the Yolo Bypass consistent with more frequent inundation? Are there any situations where the flood-flow capacity of the Yolo Bypass would be reduced by implementing CM-2? If so, what impact would reduced Yolo Bypass capacity have on Delta agricultural resources, residents and communities?
 17. Studies conducted in 1967 as reported in Bulletin 125 concluded that increased river elevations will increase seepage into agricultural lands. Will increased river elevations upstream of coffer dams result in increased seepage affecting agricultural resources? How much? Where?
 18. Construction and operation of CM 2-22 will result in increasing populations of endangered species and other conditions which will impact neighboring agricultural resources. How will agricultural resources be protected from limitations on activities such as but not limited to pumping water if endangered species expand due to implementation of CM2-22?
 19. Water quality impacts WQ7, WQ8 and WQ11 all deal with increased salinity in Delta water downstream from the proposed northern intakes. This impact is not adequately analyzed with respect to its effect on agricultural resources. The data shows the number of days standards will be violated and the percent of days in violation (Appendix 8H). This data must be analyzed to demonstrate the magnitude of the violations and the resulting impacts on agricultural resources. How high will EC be, when, and where?
 - a. Will increased EC result in changing cropping patterns to less profitable crops or fallowing land? Will corn (an important crop for agricultural viability and migratory waterfowl) remain a profitable crop choice?
 - b. What is the effect of comparing Sacramento River E.C. data at Emmaton (existing conditions) to data as measured at Three Mile Slough for the BDCP alternatives (Appendix 8H-5)? Wouldn't it be more appropriate to compare E.C. data at the same location? Would this comparison show a greater magnitude of increased EC caused by operation of the BDCP?
 - c. Appendix 8H page 1 line 17 indicates that there may be some modeling anomalies that may have masked or distorted results. Is anomaly synonymous with error? Are modeling conclusions and results accurate? If there is one anomaly (error) could there be others? Do the

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Attachment B

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project proponents know of any other anomalies? Are there errors, omissions or other factors which have distorted results from models and presented by the BDCP?

- d. Is damage to Delta water quality consistent with California Water law, and if not, is the BDCP legal?
20. What is the impact of the BDCP on the terms and conditions of the North Delta Water agency contract with the state of California, and how will agriculture resources within the boundaries of the North Delta Water Agency be affected?
21. The employment of the "Decision Tree" and "Adaptive Management" results in deferring major decisions about how BDCP is built and operated. Is the project clearly defined or does employment of the "Decision Tree" and "Adaptive Management" result in failure to adequately describe the project, disclose impacts, and design proper mitigation? How can the public adequately comment on the Draft EIR/EIS when the employment of the "Decision Tree" or "Adaptive Management" could result in major changes to the project or the operation of the project?
22. Does a programmatic study of CM2-22 defer comprehensive description and analysis of the major components of the BDCP and does this result in failure to adequately describe the project, disclose impacts and design proper mitigation?
23. The Implementation Agreement (IA) has not yet been released. On 5/29/14, DWR announced that a draft IA is being prepared for release, but that it does not contain operating information or financial commitments. Without that information, does the soon to be released IA meet HCP and CEQA guidelines? When will a complete IA be available for review and how will it impact the validity of already submitted comments?
24. Have all alternatives been analyzed in equal detail?
25. Have all alternatives presented by the public been analyzed in equal detail?
26. Have alternatives been proposed, but not analyzed, that could supply similar benefits without devastating the Delta economy, communities and agricultural resources?
27. What is the implication of continuing to design the twin tunnels

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Attachment B

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(Alternative 4) and establish an entity to construct the project long term before the close of comments on the Draft EIR/EIS? Is the CEQA/NEPA process just a formality or is the process meant to provide meaningful public participation and input on projects that will have long-term environmental, economic, and human impacts?

REARC 2508

From: staff@sacfarmbureau.org
Sent: Friday, October 30, 2015 8:16 AM
To: BDCPcomments
Subject: BDCP/CAWaterFix Comments
Attachments: CA WaterFix Comments 10_30_15.pdf

Please see the attached comment letter submitted by the Delta Caucus.

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serving Sacramento County agriculture since 1917

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George Biagi, Jr.
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COUNSEL

Dante John Nomellini
Dante John Nomellini, Jr.

October 26, 2015

BDCPComments@icfi.com

Re: BDCP/California Water Fix
RDEIR/SDEIS
DJN Sr. Part One

Our comments regarding the above are being submitted in multiple parts.

PREDETERMINATION OF ACTION TO CONSTRUCT AND OPERATE AN ISOLATED CONVEYANCE FACILITY

The Decision to Proceed with an Isolated Conveyance, i.e., Peripheral Canal/Tunnels, as Part of the Plan Has Been Made in Advance of the Analysis and Preparation of the Draft EIR/EIS and RDEIR/SDEIS Destroyed the Impartiality for a Good Faith Effort at Full Disclosure and Analysis of Impacts, Alternatives and Mitigation.

NEPA requires full disclosure of the potential effects of major actions proposed by federal agencies and accompanying alternatives, impacts and possible mitigation. NEPA also requires that environmental concerns and impacts be considered during planning and decision making so that steps may be more easily taken to correct or mitigate the impacts of an action. Compliance with NEPA should result in more informed decisions and the opportunity to avoid or mitigate for potential environmental effects before an action is implemented. The NEPA process is intended to identify and evaluate alternatives in an impartial manner. (See Reclamation's NEPA Handbook dated February 2012.)

CEQA requires adequacy, completeness and a good faith effort at full disclosure. The EIR is to inform the decision makers and the public of the environmental impact of proposed actions. (See CEQA Guidelines sections 15002 and 15003.) The purposes include identifying ways to avoid or significantly reduce environmental damage and preventing significant, avoidable damage to the environment by requiring changes in projects through the use of feasible alternatives or mitigation measures.

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The environmental review for BDCP and now the California Water Fix has been orchestrated to justify the new Sacramento River Intakes and the Isolated Conveyance Facility. Such actions reflect bad faith and have resulted in inadequate disclosure and analysis of impacts, alternatives and mitigation.

1) Participation in the BDCP Steering Committee was conditioned on agreement to The Bay Delta Conservation Plan Points of Agreement for Continuing into the Planning Process dated November 16, 2007, which includes agreement to new points of diversion on the Sacramento River and an isolated conveyance facility.

The agreement provides:

“2.3 Conveyance Facilities

The Steering Committee agrees that the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion, the ultimate acceptability of which will turn on important design, operational and institutional arrangements that the Steering Committee will develop and evaluate through the planning process. The main new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta. Modifications to existing south Delta facilities to reduce entrainment and otherwise improve the State Water Project's (SWP) and Central Valley Project's (CVP) ability to convey water through the Delta while contributing to near and long-term conservation and water supply goals will also be evaluated. This approach may provide enhanced operational flexibility and greater opportunities for habitat improvements and fishery protection. During the BDCP process, the Steering Committee will evaluate the ability of a full range of design and operational scenarios to achieve BDCP conservation and planning objectives over the near and long term, from full reliance on the new facilities to use of the new facilities in conjunction with existing facilities.” (Exhibit 2) (Emphasis added.)

Excluded from such planning process agreement is design and operation of the SWP and CVP without an isolated conveyance facility and/or new intake facilities on the Sacramento River.

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Exhibit 1 is a copy of the January 27, 2009, letter from Karen Scarborough, Undersecretary of the State of California Resources Agency and Chair of the BDCP Steering

Committee to Dante John Nomellini, Manager and Co-Counsel of the Central Delta Water Agency requiring such consent. The letter provides:

“As you are also aware, consent to the ‘Points of Agreement’ and other prior decisions of the Steering Committee is requisite for a seat on the Steering Committee.”

Exhibit 2 is a copy of The Bay Delta Conservation Plan: Points of Agreement for Continuing Into the Planning Process (November 16, 2007).

Exhibit 3 is a copy of the August 26, 2008, *letter* from Dean Ruiz, attorney for the Central Delta Water Agency, to Karen Scarborough requesting membership on the BDCP Steering Committee.

Exhibit 4 is a copy of the November 13, 2008, letter from Dante John Nomellini, Manager and Co-Counsel of the Central Delta Water Agency, to Karen Scarborough, et al. stating willingness to execute the October 6, 2006, Planning Agreement but disagreeing with the provision in the November 16, 2007 “Points of Agreement.”

2) The Department of Water Resources as lead agency for CEQA and the United States Department of Interior’s Bureau of Reclamation as a co-lead agency under NEPA are both signatories to the March 2009 Memorandum of Agreement Regarding Collaboration On the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection With the Development of the Bay Delta Conservation Plan. The Memorandum includes the above referenced November 16, 2007, Points of Agreement to construct and operate an isolated conveyance facility as Exhibit 2 thereto. Said Memorandum is Exhibit 5. DWR and the USBR are both signatories to the December 15, 2011, First Amendment To The Memorandum of Agreement Regarding Collaboration On the Planning, Preliminary Design and Environmental Compliance For The Delta Habitat Conservation and Conveyance Program In Connection With the Development of the Bay Delta Conservation Plan. Said First Amendment confirms the ongoing commitment to the BDCP and DHCCP including the March 2009 MOA which is Exhibit 5 and further references in paragraph J. the November 2007 “Points of Agreement.” The First Amendment dated December 15, 2011, is Exhibit 6.

3) The Draft EIS/EIR is written in a manner advocating the Conservation Strategy of the BDCP plan which is to construct and operate an isolated conveyance as a standalone conveyance or as part of dual conveyance and is evidence that the decision is predetermined. The lack of objective and impartial presentation and analysis is apparent. The Executive

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Summary for the Bay Delta Conservation Plan at page 10 sets forth the Conservation Strategy for “Water Flow and Conveyance” as follows:

“Water Flow and Conveyance

Water flow and conveyance conservation measures provide for the development and operation of new water conveyance infrastructure and the establishment of operational parameters associated with existing and new facilities. New north Delta intake facilities along the Sacramento River will divert water through state of the art positive barrier fish screens into an isolated tunnel/pipeline to the south Delta. In conjunction with the existing south Delta facilities (referred to as dual operations), this improved operational flexibility will improve conditions for covered fish species and restore water supply reliability. Water diversion rates and bypass flows in the Sacramento River at the north Delta diversions will be informed by seasonal movement patterns of covered fish species. The conservation measures summarized in the following sections are discussed in detail in Chapter 3, *Conservation Strategy.*” (Emphasis added.)

The Executive Summary for the BDCP Draft EIR/EIS (November 2013) at page ES-1, paragraph 3 provides:

“The BDCP is a comprehensive conservation strategy for the Sacramento-San Joaquin Delta (Delta) to advance the planning goal of restoring ecological functions of the Delta and improving water supply reliability in the state of California. The conservation strategy is designed to restore and protect ecosystem health, water supply, and water quality within a stable regulatory framework. The BDCP reflects the outcome of a multiyear collaboration between DWR, Reclamation, state and federal fish and wildlife agencies, state and federal water contractors, nongovernmental organizations, agricultural interests, and the general public. The BDCP sets out a comprehensive conservation strategy for the Delta designed to restore and protect ecosystem health, water supply, and water quality within a stable regulatory framework through the following.

- New and/or modified state water conveyance facilities and operation of the SWP and the CVP in the Delta.” (Emphasis added.)

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At page ES-2, it is provided:

"The conservation strategy is based on the best available science
and was built upon the following broad conservation goals."
(Emphasis added.)

These statements issued in advance of the completion of the EIR/EIS process reflect the predetermination and intended lack of objectivity in the preparation of the environmental documents and analysis.

4) The pretense that the isolated conveyance facility was a Conservation Measure (CM1) has been removed however the lack of good faith effort at full disclosure remains. Two forty foot (40ft) diameter tunnels 35 miles long which have the capacity depending on intakes to convey 15,000 cfs or more of water from the Sacramento River to the export pumps with no outlets for maintaining Delta water quality certainly do not constitute a measure to protect and enhance the unique cultural, recreational and agricultural values of the Delta as an evolving place. During much of the time the capacity of the tunnels to divert water will exceed the flow available in the Sacramento River at the intake location. As clearly demonstrated the SWP and CVP have not developed sufficient supply to meet the desires of contractors or even the preconditions to their permits to operate. There is no basis to assume that regulatory restraints will not continue to be avoided through emergency actions and there is no basis to assume that water supply will be developed in sufficient quantities to meet regulatory requirements, senior obligations and contractual desires. Disregarding operation the impacts of construction and the physical facilities themselves will severely damage the Delta in violation of the statutory mandate to protect and enhance.

5) Top Public official actions have gone far beyond simple preference of a particular project and their actions have resulted in the lack of impartiality of the public agencies under their direction which is necessary to a good faith full disclosure in the environmental documents.

Jerry Brown, Governor of the State of California has been emphatic in his advocacy of the BDCP tunnels. See Exhibit 7 which is a May 28, 2014 Article wherein he is quoted as saying "I just want to get sh*t done,". "Sh*t" appears to be the BDCP tunnels which are the alternative to his previously emphatically supported peripheral canal, but with no outlets to maintain Delta water quality. Those within the Governor's Department of Water Resources and Department of Fish and Wildlife (agencies responsible for good faith full disclosure in the BDCP EIR/EIS) would be fools to misread the direction from the top. They have not misread the direction.

Secretary of Interior Ken Salazar, the head of the U.S. Bureau of Reclamation and U.S. Fish & Wildlife Service has also signaled his emphatic support for the BDCP Tunnels in remarks to the Commonwealth Club, San Francisco, CA, September 19, 2011, Exhibit 8. After

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referencing debate raging in Washington, D.C. relating to water supplies we depend on in the west. He explains:

“It’s a battle between pragmatism and ideology. Collaboration versus cynicism.”

“In California’s Bay Delta, a plan to modernize and secure the State’s aging and inadequate water system is always the target of pot shots. Yet the bottom line is the health of the Delta is inextricably linked to the security of safe and reliable water supplies.”

Mr. Salazar goes on to provide:

“That solution is the Bay Delta Conservation Plan.

The Bay Delta Conservation Plan is the most important - and most complex - long-term water and habitat management plan ever undertaken.

The BDCP provides a comprehensive approach that includes new habitat for endangered fish species, coordinated measures to attack toxics that are fouling delta waters, and improvements to the state’s water infrastructure.

Rather than simply pumping water from north to south through the Delta - which places immense strain on the system and is unreliable - a new conveyance system would reduce direct conflicts between water supply and fisheries, as the Delta Vision Blue Ribbon Task Force and many independent scientists have recommended.

This type of a comprehensive approach is long overdue. We simply must find a way to put California on a path to restore the delta and protect in-Delta interests - while also securing a more reliable water supply for its future. These are the ‘co-equal goals’ required by the landmark law that the California legislature passed in 2009.

That’s why, for the past two and a half years, my Department has committed a vast amount of energy to advancing the BDCP.”

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The reference to “a new conveyance system” rather than “simply pumping water from north to south through the Delta” is to the BDCP common strategy for Water and Conveyance which is the “isolated tunnel/pipeline to the south Delta”. Mr. Salazar’s characterization of criticism as “pot shots” does not encourage those within his departments to make a good faith disclosure of adverse impacts of the project which he apparently favors.

It would appear that those public officials who will control the decisions have moved well beyond support to a predetermination to move forward with the isolated conveyance in advance of completion of the EIR/EIS process.

6) Further evidence of the predetermination of proceeding with the isolated Tunnel/pipeline conveyance prior to completion of the EIR/EIS is the Department of Water Resources establishment of an organization within the Department called the Delta Conveyance Facility Design and Construction Enterprise to support the design and construction of Conservation Measure 1. See Exhibit 9. In a presentation to the Metropolitan Water District of Southern California, Special Committee on the Bay Delta Mark Cowin, Director of the Department of Water Resources was quoted as saying:

“‘So that’s what I wanted to say about the DCE,’ he said. ‘The memo that I put out to all staff as Randall indicated, really is just our first steps as an organization to prepare ourselves for implementation of this project so we’re taking our existing resources and starting to move them into an organization that can engage both with the DCE and ultimately with the implementation office for BDCP as well.’” (Exhibit 9-1) (Emphasis added.)

The candid admission by Jerry Meral, then Deputy Secretary of Resources who was quoted to say:

“BDCP is not about, and never has been about saving the delta.
The delta cannot be saved.”

is further evidence that there has been a predetermination as to the construction of the isolated conveyance facility. See Exhibit 10.

The isolated conveyance is the only measure for which the BDCP EIR/EIS provides project level review. The lack of inclusion of Delta levee improvements as part of the project to facilitate export operation when the Sacramento River intakes cannot be safely operated lends more weight to the evidence that going forward with the isolated conveyance has been predetermined. The State administration determination is contrary to State law which requires that the unique cultural, recreational, natural resource and agricultural values of the Delta be protected and enhanced and that water shall not be diverted from the Delta for use elsewhere unless adequate supplies for the Delta are first provided.

In April of 2015, before completion of environmental review, the Design and Construction Enterprise (DCE) developed a CM1 Property Acquisition Management Plan focused only on Alternative 4 which includes the Sacramento River intakes and the isolated tunnels along the chosen route for Alternative 4A. This planning effort focus on only one alternative and one route is yet another commitment of resources to the single preferred alternative thus inhibiting objective review of other alternatives. See Exhibit 10-1.

On August 25, 2015 the DWR and USBR submitted to the SWRCB a petition for change in their specific water permits to allow the three new intakes on the Sacramento River for Alternative 4A. This commitment of resources and reflection of intent to move forward with Alternative 4A and only 4A is yet another confirmation of the predetermination for new intakes on the Sacramento River and the isolated conveyance tunnels. See Exhibit 10-2.

On August 27, 2015 California Natural Resources Secretary John Laird gave an update to a committee of the San Diego Water Authority explaining the split of the tunnel project into two projects. He explained "By doing two 30-mile tunnels and by doing habitat restoration, it lowers the amount of approval that needs to be done, and you can move ahead with the habitat...". "I should just say that the Governor is very committed to doing this," he said, "He wants to get it done. One of the interesting things in working for him is that he is fearless. He says what he really thinks; it doesn't matter how unpopular it is, if he thinks it's in the long-term interest, he is determined to spend whatever capital it takes to get it done, and this is on that list for him." The predetermination as to the tunnels is again confirmed. See Exhibit 10-3.

On September 21, 2015 the USACE gave notice that the DWR applied for a permit to place fill material in approximately 775.02 acres of waters of the United States to construct and operate a new water conveyance facility consisting of three intakes along the Sacramento River and dual tunnels conveying up to 9,000 cubic feet per second of water to the existing Clifton Court Forebay. See Exhibit 10-4. This application is specific to the 4A tunnels and three Sacramento intakes adding to the evidence of predetermination.

The actions of Federal Officials and Agencies reflect an intentional violation and circumvention of 40 CFR section 1506.1(a) which precludes actions which would "Limit the choice of reasonable alternatives" until an agency issues a record of decision as provided in section 1505.2. Such actions clearly run contrary to a good faith effort to rigorously explore and objectively evaluate all reasonable alternatives as required by 40 CFR section 1502.14.

The actions of State Officials and departments clearly show that the project with three intakes on the Sacramento Rivers and two tunnels connecting to Clifton Court has already been determined to be the selected project regardless of the fact that environmental review has not been completed.

RECIRC 2509

**NEPA POLICY AND PROCEDURAL REQUIREMENTS TO ASSURE OBJECTIVITY
IN THE PREPARATION OF THE EIS HAVE BEEN AND ARE BEING
CIRCUMVENTED.**

The BDCP Draft EIR/EIS Purpose Statement and the revision in the Water Fix are a confusing mix of State Water Project (SWP), federal Central Valley Project (CVP), State Water Contractor and federal Water Contractor purposes and needs. The broader purposes as required by law are not included.

The SWP and State Water Contractors obviously want to construct the isolated conveyance facility and operate the SWP to maximize the export of water from the Delta.

The CVP (U.S. Bureau of Reclamation) although clearly in favor of construction of the isolated conveyance has not forthrightly sought authority to join in construction, but obviously plans to convey CVP water through such facility and seeks to protect the "ability of the SWP and CVP to deliver up to full contract amounts, . . ."

The SWP contractors and CVP contractors who are to receive the water exported from the Delta obviously are isolated conveyance and full delivery proponents.

The roles of regulating agencies and applicants, lead agencies and cooperating agencies has been mixed in a manner which circumvents the procedural mechanisms to assure NEPA required objectivity.

The SWP and SWP contractors seeking take permits from the U.S. Fish & Wildlife Services (USFWS) and National Marine Fisheries Service should be viewed as applicants and the Services as co-lead agencies. In such case, the EIS should have been prepared directly by the Services or by a contractor selected by them or where appropriate under 40 CFR section 1501.6(b), a cooperating agency which has a similar interest. 40 CFR section 1506.5(c) in part provides:

"It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate by a cooperating agency to avoid any conflict of interest." (Emphasis added.)

Allowing DWR, the USBR and their respective contractors to run the show is not appropriate.

Although 40 CFR section 1506.2 directs cooperation to the fullest extent possible to reduce duplication between NEPA and state and local requirements, it does not suggest that compliance with requirements to avoid conflict of interest and assure objectivity can be avoided. Joint selection of common consultants in compliance with NEPA requirements and subsequent sole direction of the common consultants by USFWS and NMFS as to NEPA compliance would

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avoid duplication and could have helped avoid the conflict of interest deterioration of objectivity. Such has not been the case. The USBR is not a regulatory or permitting agency for BDCP in the same sense as the USFWS and NMFS. It has its own responsibilities for compliance with federal ESA. Its consultations with USFWS and NMFS require that it comply with NEPA, but its role in protecting endangered species is conflicted with its role in serving its water contractors and in coordinating the CVP operations with those of the SWP. The USBR is not an adequate representative for the interests and NEPA responsibilities of the USFWS and NMFS and should not be a co-lead and particularly the sole lead.. Exhibit 11 is a copy of the First Amendment to the Memorandum of Agreement Regarding Collaboration on the Planning, Preliminary Design and Environmental Compliance for the Delta Habitat Conservation and Conveyance Program in Connection with the Development of the Bay Delta Conservation Plan dated August 31, 2011. This copy contains signatures by the DWR and USBR. Whether the State and Federal Contractors signed is not known. This First Amendment can be contrasted to another First Amendment (which may be the Second Amendment) dated December 15, 2011 and is Exhibit 6. The USFWS and NMFS are not parties to either First Amendment. Both First Amendments provide essentially the same language as to contracting, directing and communicating with the consultants regarding the BDCP related environmental documents.

II.E. of Exhibit 6 provides:

- “E. DWR is taking the lead role in preparing and, after consultation with the Parties, shall direct the consultants regarding the content of the BDCP, including those elements of the BDCP intended to be incorporated in the EIS/EIR. DWR has also contracted with the consultants preparing the EIS/EIR and shall continue to administer the contract. DWR shall solicit, in a timely manner, from the Department of Fish and Game (‘DFG’), the Public Water Agencies, and the NEPA Co-lead Agencies, comments on the draft work products in support of the completion of tasks, pursuant to the schedules in Exhibit 1 and 1A. As set forth in Paragraph B above, Reclamation shall be responsible for coordinating with the NEPA Co-lead Agencies and coordinating with DWR on the NEPA Co-lead Agencies’ comments that DWR shall submit to the Consultants in accordance with the schedules in Exhibit 1 and 1A. In the event agency comments are not received consistent with the schedules in Exhibit 1 and 1A, DWR may proceed with preparation of the BDCP and DWR, and Reclamation may proceed with the preparation of the EIS/EIR. DWR shall direct the Program Manager on preparation of the BDCP and EIS/EIR as necessary to maintain the schedule or consider necessary revisions as

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described in subsection II.C. The DWR Director shall concurrently advise the Parties of the direction provided to the Program Manager. Nothing in this section or elsewhere in this First Amended MOA modifies the Federal responsibilities for the content of the draft and final EIS and preparation of the ROD.” (Emphasis added.)

II.F. of Exhibit 6 and Exhibit 11 in pertinent part provides:

- “F. DWR has retained a consultant with extensive project management experience to be the BDCP and DHCCP Program Manager. The Program Manager shall report to and be directed by the Director of DWR. The Director of DWR shall implement the responsibilities of DWR as set forth in Subsection II.E. above. The Director of DWR may fulfill this responsibility through the Program Manager, who is delegated to carry out the day-to-day management activities of the BDCP and to closely coordinate with Reclamation regarding preparation of the EIS/EIR. . . .” (Emphasis added.)

II.Q. of Exhibit 6 (12-15-11) provides:

- “Q. The Parties may retain consulting services as necessary to complete the BDCP and DHCCP Planning Phase, including the BDCP and EIS/EIR. No consultants will be retained for BDCP work unless they are approved by DWR. Before retaining consultants for EIS/EIR work DWR shall, in accordance with NEPA, its implementing regulations and the Lead Agency Agreement, consult with the NEPA Co-Lead Agencies. Consistent with Section II.F, above, the Director of DWR shall manage the retained consultants to carry out the BDCP and EIS/EIR.” (Emphasis added.)

II.Q. of Exhibit 11 (8-31-11) provides:

- “Q. The Parties may retain consulting services as necessary to complete the BDCP-DHCCP Planning Phase, including the BDCP and EIS/EIR. Consistent with Section II.F, above, the Director of DWR shall manage the retained consultants to carry out the BDCP and EIS/EIR.” (Emphasis added.)

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III.I. of Exhibit 6 and Exhibit 11 provide:

- “I. In the event DWR designates SFCWA as a consultant contract administrator, DWR shall continue collecting funds from the Public Water Agencies, including but not limited to those member agencies identified in Exhibit 2, pursuant to the BDCP-DHCCP Planning Phase funding agreements, and DWR shall distribute those funds to SFCWA to fund the consultants that are contracting directly with SFCWA for the completion of the BDCP-DHCCP Planning Phase.” (Emphasis added.)

The USFWS and NMFS, the agencies with the most direct responsibility for protection of endangered species and the parties expected to grant the essential permits have been relegated to a back seat role. They don't hire or direct the consultants; their submission of comments must be through the USBR and thence through DWR to the consultants. If their comments are untimely DWR and Reclamation make the call. USFWS and NMFS cannot even hire consultants unless they are approved by DWR and DWR can even delegate administration of the consultant contracts to the water contractors.

The manipulation of the lead, co-lead and cooperating agencies and the delegation of responsibilities by the State and federal agencies has left the most conflicted parties in charge of the NEPA environmental process. Although the ultimate approval is left with the respective agencies, the thousands of pages of text and studies is virtually impossible to adequately review. The 132 page Executive Summary can be contrasted to the 15 page normal summary referenced in 40 CFR section 1502.12 and the thousands of pages in the DEIS/EIR can be contrasted to the 150 to 300 pages referenced in 40 CFR section 1502.7. The impartiality and avoidance of conflicts whether financial or otherwise, of the consultants is critical to the objective analysis required by NEPA. Those who contract with the consultants and most important those who direct the consultants will have the greatest impact on objectivity. As related to BDCP the DWR and in turn the USBR are essentially the agents of their respective contractors and should be viewed as applicants for the purpose of NEPA compliance. 40 CFR section 1506.5(c) specifies that a consulting firm involved in preparing an EIS must execute a disclosure statement setting forth any “financial or other interest in the outcome of the project.” Whether this was done and by whom is of interest however, even with such disclosure, direction of the consultants will greatly dictate the bounds of objectivity.

Objectivity to assure the need to “rigorously explore and objectively evaluate all reasonable alternatives” is made more critical by the revolving door of employees between federal and state agencies and export water contractors.

For NEPA purposes, USFWS and NMFS should now engage independent consultants which they direct to review, revise and supplement the already prepared BDCP documents and

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issue their own draft EIS for public comment and final action. The cost for such effort should be paid in advance by the contractors.

For CEQA purposes the state Department of Fish and Wildlife, although realistically not able to exercise any position independent of DWR, would have been the more appropriate State agency to direct the consultants in preparation of the EIR. At this juncture the Independent Science Board or some other independent body should be authorized and funded to review, revise and supplement the already prepared BDCP documents and issue a new CEQA draft for public comment and final action. The cost for such effort should be paid in advance by the contractors.

Exhibits 1 through 11 of our comments submitted July 25, 2014 are hereby incorporated by this reference as if included with this submittal. Exhibits 9-1 and 10-1 through 10-4 are submitted with this Part One of our comments.

Very truly yours,



Dante John Nomellini, Sr.
Manager and Co-Counsel

RECIRC 2509

From: Nomellini, Grilli & McDaniel PLCs <ngmplcs@pacbell.net>
Sent: Thursday, October 29, 2015 4:14 PM
To: BDCPcomments
Subject: BDCP/California Water Fix RDEIR/SDEIS CDWA Comments Part One 10-26-15
Attachments: CDWA BDCP-Water Fix Comments Part One 10-26-15.pdf

See attached CDWA comments Part One. DJN Sr

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