

Brandi Narvaez  
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October 30, 2015

BDCP / California Water Fix Comments  
P.O. Box 1919  
Sacramento, CA 95812  
Email: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

Regarding: BDCP Public Comments

To Whom It May Concern:

I am writing as a concerned citizen of the great state of California, specifically Solano County, regarding the Bay Delta Conservation Plan (the Plan). After anticipating the release of the Plan and investing considerable time in reading segments of the thousands of pages available I am compelled to write with my public comment. I am wildly concerned about the environment factors and impacts, budgetary and financial components and legal aspects of this plan.

San Francisco Bay-Delta business, tourism, fishing, and farming communities cannot trust that the tunnels will be operated in a manner to protect our interest, especially because the State Water Resources Control Board, the Department of Water Resources, and the Bureau of Reclamation have allowed for the waiving and weakening of Delta water quality standards and species protections during the drought, endangering numerous Delta species and bringing some to the precipice of extinction.

The route selected is the worst alternative that could be selected since it does not protect Delta farm communities and Delta recreation as required by the 2009 Delta Reform Act. It is only the cheapest. A construction project through the heart of the Delta, through the sensitive estuary and loud pounding through bird habitats for years is not the way to protect the fish or fowl.

Further the construction plans include de-watering Delta farmers' wells for years, making farming and living in their homes not possible. Yet there is no provision to provide renumeration to them. This is abhorrent for the local famers in the Delta who have spent generations providing agriculture services and food for not only Californians but the Nation and the world.

The draft of the Plan does not adequately cover the cost components of this monumental plan: to both build and operate. And frankly plans developed and executed by the state of California are notorious for being budgeted poorly. Example being the recently built eastern span of the Bay Bridge; originally estimated at \$1 Billion; final cost was \$6.4 Billion. Clearly the ability to estimate sizable projects is akin to having a crystal ball, but the sheer magnitude of this plan even with the contingencies seem to be significantly under budget. The State of California has a poor history in budgeting properly for large magnitude projects. The tunnels would be a financial disaster.

The more and more I read; the more and more I was angered by the BDCP. It did strike me actually as illegal as well. How can a plan like this be allowed under existing legislation; i.e. Water Code Section 85020-85023 outlines the policy of the State of California as it pertains to the Delta. This legislation was passed recently, in 2009, which outlines clearly that regional areas should be reducing their dependencies on Delta fed water resources through other measures. The entire BDCP is in direct conflict with that legislation. It would appear the entire BDCP has no legal basis, or should I be so bold as to say, the BDCP is illegal according to the State of California.

I would love nothing more than to see the Delta restored, cleaned, and enhanced. This plan as presented by the BDCP does NOT accomplish those objectives; it is a water grab project which reads like a profit center for the water contractors. Through my reading and review I've come to believe it is underfunded, focuses blatantly on the financial benefits of the water contractors supplying Southern California, it has irreparable impact and consequences to the Delta coupled with a ridiculous loopholes. Finally it would appear this proposed plan is basically illegal in accordance with legislation already in place to protect the Delta.

I would welcome any healthy discussion about my comments regarding the Bay Delta Conservation Plan, I can be reached at the above email address at any time.

Sincerely,

Brandi Narvaez

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**From:** Brandi Narvaez <[bnarvaez@brandinarvaez.com](mailto:bnarvaez@brandinarvaez.com)>  
**Sent:** Friday, October 30, 2015 4:54 PM  
**To:** BDCPcomments  
**Subject:** BDCP Public Comments  
**Attachments:** Brandi Narvaez BDCP Public Comment - Oct2015.docx

**Importance:** High

Please see attached letter containing my comments on the BDCP for the open public comment period!

Thanks,

-b

Brandi Narvaez, MBA, PMP | [bnarvaez@brandinarvaez.com](mailto:bnarvaez@brandinarvaez.com) | 707-365-5424

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"The New Voice of Salmon"

RECIRC2635.

October 30, 2015

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

Sent via U.S. Mail and via email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

To Whom It May Concern:

With this letter the Golden Gate Salmon Association (GGSA) supports and agrees with the comments submitted by NRDC et al on the California WaterFix / Bay Delta Conservation Plan ("BDCP") Revised Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement ("RDEIR/SDEIS") except for those in sections XIIa and XIII, aii, b, c, d, e and g. Comments in those sections, while likely correct, are beyond the scope of GGSA's mission to restore sustainable runs of Central Valley salmon.

GGSA believes the RDEIR/SDEIS is not consistent with the requirements of NEPA and CEQA. The document fails to provide a clear, understandable, and accurate assessment of the likely environmental impacts of the alternatives, misleads the public and decision makers as to the likely effects, and fails to disclose significant adverse impacts that are likely to occur and to analyze feasible alternatives and mitigation measures that would reduce or avoid those adverse effects.

GGSA believes that in order to comply with CEQA and NEPA, the RDEIR/SDEIS must be substantially revised and recirculated.

The modeling presented in the RDEIR/SDEIS indicates that the status quo is unsustainable and that, in combination with climate change, existing operations of the CVP and SWP will jeopardize the continued existence of several fish species, including the salmon we rely on to make a living and threaten the livelihoods of thousands of salmon fishing job. It will also lead to continued declines of the health of the Bay-Delta estuary, including the growth of toxic harmful algal blooms like *Microcystis*, which threaten human health and safety as well as the environment. Additionally, the RDEIR/SDEIS fails to incorporate the legal mandate to manage water projects to achieve 990,000 naturally spawned adult Central Valley salmon annually. Instead, the RDEIR/SDEIS is likely to reduce the poor salmon runs experienced in recent years.

Instead of meaningfully addressing these threats and responding to the effects of climate change, the State's preferred alternative (Alternative 4A), and most of the other alternatives considered in the RDEIR/SDEIS, largely ignore the effects of climate change and in many cases would **worsen** these problems. It would lead to more harmful algal blooms in the Delta and San Francisco Bay, reduced salmon survival through the Delta, and the likely extinction of several native fish species.

Such an outcome is neither acceptable nor inevitable. Instead, we encourage the agencies to commit to the spirit and requirements of the 2009 Delta Reform Act, including reducing reliance on the Delta and investing in local and regional water supply projects in order to restore the health of the Delta ecosystem and improve water supply reliability, while sustaining the Delta's local communities and economy.

Thank you for consideration of our views.

Sincerely,

A handwritten signature in cursive script that reads "John McManus".

John McManus, Executive Director  
Golden Gate Salmon Association

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**From:** john@goldengatesalmon.org  
**Sent:** Friday, October 30, 2015 3:10 PM  
**To:** BDCPcomments  
**Subject:** GGSA Comments on Cal WaterFix  
**Attachments:** GGSA comments on Cal WaterFix.docx

October 30, 2015

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

*Sent via email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)*

To Whom It May Concern:

With this letter the Golden Gate Salmon Association (GGSA) supports and agrees with the comments submitted by NRDC et al on the California WaterFix / Bay Delta Conservation Plan ("BDCP") Revised Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement ("RDEIR/SDEIS") except for those in sections XIIa and XIII, aii, b, c, d, e and g. Comments in those sections, while likely correct, are beyond the scope of GGSA's mission to restore sustainable runs of Central Valley salmon.

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Thank you for consideration of our views.

John McManus  
Executive Director  
Golden Gate Salmon Association  
650-218-8650



**From:** Richard Thieriot <rtt@rthieriot.com>  
**Sent:** Friday, October 30, 2015 5:20 PM  
**To:** BDCPcomments  
**Subject:** BDCP/WaterFix Comments  
**Attachments:** Parrottletter.docx

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Dear Sir or Madam:

Please accept and address my comments on the EIS/EIR. I object to the approval of the project until the concerns articulated below are properly analyzed and mitigated for, or until alternatives with reduced impacts are developed.

The principal purpose of the project is to expand the State and Federal government's 50-Year-Old program of shipping water south via the SWP and CVP, respectively. When these water projects were developed and constructed, the San Joaquin Valley and urban areas in the South and in the Bay Area and Central Coast needed water, and the Sacramento Valley had a surplus. The program was a "win-win". Now, however, the Sacramento no longer has that surplus water. Not only will there be less available surface water, but aquifers all over the North valley have started to drop, just like in the San Joaquin Valley.

Parrott is not concerned with the transfer of water which is truly "surplus" to the needs of the north, or with transfers that do not affect the "sustainability" of groundwater levels. Rather, Parrott's concern is that water transfers facilitated by the SWP and CVP, either directly or indirectly, are already playing a part in the depletion of North Valley aquifers. Furthermore, the rate of depletion is likely to increase substantially given the State's promotion of increased water transfers.

While the tunnels would not, on their own, be a *cause* of the over-drafting, they would serve as a crucial "facilitator" of it.

More specifically:

1. DWR hydrographs show that groundwater levels have begun dropping throughout the Sacramento Valley. These decreases include some particularly sharp localized reductions in some areas. The State's "Long-Term Water Transfer" program, and associated actions by state and local agencies and private parties, can affect groundwater levels in these aquifers either by direct groundwater transfer, indirect groundwater transfer through substitution, or loss of recharge through land fallowing associated with transfers. The EIS/EIR does not make clear how much of the water transferred as part of these programs or projects is direct groundwater versus other indirect methods that may affect groundwater. However, it *is* clear that the State is promoting increased water transfers as a means to alleviate water supply pressures, and that this increase in transfers may increase the use of groundwater in the Sacramento Valley or in other ways affect the groundwater supplies and basins in the Sacramento Valley. The EIS/EIR should provide an analysis of the expected impacts to groundwater from all anticipated transfer activities and provide hard limits on the amount and monitoring of impacts to groundwater in source areas and develop mitigation measures if this monitoring records continued or significant declines in groundwater levels or subsidence in source (i.e., transferor) areas. There should be an annual maximum limit to the amount of water transfers the proposed project will facilitate. Parrott also suggests that a prohibition on the proposed project's facilitation or implementation of direct groundwater transfers should be a condition of approval. Furthermore, there has recently been a steady increase in the number of the large deep wells drilled in the Sacramento Valley's aquifers, particularly in the central and northern sections. The

EIS/EIR should address the cumulative impacts of all these new wells and any water transfers facilitated by the proposed project. In particular, the EIS/EIR should analyze whether these new wells are being drilled as a result of participation in groundwater substitution transfers that are contemplated to be facilitated by the proposed project. If unregulated and rampant north to south transfers are allowed to continue, the condition of the North State's aquifers will eventually match that in the South. Then, California will have NO agriculture.

2. For the first time, "subsidence" has begun to occur in the Sacramento Valley. And it is occurring in an area that has been involved in several relatively large-scale water transfers in recent years. Whether through direct groundwater transfers, groundwater substitution, fallowing and failure to apply surface water, these transfers are implicated in and may be affecting groundwater levels and recharge and migration rates in this same area, and thereby causing, either directly or indirectly, the observed subsidence and related impacts. The EIS/EIR should more fully investigate and discuss this subsidence problem and the potential links between water transfers facilitated by SWP and CVP operations currently and address how the proposed project could potentially affect groundwater and subsidence.

3. The legal framework which oversees the State's groundwater is based on two key concepts. The first is that groundwater levels must be "sustained". They cannot be drawn down to the point where their future usefulness comes into doubt. This concept has been expressed most recently in California's new "SGMA" groundwater law. This "Sustainability" could be crucially undermined by the increased volume of water transfers which will be made possible through the tunnels. The second principal law governing the use of groundwater is the "riparian" concept that "Overliers" have priority on the use of it. This principle has been re-expressed in a number of long-standing cases such as "Katz vs. Walkinshaw". Again, the expanded capacity of the tunnels would allow further inroads into the rights of "Overliers". (The overlies right is riparian in nature and therefore does not cover the sale of water.)

4. The degree of evaporation which affects water shipped from the Sacramento Valley to the San Joaquin is extreme. Over the course of a year, water transfers could end up wasting hundreds of thousands of acre feet of water. Waste, on this scale is entirely inappropriate for such a high-value -- and shrinking -- resource.

5. On top of the above, the cost to ship the water South is extreme. It is extreme not only in terms of the construction of the system, but also in terms of the cost (and the waste) of the annual power needed.

The EIS/EIR must address these issues and provide full disclosure of the amount of annual transfers of project and non-project water that the project would allow and facilitate. For instance, the project description should clearly state the volume and kind of water transfers that will be allowed each year, or in particular year types such as drought years. The discussion and analysis must identify (and thereby limit) the amount of direct groundwater and groundwater substitution transfers that the project will be allowed to facilitate / implement from the Sacramento Valley to other locations. The EIS/EIR should include analyses that identify, disclose, and address potential impacts to groundwater basin levels in the Sacramento Valley

from operation of the project, both on the short- and long-term bases and with reasonable estimates of predicted conditions as affected by climate change and the more extreme hydrological variations that accompany it. The current analysis does not sufficiently address these groundwater issues, and the current depleted and decreasing levels of groundwater basins in the Sacramento Valley.

Parrott's preference would be that a condition of approval of this project be to prohibit its use to facilitate or implement any water transfers that could affect groundwater basin levels in the Sacramento Valley. This includes direct transfers of groundwater, indirect transfers of groundwater through groundwater substitution transfers, and any other transfers involving changes in water or land use that may adversely affect groundwater basins levels, recharge rates, or the movement of groundwater in and between basins or sub-basins.

Parrott understands and realizes that cooperation between areas of the State perceived as "water rich" and more arid regions of the State is essential for California's long-term social and economic prosperity, but such endeavors require the thorough review and deliberation that CEQA and NEPA require. With respect to groundwater, however, Parrott believes more detail is required in the EIS/EIR to fully understand the project's implications for groundwater sustainability and groundwater supplies in the Sacramento Valley so that a fully-informed and well-balanced decision that is in the entire State's interest is made apparent and selected.

Sincerely,

Richard T. Thieriot  
President  
Parrott Investment Co., Inc.

**Clarksburg Fire Protection District**P.O. Box 513  
Clarksburg, CA 95612

October 30, 2015

**COMMENT LETTER NUMBER ONE**Via Email to: **BDCPComments@icfi.com**BDCP Comments  
P. O. Box 1919  
Sacramento, CA 95812

Re: Comments to the Bay Delta Conservation Plan Draft RDEIR/SDEIS

Dear Lead Agencies, and BDCP Leadership and Comment Teams:

The Bay Delta Conservation Plan/California WaterFix ("**BDCP/CA WaterFix**") proposes to dramatically alter the way in which the Clarksburg Fire Protection District (the "**District**") meets its mission and delivers emergency services within District boundaries and in accord with its mutual aid agreements. Those mutual aid agreements include agreements with other fire districts within the northern Sacramento-San Joaquin Delta.

Although the District timely and properly requested cooperating and coordinating agency status with each state and federal regulatory agency responsible for the Bay Delta Conservation Plan ("**BDCP**") by District letter dated November 5, 2009, its requests have been ignored.

The District is a unit of local government in the Sacramento-San Joaquin Delta (the "**Delta**"). The District generally covers all of the geographical area south of the city limits of the City of West Sacramento, west of the Sacramento River, east of the Sacramento Deep Water Ship Channel, and to the southern boundary of Yolo County. The District lies entirely within the legal boundaries of the Delta. The geographical area covered by the District lies entirely within the Plan Area (as defined in the BDCP/CA WaterFix).

The mission and purpose of the District is to provide reliable fire suppression and emergency medical response to the people, residents, structures and businesses within the boundaries of the District and assist in holding insurance rates as low as possible. In order to meet this mission and purpose the District relies upon a number of existing physical and economic facts within the District, including:

1. Reliant for the majority of its funding from agricultural land uses and operations, a system of assessments (including special assessments and a portion of

general real property taxes) on real property parcels and structures, the maintenance of agricultural viability and land values, and the determination and payment of fees to meet the financial obligations of the District;

2. A system of roads and travel routes for the delivery of services both within the District and to facilitate and continue the existing deliveries of as needed mutual aid to and from other fire districts through existing agreements and, through strike teams, throughout California;

3. The on-going system of purchase and maintenance of equipment comprised of rolling stock, personal protection, fire suppression, medical aid, and supportive supplies, materials and equipment; and

4. The maintenance of existing levees and flood protection to reduce the risk of floods and the damage cause by inundation by water.

A number of State and federal entities are discussing formulating various devices, strategies, policies, habitat conservation plans, reports and other procedures (together, "**Plans**") which appear to have the potential to significantly and seriously disrupt or even prevent the District from accomplishing its mission and purpose by alteration of the physical and economic facts listed above. The BDCP/CA WaterFix is one of these Plans currently under consideration.

This letter constitutes the District's formal comments to the Partially Recirculated Draft Environmental Impact Report and Supplemental Draft Environmental Impact Statement, issued July 2015 (the "**Draft EIR/EIS**") for public comment. Among other things, the comments in this letter are provided by the District so as to protect and enhance the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place. (See, Water Code section 85054.) Nothing in this letter replaces or diminishes any comments previously made by the District in the process to date.

Throughout all of these comments, when impacts and/or effects are described or identified in any way, such impacts are to be deemed significant impacts for purposes of CEQA analysis, and such effects are deemed adverse effects for purposes of NEPA analysis.

In a typical year the District responds to approximately 25 fire suppression calls, 75 medical aid calls, and 68 other "first responder" calls. Depending upon the specifics of the actual construction project which may go forward (and specifically not agreeing that any project of any scope should go forward), the District forecasts a significant and substantial increase in call volume due to construction activities and increased traffic in and through the District. After the completion of all construction activity, and as a

result of proposed project operations, the District estimates a nominal increase in call volume due to operational and maintenance activities relating to the project. The increased call volumes as a result of construction, and also as a result of operations, will both be substantial, serious and significant impacts and effects on and for the District.

### **Comments Regarding Surface Water**

The District relies in part on surface waters throughout the District, and elsewhere on mutual aid calls, for fire suppression and emergency response. Chapter 6, as modified in Appendix A of the Draft RDEIR/SDEIS, purports to analyze the significant and serious effects and impacts because of changes in surface water as a result of the project alternatives.

Chapter 6, as modified in Appendix A of the Draft RDEIR/SDEIS, focuses almost exclusively on the changes in the level of surface water in and around both the Delta and the State of California as a result of the project alternatives. However, Chapter 6, as modified in Appendix A of the Draft RDEIR/SDEIS, fails to adequately analyze or discuss the quality or quantity of surface water available or used by existing surface water users as either impacts or effects as a result of any of the project alternatives.

Specific to the District, various project alternatives, if not all project alternatives, fail to analyze the significant and substantial impacts or effects of lowered surface water tables, and thus failures of significant or substantial loss of access to water. The District relies heavily on water, carried in all of its rolling equipment, to fight and suppress fires. The anticipated lowering of the surface water elevations, and/or the possible degradation of surface water quality and/or quantity has the serious and very possible of additional and further deterioration of the District's ability to fight and suppress fire both within the District and in response and draw of water outside the District under mutual aid agreements. The project proponents must provide for all water loss.

Chapter 8, as modified in Appendix A of the Draft RDEIR/SDEIS, does not appear to address changes in water quality upon District operations. Poor water quality, whether in surface or ground waters, is believed to significantly and seriously deteriorate and negatively affect the efficiency of water use in fire suppression and emergency response, and is further believed to shorten the life of the equipment used by the District to perform its mission. The RDEIR/SDEIS must fully analyze serious and significant impacts and effects arising from changes in water quality upon District operations and equipment in order to be complete.

### **Comments Regarding Groundwater**

The District relies in part on groundwater through various existing wells located in the District, some within one-half mile of the projects for water intake, for fire

suppression and emergency response. Chapter 7 purports to analyze the significant and serious effects and impacts because of changes in groundwater as a result of the project alternatives.

Chapter 7, as modified in Appendix A of the Draft RDEIR/SDEIS, focuses almost exclusively on the changes in the level of groundwater in and around both the Delta and the State of California as a result of the project alternatives. However, Chapter 7, as modified in Appendix A of the Draft RDEIR/SDEIS, fails to analyze or discuss the quality or quantity of ground water available or used by existing groundwater users as either impacts or effects as a result of any of the project alternatives.

At Page 7-5, lines 37-39 in Appendix A of the Draft RDEIR/SDEIS, in regards to mitigation it is stated that "If water level data indicate that dewatering operations are responsible for reductions in well productivity such that water supplies are inadequate to meet existing or planned land use demands, mitigation will be required and implemented." This statement completely fails to meet statutory or legal standards by failing in any way to describe the proposed mitigation, and how any such mitigation will in fact adequately mitigate for reductions in well quality. Will water trucks be brought in? Will new wells and water distribution systems be installed? The District, on behalf of the residents and businesses it serves, states that without any proposal of what and how mitigation will be supplied and will operate, the RDEIR/SDEIS is fatally flawed.

Specific to the District, various project alternatives, if not all project alternatives, fail to analyze the significant and substantial impacts or effects of lowered groundwater tables, and thus significant or substantial loss of access to water. The District relies heavily on water, carried in all of its rolling equipment, to fight and suppress fires. The anticipated lowering of the ground water tables, and/or the possible degradation of groundwater quality and/or quantity has the serious and very possible of additional and further deterioration of the District's ability to fight and suppress fire both within the District and in response and draw of water outside the District under mutual aid agreements.

The District is also concerned generally that the overall lowering of the groundwater table as admitted in the Draft RDEIR/SDEIS will cause, or lead to, ground surface and underground depressions, sinkholes and lowered elevations, cracks in building foundations, and other structural damage as surface and subsurface earth subsides due to lowered groundwater tables, increasing calls for emergency assistance.

### **Comments Regarding Agricultural Resources**

The District provides substantial fire and emergency response services to the persons, businesses, structures, industrial locations and improvements located out in the District which are primarily characterized by or materially support agriculture land

uses. The cross-reference discussion set forth in subsection 14.1, beginning on page 14-1, line 28, through page 14-2, line 2, fails to refer to fire suppression and emergency response as related to agriculture in any other chapter. Failing this, reader expects to see analysis of the serious and significant impacts and effects of each of the proposed project alternatives on agriculture as a result of the serious and substantial impacts and effects on the District operations caused by each of the project alternatives. The lack of such analysis is a fatal flaw in the Draft EIR/EIS. Appendix A fails to address these concerns.

The substantial and serious connection between the District's income from special assessments (determined by a schedule of fixed amounts) and a portion of general real property taxes (determined by assessed values) and related serious and substantial impacts and effects caused by the various project alternatives is not analyzed at all.

Additionally, serious and substantial impact and effect, and possible reduction in the level of fire suppression and emergency response will have a serious and substantial impact and effect on future agricultural development and per acre values. These impacts, and the serious and significant impacts and effects which may occur related to the District may limit, restrict, stop, or reduce the agricultural infrastructure required for continued existence of all of the crops and agricultural activities identified in Chapter 14.

Section 14.2.2.3, page 14-20, lines 3 to 21, with reference to the Delta Protection Commission ("DPC") and its work fails to mention or analyze the DPC's *Economic Sustainability Plan* ("ESP").<sup>1</sup> Cutting across a number of sections written into the Draft EIR/ESP, but with particular focus on Delta agriculture, the ESP is an important planning and legal document formally adopted by the DPC. Many of the components of the ESP have been incorporated into and made a part of the Delta Plan, formally adopted by the Delta Stewardship Council. This failure is a fatal flaw.

Additionally, the admitted lack of analysis of Williamson Act contract cancellations discussion (e.g., at page 14-75, lines 10-24) fails to include in its analysis the resulting financial impacts resulting on changes in land values, changes and restrictions in crop plantings, and changes in land uses on the income and operations of the District and the other public entities, utilities, and other organs of the Delta and the Delta communities. This failure is a fatal flaw.

### **Comments Regarding Socioeconomics**

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<sup>1</sup> The ESP is described and analyzed in subsection 16.2.2.3, beginning at page 16-32. However, the ESP also should be included in the Draft EIR/EIS analysis for Chapter 14.

Chapter 16, discussing the Socioeconomics of the Delta, bases its analysis in large and significant part on the thinking and belief, without evidence of this belief, that the “rural communities” of the Delta are the towns of the Delta, the collection of improvements lying within the historic townships in the Delta. The language set out at page 16-3, lines 8-10 is an important example of this thinking of the Draft EIR/EIS.

In truth, the Delta communities are composed of both the townships *together with* their surrounding agricultural lands, each in symbiotic relationship with the other. In the Clarksburg area this truth is illustrated by the almost weekly meetings, gatherings, two annual district parades, three annual community dinners at the District firehouse, two garden clubs, a boy scout troop that has consistently produced for many years one of the greatest number of Eagle Scouts on an annual basis in the Country, together with innumerable events at the schools, church, library, and with other community groups, all bringing together residents of both the town area of Clarksburg with the residents outside the town area, into one cohesive single community unit bound together with unified and common values, united traditions, and family histories going back on the same land as far as seven generations (“**Community Cohesion**”).

The District is also characterized by an important multi-cultural history. Whether it is the example of farmers who during the Second World War paid the taxes on the lands and buildings of their fellow Japanese farmers so they would not lose their land during internment, protection of the historic Japanese School, or the example of German POWs choosing to remain in the Delta upon their release in 1945, the Portuguese social hall (in the Lisbon District), the residents from Holland, in the area with the same name, or the large Hispanic population which participates in the life of the Delta, these facts and more demonstrate that the Delta community and its social fabric is not divided along the lines of township vs. non-township.

The demographic data set forth for the Delta portion of Yolo County beginning at page 16-7, line 317, to page 16-8, line 13, of the Draft EIR/EIS, and again at page 16-7 of the RDEIR/SDEIS in the information listed for Clarksburg and West Sacramento fails to recognize that only a part of West Sacramento lies within the Delta. The numbers offered for West Sacramento mislead because those numbers describe the whole of West Sacramento, not the Delta portion of the city. The Draft EIR/EIS is inaccurate and misleading to the extent that data derived from outside the Delta is offered as analysis of the Delta. Data should be limited to in-Delta residents, population, employment, etc. This same comment applies to cities and other areas which lie partly within the Delta, but the data for which is given for the entire city or area, not just the portion of the city or area which lies within the Delta.

At subsection 16.2.3.5, beginning at page 16-37, line 24, and throughout, the Draft EIR/EIS failed to mention or include at all in its analysis the 2001 Clarksburg General Plan, duly passed as an integral part of the Yolo County General Plan and is a

matter of public record. As Yolo County is a cooperating agency and recognized arm of local government, the portions of its General Plan, specifically the 2001 Clarksburg General Plan, must be given the respect required by both state and federal law. The failure to include and analyze the 2001 Clarksburg General Plan is a fatal flaw.

ECON 15, analyzed in relation to Alternative 1A, and incorporated into various other Alternatives, regarding damage, impact and negative effects on community character, is deeply flawed. (See page 16-72, line 3 to page 16-73, line 10.) In addition to the failures discussed above, the NEPA portion of the analysis (page 16-72, line 5 to page 16-73, line 2) admits that serious and significant impacts would be imposed on Delta communities, while the CEQA portion of the analysis (page 16-73, lines 3-10) claims no physical impacts will occur. Either one statement or the other is true. Both statements cannot be true at the same time.

ECON 15, page 16-72, at lines 27-30 claims that CM3 (the cultivated land natural community strategy) would ensure continued agricultural production, but fails to address in any way the quality, type, values or other characteristics of that claim of continued agricultural production. It is basis and foundational to any NEPA or CEQA analysis to include the basic parameters of anticipated changes in crop quality, type, value and other fundamental characteristics when claiming that "CM3 would ensure the continuation of agricultural production on thousands of acres in the Delta."

The continued health of agriculture in the District in particular, and in the Delta in general, is essential to the financial health and human resources demands upon the District and its ability to continue to satisfy the demands of its mission.

The activities, meetings, social gatherings, parades, and other regular and annual events which provide important glue for the community and its social harmony face substantial likelihood of disruption constituting a substantial and serious negative impact and effect.

### **Comments Regarding Cultural and Historic Resources**

Since its establishment in the 1940s, the District has had an important place in the cultural and historic landscape of the Delta. In no small part due to its place in the Community Cohesion described above, the District has consistently served over time as a key place where members of the Delta Community gather to refresh relationships, discuss community issues, and plan for the future.

The District is also a key area for Native American activity. Sections 18.1.1.3 and .4 in particular, and section 18.1 in general disclose that at no time did the drafters of the Draft EIR/EIS ever reach out to local historians who would have shown the drafters and

their agents and associates the location of burial grounds, where arrowheads are generally found, and where other evidence of Native American culture is located.

The failure of analytics used throughout the preparation of the Draft EIR/EIS to even ask for local knowledge on the ground and generally known among families who have lived in the Delta for as much as seven generations is a fatal flaw in analysis and process throughout.

### **Comments Regarding Transportation**

Figures 19-3a, 19-3b, 19-4a and 19-4b, and Segments CT 28, 33 and 34, and YOL 01, 02 and 03, Table 19-1, admit to various serious and significant impacts and effects of each of the Alternatives on the transportation network and routes relied upon by the District to perform its mission.

The analysis overall, and specifically as laid out in Table 19-3, seventh column from the left title "Hourly Volume Range (6AM to 7PM)" specifically fails to take into account morning and evening agricultural activity before and after the stated hours during harvest, planting and growing seasons for various crops. Pear harvest, for example, during July and August, creates heavy traffic before 6AM and after 7 PM. The same is true of grape harvest in August, September and October.

The pavement conditions, Table 19-5, for YOL 01, 02 and 03 are admittedly generally unknown or are already inadequate. When 24-hour traffic diversions, and volunteer rerouting due to extremely heavy dump truck traffic to transport tunnel spoils and construction related vehicular, light equipment and heavy equipment trips, the Draft EIR/EIS admits the already inadequate roads will be damaged beyond repair. This will further fracture and degrade Community Cohesion.

Although the Borges Airport is identified by a green dot in the Chapter 19 maps, it is not analyzed in Section 19.1.5 (page 19-27, line 19 through page 19-31, line 9). The Borges Airport is within the District and may serve as appropriate as an emergency landing zone for certain emergency responses on the part of the District. The Borges Airport may be open to the public on a rental or fee basis. Substantial, adverse and serious impacts and effects on the Borges Airport as a result of each of the Alternatives should be analyzed. Such analysis should include substantial and substantive discussion with the owners and operators of the Borges Airport.

As pointed out in the initial portion of this comment letter, the District made formal request to be designated a coordinating and cooperating public agency for purposes of the Plan and Draft EIR/EIS. The request of the District was ignored. Nonetheless, the District through other correspondence, public testimony, and a number of informal meetings has made its presence noted.

Nowhere in the Determination of Effects, section 19.3.2, page 19-36, line 7 through page 19-39, line 1, was the admitted disruption of traffic operations inclusive of the disruption on fire suppression and emergency response operations maintained by the District. Traffic rerouting, whether directed by governmental authority, or voluntary in nature as people change their transportation routes as a result of, and to avoid construction and operation impacts, will seriously impact and effect the District. Responding to calls in and around construction and operation traffic will certainly delay emergency response. The failure and omission of analysis of these issues is a fatal flaw.

For example and in particular, but not by limitation, the admitted time of “at least 1 hour” during which LOS would be exceeded (see, for example page 19-41, lines 10-11) does not analyze the resulting burden on emergency response. The same failure is true for corresponding analysis for all Alternatives.

Chapter 19 fails to analyze the serious impacts and effects of increased traffic, and in particular the serious impacts and effects of long periods of heavy equipment traffic, on the levee roads. The failure and omission of analysis of these issues is a fatal flaw.

### **Comments Regarding Public Services and Utilities**

Chapter 20 of the Draft EIR/EIS claims to describe the public services and utilities in the study area which may be affected by the construction, operations and maintenance of the action alternatives in the Plan Area. (Page 20-1, lines 4 – 6.)

As part of the subsection discussing Fire Protection and Emergency Response, the Draft EIR/EIS states “Response time is broken into three components: alarm processing time (dispatch), turnout time, and travel time. The element of time for alarm processing is in the hands of the dispatch and communication system. The amount of time it takes to turnout fire apparatus is different depending on whether the station is staffed by full-time permanent or otherwise assigned personnel, or whether the staffing is recalled (volunteer). Travel time is a function of speed and the availability of a road network to get to the scene of an emergency.” (Page 20-3, lines 35-40.)

**Flawed Method of Analysis.** Subsection 20.3.1, from page 20-29, line 16 through page 20-30, line 8, recites a “desktop” method of analysis, limited solely to review of electronic data and telephone calls, perhaps limited to one voice message, and email(s). These two methods are the only listed means attempted by the drafters and proponents of the Draft EIR/EIS to obtain information from the public agencies and utilities the drafters write about.

There is absolutely no data presented in summary, raw or other form making representation of any data collected from the telephone calls and emails. This means

that no such analysis was received. The calls and emails, and all information received as a result, should be disclosed in the Draft EIR/EIS. The lack of information is not disclosed, and should be disclosed. The Draft EIR/EIS, presented without any of the information collected via the personal methods, is flawed and defective because without the information obtained by telephone calls and email the readers and reviewers of the Draft EIR/EIS cannot effectively evaluate the Draft EIR/EIS. The conclusion is that the drafters have either hidden or failed to disclose the information received, or that information was received and not disclosed.

The drafters further failed to inventory the equipment and training level of the District or any Delta public entity or utility, failed to estimate the increased service load on the District because of the construction and/or operations of the projects listed in any of the alternatives, and failed to evaluate whether the District, or any other public entity or utility is possessed, and offered no plan, to assist the District or any other public entity or utility would possess the required equipment and training to respond to the increased service demands upon the District caused by any of the projects or proposals listed in the Draft EIR/EIS.

**Further Flaw in Method.** As stated above, Subsection 20.3.1, from page 20-29, line 16 through page 20-30, line 8, recites a "desktop" method of analysis, limited solely to review of electronic data and telephone calls, perhaps limited to one voice message, and email(s). The drafters of the Draft EIR/EIS completely failed to collect the statements of mission, plans, purpose or any other matter from the data and information developed and stored at each public service entity, did not inspect or view any of the facilities listed, did not learn the scope, number or type of responses handled by the District, or any public service entity, in the Delta. The District submits that these flaws are fatal and the failures listed are required to be corrected in order to construct and understand the base line data points upon which the Draft EIR/EIS purports, and should be, based.

As one example, for illustration only, if such basic inquiry has been performed by the drafters of the Draft EIR/EIS, they would have learned that part of the primary mission of the District is to provide emergency medical aid, accident and other non-fire first responder services, and that annual calls of this type typically number above 75 per year. The drafters would also have learned that many of these calls result from existing and long standing mutual aid agreements with sister Delta fire protection districts. The project, and all of the alternatives, clearly disrupt and delay the delivery of these non-fire responses. It is reasonably believed by the District, based on long experience, that loss of life, serious and permanent injury, some of a debilitating type, with corresponding catastrophic financial, social and quality of life loss.

**Error.** At Page 20-22, line 22, under the section entitled “Yolo County General Plan”, the Draft EIR/EIS states that the Yolo General Plan makes provision for public services and utilities within “Solano” County.

**Correction.** The reference should be changed so that the word “Yolo” replaces the word “Solano”. Please make this correction and change all analysis accordingly.

**Error.** At Table 20A-4, page 20A-13, of Appendix 20A, in the River Delta School District section, third school from the top of the page, referring to “Delta Elementary (K-6 Charter)” claims and states that the enrollment of the school, as of the date of the release of the plan (November 2013) is 123, with a capacity of 280, and states that capacity is not exceeded.

**Correction.** The correct numbers for the Delta Elementary (K-6 Charter) school are: 345 enrollment, with a capacity of 345, at capacity, with a wait list of 32. Please make this correction and change all analysis accordingly.

**Flawed Environmental Analysis.** Subsection 20.3.1.1, in reference to the Environmental Consequences as applied to Fire Protection states, that “Fire Protection entities have the potential to be affected by construction activities in the same ways as law enforcement agencies.” (Page 20-30, line 30.) The “Law Enforcement” section immediately above this quoted sentence on Page 20-30, lines identifies four potential impacts: increased number of construction personnel moving into the Plan Area, construction encroachment on station(s), road impacts, and decreased funding.

This analysis is flawed in the following ways:

1. The analysis is limited to “construction activities” (Pg. 20-30, line 30.) The effects analysis (referred to below) lists both constructions and operations activities as creating effects. The flaw here is the failure of the scope of environmental analysis limited to “construction”, whereas the effects analysis focuses on both construction and operation. The environmental analysis must focus and include operations in addition to construction. Such expansion of analysis to include operations will require further study, additional data, and expanded outreach to understand the true environmental impacts of the BDCP operations upon public services such as Fire and Emergency Response.
2. The Environmental analysis as applied to fire protection, by simply incorporating the analysis as applied to law enforcement, fails to included emergency response, fire suppression, medical aid and other first responder duties which are difference than law enforcement.

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**Flawed Effects Analysis of Both Adverse Effects (NEPA) and Significant Impacts (CEQA).** Subsection 20.3.2, Determination of Effects (beginning at page 20-33, line 1) should be titled "Determination of Effects and Impacts", to cover both NEPA and CEQA analysis.

The effects and impacts analysis on page 20-33 should include "lack of fire suppression equipment to serve the needs of substantially greater, adverse and significantly higher number of calls and events requiring fire suppression services by the District both within its boundaries and through the District's mutual aid agreements.

### **Comments Regarding Public Health**

The Draft EIR/EIS fails to take into account various flood potential, flood dangers, and flood risks. In particular, the Draft EIR/EIS in final form should include the Lower Sacramento River/Delta North Regional Flood Management Plan (July 2014), its findings, analysis, conclusions and recommendations. Flood risk, flood events, and high water events have been a significant and serious part of life at all levels in the Delta. Flood dangers and risks, and actual flood events, should be an integral part of each and every chapter of the Draft EIR/EIS. The lack of such analysis throughout and in every chapter is a fatal flaw.

### **Comments Regarding Environmental Justice**

The District observed no dedicated outreach to the Hispanic members of our community.

### **Comments Regarding Public Participation, Consultation and Coordination**

The public participation, consultation and coordination activities on the part of the preparers of the Draft EIR/EIS did not include any directed or specific outreach to the District itself.

The largest outpouring of people coming to public meetings occurred in Clarksburg, the heart of the District. (See, e.g., Table 32-1, page 32-2, line 18; Table 32-2, page 32-3, line 6.)

Although the District is a major unit of local government in the Clarksburg area, the lack of outreach from the preparers of the Draft EIR/EIS to the District, is a fatal flaw. The District reached out, both formally and informally on a host of occasions, but none of these substitute for the formal outreach from the preparers of the Draft EIS/EIS to the District.

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The District requests that the final EIR/EIS presentation clearly identify and specifically show all places where each and every one of the comments above is specifically addressed. A redline copy of the Draft EIR/EIS, accompanying the Final EIR/EIS, would greatly aid in helping the public understand where and how all comments are addressed in the final product.

### **Failure to Include Clarksburg Community Plan**

On September 29, 2015 the Yolo County Board of Supervisors adopted the Clarksburg Community Plan ("**Plan**"). This Plan, a legally binding document, as an amendment to the Yolo General Plan, set forth certain facts, values, and provided critical information required to properly analyze the preferred alternative and other projects examined by the EIR/EIS. If the Final EIR/EIS does not properly analyze the Plan, and any other similar plan within the Delta, the Final EIR/EIS will be fatally flawed.

Please contact me if you have any questions.

Very truly yours,  
CLARKSBURG FIRE PROTECTION DISTRICT

By: 

Mark Pruner, Chair  
Board of Directors

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**From:** Mark Pruner (p) <mark@markpruner.com>  
**Sent:** Friday, October 30, 2015 4:20 PM  
**To:** BDCPcomments  
**Cc:** Mark Pruner (p)  
**Subject:** BDCP Comments - Clarksburg Fire Protection District No. 1  
**Attachments:** Clarksburg Fire Protection Dist BDCP Comment Letter No 1 (October 30 2015).pdf

Please find attached the BDCP Comments to the RDEIR/SDEIS.

Please contact me with any questions or comments.

Mark Pruner  
Board Chair

Mark Pruner  
P. O. Box 3  
Clarksburg, CA 95612  
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**Clarksburg Fire Protection District**

P.O. Box 513  
Clarksburg, CA 95612

October 30, 2015

**COMMENT LETTER NUMBER TWO**

Via Email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

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

Re: Comments to the Bay Delta Conservation Plan Draft RDEIR/SDEIS

Dear Lead Agencies, and BDCP Leadership and Comment Teams:

This comment letter is in addition Comment Letter Number One previously submitted in reference to the Draft EIR/EIS and REDIR/SDEIS.

As previously stated in the Comment Letter Number One, the Bay Delta Conservation Plan/California WaterFix ("**BDCP/CA WaterFix**") proposes to dramatically alter the way in which the Clarksburg Fire Protection District (the "**District**") meets its mission and delivers emergency services within District boundaries and in accord with its mutual aid agreements. Those mutual aid agreements include agreements with other fire districts within the northern Sacramento-San Joaquin Delta.

Although the District timely and properly requested cooperating and coordinating agency status with each state and federal regulatory agency responsible for the Bay Delta Conservation Plan ("**BDCP**") by District letter dated November 5, 2009, its requests have been ignored.

The District is a unit of local government in the Sacramento-San Joaquin Delta (the "**Delta**"). The District generally covers all of the geographical area south of the city limits of the City of West Sacramento, west of the Sacramento River, east of the Sacramento Deep Water Ship Channel, and to the southern boundary of Yolo County. The District lies entirely within the legal boundaries of the Delta. The geographical area covered by the District lies entirely within the Plan Area (as defined in the BDCP/CA WaterFix).

The mission and purpose of the District is to provide reliable fire suppression and emergency medical response to the people, residents, structures and businesses within the boundaries of the District and assist in holding insurance rates as low as possible. In

order to meet this mission and purpose the District relies upon a number of existing physical and economic facts within the District, including:

1. Reliant for the majority of its funding from agricultural land uses and operations, a system of assessments (including special assessments and a portion of general real property taxes) on real property parcels and structures, the maintenance of agricultural viability and land values, and the determination and payment of fees to meet the financial obligations of the District;
2. A system of roads and travel routes for the delivery of services both within the District and to facilitate and continue the existing deliveries of as needed mutual aid to and from other fire districts through existing agreements and, through strike teams, throughout California;
3. The on-going system of purchase and maintenance of equipment comprised of rolling stock, personal protection, fire suppression, medical aid, and supportive supplies, materials and equipment; and
4. The maintenance of existing levees and flood protection to reduce the risk of floods and the damage cause by inundation by water.

A number of State and federal entities are discussing formulating various devices, strategies, policies, habitat conservation plans, reports and other procedures (together, "**Plans**") which appear to have the potential to significantly and seriously disrupt or even prevent the District from accomplishing its mission and purpose by alteration of the physical and economic facts listed above. The BDCP/CA WaterFix is one of these Plans currently under consideration.

This letter constitutes the District's Comment Letter Number Two focusing on the estimated impact on the District which will result from the proposed project, in one or another alternatives, (the "**Projects**"), and the cost to the District as a result of the Projects.

Throughout all of these comments, when impacts and/or effects are described or identified in any way, such impacts are to be deemed significant impacts for purposes of CEQA analysis, and such effects are deemed adverse effects for purposes of NEPA analysis.

In a typical year the District responds to approximately 25 fire suppression calls, 75 medical aid calls, and 68 other "first responder" calls. Depending upon the specifics of the actual construction project which may go forward (and specifically not agreeing that any project of any scope should go forward), the District forecasts a significant and substantial increase in call volume due to construction activities and increased traffic in

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and through the District. After the completion of all construction activity, and as a result of proposed project operations, the District estimates a nominal increase in call volume due to operational and maintenance activities relating to the project. The increased call volumes as a result of construction, and also as a result of operations, will both be substantial, serious and significant impacts and effects on and for the District.

### **Comments Regarding Direct Financial Impact**

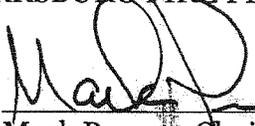
The District has determined that if the project as proposed proceeds, additional costs and impacts will be caused to the District. It is estimated, based on an analysis of call volume and type over the past 10 years, that with the increased traffic within the District, additional construction related activities, and other matters related to the proposed project, its construction, and its operations, as proposed by the Draft EIR/EIS and RDEIR/SDEIS, emergency requests for assistance within the District and under mutual aid agreements with other Districts will increase by approximately 100 calls per year.

In order to meet this demand, it is estimated that the hiring of personnel in the persons of a Fire Chief, Battalion Chief, Captain, one or more Engineers, and Fire Fighters will be required. Additional equipment will need to be purchased, and additional other costs will be incurred. Additional training will be required. In total, it is estimated that the direct financial impact of the project as proposed to the District will be \$1,675,000 on an annualized basis. This estimate is subject to updates in information and to further and more accurate information which may be received in the future.

The District states that the project proponents should be responsible to cover and pay the District for all of the actual costs of the project, its constructions and its operations.

Please contact me if you have any questions.

Very truly yours,  
CLARKSBURG FIRE PROTECTION DISTRICT

By:   
Mark Pruner, Chair  
Board of Directors

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**From:** Mark Pruner (p) <mark@markpruner.com>  
**Sent:** Friday, October 30, 2015 4:52 PM  
**To:** BDCPcomments  
**Cc:** Mark Pruner (p)  
**Subject:** Clarksburg Fire Protection District Comment Letter No 2  
**Attachments:** Clarksburg Fire Protection Dist BDCP Comment Letter No 2.pdf

Please find attached the BDCP Comments to the RDEIR/SDEIS, Comment Two, from the Clarksburg Fire Protection District.

Please contact me with any questions or comments.

Mark Pruner  
Board Chair

Mark Pruner  
P. O. Box 3  
Clarksburg, CA 95612  
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Fax: (916) 447-9661

**Resort location:**

Snug Harbor Resorts, LLC  
 3356 Snug Harbor Drive  
 (On Ryer Island)  
 Walnut Grove, CA 95690

Phone: (916)775-1455

**Web site:**

<http://www.snugharbor.net>

**Email:**

[sunshine@snugharbor.net](mailto:sunshine@snugharbor.net)



To: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

10/30/15

From: Nicole S. Suard, Esq., Managing Member, Snug Harbor Resorts, LLC

RE: Comments: **Opposition** to BDCP "WaterFix" Tunnels and some of the "EcoFix" proposals

This letter is sent as a summary update to comments already detailed in the last comment period for the proposed Bay Delta Conservation Plan, for twin Delta Tunnels. The primary issue is the diversion of too much Sacramento River water to other areas of the state, leaving insufficient freshwater flow to protect the Sacramento River Valley, Delta and San Francisco Bay area drinking water aquifers in the short and long term. Another primary issue is the inconsistent and inaccurate computer modeling utilized to validate more water diversion, while clear and current negative impacts are being ignored or the causes redefined. The cost of building of the tunnels will put even more pressure on water diversion regulators to allow even more diversion of Sacramento River water, to further degrade Northern California environment in favor of lower Central Valley and Southern California development. Water diversions from the Sacramento River should be reduced - not increased. Below is a summary of issues that still remain despite some revision to the BDCP/WaterFix documentation:

1. Baselines for computer modeling used data from different years for different modeling scenarios, basically created a fabricated "historical Delta" from which to initiate computer modeling. As Melinda Terry from NDWA said "Garbage in, garbage out". Decisions knowingly made based on the outcomes of computer models generated by the use of false baselines mean DWR and the consultants will be fully legally responsible for the outcomes and negative impacts of the actions taken. CALSIM, CALSIMII and DSM2 are examples of computer modeling used in BDCP planning which utilize false and/or manipulated baseline data regarding freshwater flow quantity, water column depth and in-delta use. See questions regarding water flow accounting: [http://www.snugharbor.net/dwr\\_reporting\\_of\\_inflow\\_and\\_outf.html](http://www.snugharbor.net/dwr_reporting_of_inflow_and_outf.html)  
<http://www.deltarevision.com/sacramento-river-waterflow.html>  
[http://www.deltarevision.com/it\\_depends\\_on\\_who\\_is\\_counting.html](http://www.deltarevision.com/it_depends_on_who_is_counting.html) and  
<http://www.deltarevision.com/COMMENTS/flows/unaccountedforwater.jpg> and <http://www.snugharbor.net/images-2014/news/unaccountedwater-update.pdf>
2. Metropolitan Water District (MWD) initiated and paid for the "emergency response stockpiling" which was planned in case of flood or earthquake, based on MWD budget documents generated 2004-2007. Maps from MWD presentations to its own board show MWD clear intent is to eliminate the water flow in several North Delta historic waterways so that that water can instead be exported to other areas of the state. See [http://www.deltarevision.com/maps/barriers\\_gates/barrier\\_gates\\_maps.htm](http://www.deltarevision.com/maps/barriers_gates/barrier_gates_maps.htm) and [http://www.snugharbor.net/delta\\_barriers\\_planned\\_by\\_mwd.html](http://www.snugharbor.net/delta_barriers_planned_by_mwd.html)

3. The impact of waterflow reduction on the Sacramento River is to substantially reduce or eliminate freshwater flow on several of the historic waterways of the North Delta, including Steamboat Slough, Sutter Slough, Miner's Slough and possibly the section of the lower Sacramento River that was called "Old River" or "Mainstem" until about 1910, i.e. from between Ida Isle below Isleton to above Walnut Grove. Since Steamboat, Sutter and Miner's Sloughs are much more shallow than they used to be, more likely than not at least the lower end of Steamboat and all of Miner's Slough will become shallow tule fields. Tules consume three times as much fresh water as agriculture use, so the consumption of more fresh water for the shallow water habitat created is not recognized in the BDCP. Also not recognized in BDCP is the fact State Lands Commission received applications for lease of the bed of Steamboat Slough and Sacramento River for use for geothermal, natural gas or other mining purposes starting in 2005, indicating SLC and those persons applying for leases assumed the river beds would be available or eliminated from navigation use-how did they know in 2005 what DWR would propose in 2014? See <http://www.snugharbor.net/images-2014/news/frackingcorrelation.pdf>

4. Long term impact to Delta recreation is the elimination of at least half of the current marinas and camping/RV parks which results in a substantial loss of tourist revenue for the area. (Fish need water to swim, boats need water to float). Note that in the Delta Vision process, Delta boating and fishing recreation was estimated to generate over \$1 billion to California's economy and there were as many as 14,000,000 visitor days per year in the Delta. DWR did not provide the Delta Vision study to the consultants who generated the BDCP recreation chapters. It is foolish to think people will drive deep into the Delta to purchase fresh produce when there are farmers markets in their own towns offering the same product without the investment in travel time and gas.

See [http://www.deltarevision.com/Issues/recreation/delta\\_recreation\\_contributes\\_1billion.jpg](http://www.deltarevision.com/Issues/recreation/delta_recreation_contributes_1billion.jpg)  
[http://www.deltarevision.ca.gov/Context\\_Memos/recreation/recreation\\_memo\\_interation1.pdf](http://www.deltarevision.ca.gov/Context_Memos/recreation/recreation_memo_interation1.pdf)  
[http://www.deltarevision.com/Delta\\_maps/Recreation\\_Navigation\\_Transportation.htm](http://www.deltarevision.com/Delta_maps/Recreation_Navigation_Transportation.htm)  
[http://www.deltarevision.com/Issues/recreation/14million\\_boater\\_days\\_per\\_year.jpg](http://www.deltarevision.com/Issues/recreation/14million_boater_days_per_year.jpg)

5. "Short term" impact to North Delta recreation, not already eliminated due to lack of water in the waterways, is the substantial limits to access by customers, due to the fact all major roads leading into the North Delta would be clogged with trucks and construction equipment. Some facilities that can house construction and engineering staff may be able to supplement lost recreation income, but most marinas have limits on live-aboard berths so will not have substitute income supplement capability. In any case, boaters and anglers will avoid the North Delta, which will impact the whole area financially. Note that CALTRANS initiated planning for "habitat corridors" 2004 that looks like BDCP conservation areas...in 2014 [http://www.deltarevision.com/delta\\_transportation\\_planning.html](http://www.deltarevision.com/delta_transportation_planning.html)

6. BDCP fails to address the issue of unaccounted for water flows and exports, and fails to recognize the difference between water that is diverted and the total counted exports received by water contractors. Previous water plans recognized the loss of as much as 50% of diverted water-loss attributed to "evaptransportation" which is a combination of evaporation and loss of water in the transport process. Simply by adding meters and monitors in several areas in and out of the Delta, water could be better counted and controlled. In the Delta, outflow monitors could be placed closer to the two river mouths, on each side of Sherman Island, with adjustments for tides, so that the miscalculated "Delta Outflow Index" would not be necessary. Alternatively, outflow monitors could be placed by the Rio Vista Ferry on Cache Slough, just above Hidden Harbor on Steamboat Slough, just below Viera's on the Sacramento River to combine to determine Sacramento River outflow, with adjustment for tidal influx. A monitor at Three Mile Slough and at two locations on the San Joaquin River, due to its width, could determine actual San Joaquin River outflow. The combination of these monitors would determine actual Delta outflow instead of a computed, estimated outflow. (See the study of the 2013 Delta outflow chart from the 2013 Water Plan) <http://www.snugharbor.net/images-2014/news/unaccountedwater-update.pdf>  
 DATA gaps: <http://www.snugharbor.net/flowdatagaps.htm>

7. For the last 10 years, under CALFED and BDCP funding, there have been ongoing "restoration" tests and studies, several of which have been conducted on lower Sacramento River, Steamboat and Sutter Sloughs. The "bench tests" on Steamboat Slough has resulted in growing and distribution of non-native invasive water weeds like egeria densa, and has resulted in escalation of silting in of the locations were the bench tests were/are conducted. According to the fish

studies, those invasive water weeds are harmful to native fish species, not helpful, so why does the BDCP promote or propose creating even more areas that are harmful to native fish species? [http://www.snugharbor.net/images-2013/deltastuff/bdcp\\_impact\\_steamboatslough.jpg](http://www.snugharbor.net/images-2013/deltastuff/bdcp_impact_steamboatslough.jpg)  
[http://www.deltarevision.com/Delta\\_maps/Restoration\\_BDCP.htm](http://www.deltarevision.com/Delta_maps/Restoration_BDCP.htm)

8. From 2006 to current year, CALFED/BDCP related fish migration studies have been conducted in many areas of the Delta. BDCP discusses the outcomes of the studies, but fails to recognize how the waterways were manipulated during the fish migration times to affect the outcomes, to validate the use of the Yolo Bypass area and Sacramento Ship Channel for a new native fish migration pathway. Besides the fish screens at Georgiana Slough, fish migration pathways were manipulated by increasing water temperatures in some waterways which would discourage use by migrating salmon, insertion of sediment in some waterways which would also discourage use by migrating salmon, installation of in-water berms which would block migrating salmon or divert the salmon into different migration pathways, and insertion of floating logs and debris during the fish migration studies to allow for coverage of salmon predators. It appears the studies were conducted to validate use of the Yolo Bypass/ Sacramento Ship Channel for conveyance, which fits with the 2006 to current MWD "west side" conveyance preference, based on MWD documents.  
<http://www.deltarevision.com/maps/conveyance-canal/conveyance-canal.htm>

9. BDCP does not address the impact of fracking in the Delta, which is much more likely to impact water quality within a few years in any area where horizontal fracking and the residue wells are located, which could then also affect the availability of fresh surface water in the Delta. BDCP should acknowledge the substantial increase in fracking for natural gas, located in the same areas as the proposed restoration areas, and acknowledge the use of tules and other plantings to naturally filter the spills and residue from the fracking process, and how the lands above the fracking areas that are currently prime farm land will be impacted by the know hazards of fracking.  
 See <http://www.deltarevision.com/timeline.htm> and <http://www.snugharbor.net/images-2014/news/deltanaturalgaswells.pdf>

10. BDCP addresses earthquake response issues, yet fails to recognize the earthquake and liquefaction issues may be caused by the horizontal fracking process based on the known impacts in other states where the process has been in use for 10 years. BDCP also fails to recognize that as natural gas is drawn out of the ground, much like the levee failure of McDonald Island in the early 1980's, the levees above the areas to be fracked may fail due to the fracking process and natural gas draw-down combined. In addition, fresh water used for fracking in the Delta may reduce water level for drinking water wells in the surrounding Delta area. See <http://www.deltarevision.com/timeline.htm>

11. CALFED and BDCP consultants have had great difficulty with accuracy in their studies of the Delta with regard to the actual physical location of the Delta islands and waterways. If the consultants can not even figure out the location of the islands and waterways they propose to modify, why would anyone think the computer modeling use or the decisions made would be more accurate than the wrong maps of the Delta? The wrong maps show a lack of attention to important details one would assume would be a basic requirement for a scientific study.  
 See <http://www.deltarevision.com/wrong-maps-of-the-delta.html> and <http://www.snugharbor.net/images-2013/deltastuff/wrongdeltanames..jpg> and [http://www.deltarevision.com/history\\_of\\_california\\_travel.html](http://www.deltarevision.com/history_of_california_travel.html)

12. Water quality, especially salinity is the biggest water-related issue in the Delta and statewide. In the Delta, the measurement of salinity for the last 100 years was reported as 1 ppt so when did we agree to switch to accepting 2 ppt and why and for whom? <http://www.snugharbor.net/images-2014/bdcp/salinityonsteamboat.jpg> EC and other measurements are traditionally used for levels of salt water, but the Delta was always freshwater. We all use drinking water wells in the Delta. If the drinking water wells are impacted in the "short term" from the drawdown of the Delta groundwater, what water will be left to replenish the Delta's groundwater since most of the Sacramento River water will be exported through tunnels so it will not be available to refresh our aquifer?  
[http://www.deltarevision.com/delta\\_and\\_bay\\_aquifer\\_impacts.html](http://www.deltarevision.com/delta_and_bay_aquifer_impacts.html) More on water quality past documents are at [http://www.deltarevision.com/Delta\\_maps/Water\\_salinity\\_toxins\\_wq.htm](http://www.deltarevision.com/Delta_maps/Water_salinity_toxins_wq.htm)

Submitted by N. Suard, Esq. as a supplement to 100+ pages submitted on BDCP previous comment period.

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**From:** sunshine@snugharbor.net  
**Sent:** Friday, October 30, 2015 4:37 PM  
**To:** BDCPcomments  
**Subject:** please see attached comments sent in opposition to the BDCP/"WaterFix"  
**Attachments:** comments-waterfix2015.pdf

Please open the attached three page letter.  
Nicole S. Suard, Esq. Managing Member, Snug Harbor Resorts, LLC

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**RECLAMATION DISTRICT NO. 2072**  
**Woodward Island**  
**235 East Weber Avenue**  
**P.O. Box 1461**  
**Stockton California 95201**  
**(209) 465-5883**

Trustees  
 Kurt Sharp  
 Coleman Foley  
 Pete Luchessi

Secretary and Attorney  
 Dante John Nomellini

Engineer  
 Dominick Gulli

Bay Delta Conservation Plan RDEIR/SDEIS  
 Draft Environmental Impact Report  
 Comments

10/30/15

Via Email: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

The twin tunnels alignment runs under Woodward Island and will have significant negative impacts to Reclamation District 2072's Flood Control and Drainage facilities. The EIR does not consider impacts to the Reclamation District and should be more detailed in the Final EIR.

With the limited information provided following are preliminary impacts, concerns and issues regarding the tunneling operation:

1. The East Bay Municipal District (EBMUD) aqueducts cross Woodward Island from East to West parallel with the Districts North levee. The EBMUD pipes are supported by pilings and the tip of the pilings are likely deeper than 100 ft below MSL as shown on the 2013 EIR In Chapter 3 Figure 3-21. The tunnels and the aqueduct should be analyzed to determine a suitable separation such that the interface will not cause hydraulic or structural impacts to the levees and drainage system of the District.
2. This is also true for the District drainage pumping plant and the BNSF Railroad trestle in the North Woodward Cut.
3. Woodward Island has a high-water table, artesian aquifers under seepage and other hydraulic resources. Putting a penetration under the District will have a significant affect on the water table. Any additional water produced from the tunnel encroachment will significantly impact the Districts drainage and flood facilities as well as the agricultural operations.
4. The Tunnels will go under the Districts North and South levees and will affect the safety and stability of the levee. When a boring machine is installing the tunnels it will produce signifigant dynamic and hydraulic loads that will affect the levee.

These comments are preliminary based on the limited information provided but should be addressed in the Final EIR.

Respectfully,



Dominick Gulli PE, PLS  
 RD 2072, District Engineer.

CC: Rd 2072 District Secretary

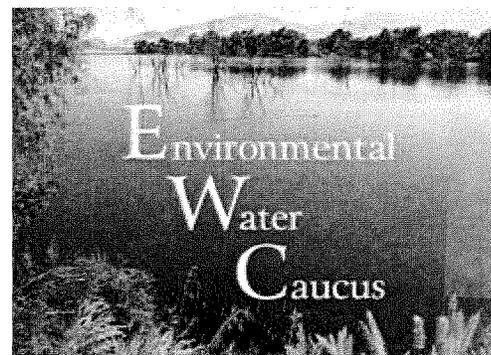
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**From:** Dominick Gulli <greenmountaindom@hotmail.com>  
**Sent:** Friday, October 30, 2015 4:35 PM  
**To:** BDCPcomments  
**Subject:** BDCP comments RD 2072  
**Attachments:** 151030 rd2072 bdcpc comments.pdf

Enclosed are comments from the Engineer for Reclamation District 2072, Woodward Island. Thank you and please confirm receipt.

Dominick Gulli RD 2072  
District Engineer.

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SUBMITTED VIA ELECTRONIC MAIL TO <[BDCPCOMMENTS@ICFI.COM](mailto:BDCPCOMMENTS@ICFI.COM)>

October 30, 2015

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

**Subject: Comments on the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement for the Bay Delta Conservation Plan (BDCP) and California WaterFix Project**

To whom it may concern:

The Environmental Justice Coalition for Water (EJCW), Restore the Delta, the Environmental Water Caucus (EWC), and our affiliated organizations present the following concerns on behalf of thousands of community members who would be negatively affected by the Bay Delta Conservation Plan (BDCP) and California WaterFix Project. We continue to oppose both the BDCP and California WaterFix. A misnomer, California WaterFix will be referred from here on as Tunnels Project.<sup>1</sup>

In short, our organizations, as well as hundreds of thousands of limited English speakers who reside largely in low-income communities of color within the five Delta counties, request an extension and restart of the public comment period due to U.S. Bureau of Reclamation and the California Department of Water Resources(DWR)'s, failure to provide for meaningful access and participation of California's limited English speaking population, including limited English speakers who live in the Delta and are attempting to engage with the draft Bay Delta Conservation Plan and draft The Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). In particular, we request that the agencies hold public hearings and provide interpreters; translate vital documents

<sup>1</sup> "California WaterFix" is a misnomer; it will not fix California water issues. We choose to call the project what it appears to be, a Tunnels Project. We think this best for commenting purposes.

such as, at the very least, the Executive Summary of the draft RDEIR/SDEIS; and provide affordable access to documents to allow low-income and limited English speakers to participate meaningfully in the process. RDEIR/SDEIS fail to allow meaningful participation and do not consider impacts of the Tunnels Project on environmental justice communities.

**RDEIR/SDEIS do not meet Environmental Justice legal standards.**

The State of California has defined “environmental justice” as: “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”<sup>2</sup> Federal and state laws require agencies to consider environmental justice and to prohibit discrimination in their decision-making processes. The Presidential Memorandum accompanying the Federal Executive Order (EO) 12898 (1994) singles out NEPA and states that “[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. The Tunnels Project fails to meet these legal requirements, including.

Such violations include but are not limited to:

1. **CEQA participation requirements**— CEQA requires a process that provides an opportunity for meaningful participation of the public. According to Public Resources Code Section 21061: “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such a project.” Public Resources Code section 21003(b) provides: “Documents prepared pursuant to [CEQA] should be organized and written in such a manner that will be meaningful and useful to decision makers and to the public.” CEQA Guidelines section 15201 explains that “Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement . . . in order to receive and evaluate public reactions to environmental issues relating to the agency’s activities.” **RDEIR/SDEIS fail to meet the purpose of CEQA and has obstructed meaningful and useful means to public participation. Lead agencies fail to translate critical documents and conduct sufficient outreach to affected communities to facilitate their meaningful participation.**
  
2. **NEPA participation requirements and Equal Justice Executive Order 12898:** Federal Executive Order (EO) 12898 (1994), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to make environmental justice part of their mission and to develop environmental justice strategies. The Presidential Memorandum accompanying the Executive Order specifically singles out NEPA, and states that “[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.” (Memorandum from President Clinton, March 1994, available at

<sup>2</sup> California Government Code § 65040.12(c).

[http://www.epa.gov/fedfac/documents/executive\\_order\\_12898.htm](http://www.epa.gov/fedfac/documents/executive_order_12898.htm).)<sup>3</sup> **RDEIR/SDEIS fail to meet NEPA participation requirements and the Presidential Memorandum for effective community participation in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.**

3. Title VI of the Civil Rights Act of 1964 provides: “No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”<sup>4</sup> Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency,” See 65 Fed. Reg. 50,121 (Aug. 16, 2000). EPA “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 39602. (June 25, 2004). *Lau v. Nichols*, 414 U.S. 563 (1974) providing that National Origin Discrimination to Limited English Speakers. **RDEIR/SDEIS fail to meet Title VI of the Civil Rights Act of 1964, Executive Order 13166, 65 Fed. Reg. 50,121 121 (Aug. 16, 200), and 69 Fed. Reg. 39602 (June 25, 2004) by failing to provide sufficient documents for information affecting limited English speaking communities, thus excluding them from participation.**
4. California Government Code section 11135 (a) and implementing regulations in the California Code of Regulations Title 22 Sections 98211 (c) and 98100. Government Code 11135(a) provides: “No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.” **RDEIR/SDEIS fail to meet California Government Code section 11135 (a) and California Code of Regulations Title 22 Sections 98211 (c) and 98100 by unlawfully denying full and equal access to documents for EJ communities.**
5. The Dymally-Alatorre Bilingual Services Act—Government Code Sections 7290-7299.8 which requires that, when state and local agencies serve a “substantial number of non-English speaking people,” they must among other things translate documents explaining available services into their clients’ languages. **RDEIR/SDEIS fail to meet the Dymally-Alatorre Bilingual Services Act—Government Code Sections 7290-7299.8**

<sup>3</sup> Memorandum from President Clinton, March 1994, available at

[http://www.epa.gov/fedfac/documents/executive\\_order\\_12898.htm](http://www.epa.gov/fedfac/documents/executive_order_12898.htm).

<sup>4</sup> Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency,” See 65 Fed. Reg. 50,121 (Aug. 16, 2000). EPA “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 39602. (June 25, 2004). *Lau v. Nichols*, 414 U.S. 563 (1974) providing that National Origin Discrimination to Limited English Speakers. See also Executive Order 13166, 65 Fed. Reg. 50,121 121 (Aug. 16, 200), and 69 Fed. Reg. 39602 (June 25, 2004).

by not providing at minimum the Executive Summary in languages other than English.<sup>5</sup>

**RDEIR/SDEIS fail to consider environmental justice communities.**

**Language Accessibility and Public Participation**

The Tunnels Project still fails to uphold federal principles of environmental justice that are to be implemented under not only the National Environmental Policy Act of 1969, but also federal and state civil rights laws. Since our comments were submitted on June 11, 2014, and July 8, 2014, the Tunnels Project has failed to provide adequate public outreach and translated documents that would allow a comprehensive and objective view of the project and its impacts on the Delta and surrounding environmental justice communities—communities disproportionately exposed to environmental health burdens.

Impacts from the Tunnels Project will include the relocation of residents from their homes, loss of jobs, inability to access fish for basic nutrition, increased health risks from the higher degree of contamination in the fish that are accessible, higher water rates as urban municipal water systems will be forced to upgrade their water treatment systems, exposure to increased water contaminants like methylmercury, selenium, salt, pesticides, and other chemical toxins when recreating at county and state parks within the Delta, and inability to navigate waterways when fishing and/or reach communities in a timely fashion during the 10-year construction period.

Unfortunately, Bay Delta Conservation Plan & the Tunnels Project have left few traces of what EJ outreach they may have done in their extensive archive of meetings and plan documents online and in its meeting schedule involving other stakeholders.

The agencies have still failed to respond adequately to requests for materials & outreach in Spanish and other languages. Currently, only some documents (e.g., Fast Facts) are available in languages other than English and present content that is too limited in scope for the target audience to use it to engage meaningfully in the decision-making process. As one example, the Fast Facts document is available in six languages, but only presents promotional information. Moreover, the contents of the translated documents present information that is misleading about the impacts of the Tunnels Project.

The Fast Facts document claims to address certain issues raised in comments received on the Draft EIR/EIS. However, nowhere in this four-page document are the negative impacts of the tunnels--on public health, health of communities, water quality and subsistence fishing, impact on small communities, air quality, etc., mentioned. The RDEIR/SDEIS documents are still not available in other languages, thus making them inaccessible not just to individuals, but to many communities as a whole which have a high percentage of limited English speakers.

In addition, when our community members and partners have called the contact number for more information in Spanish, they are prompted to leave a message. After leaving a message, our colleagues reported that the messages were returned only after a week had passed. Immediate

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<sup>5</sup> California Government Code Sections 7290-7299.8.

questions or concerns were left unanswered or referred to the Fast Fact sheet for answers that do not exist on those sheets.

As noted in a May 28, 2014, letter regarding, then, the lack of access for limited English speakers, the environmental justice survey completed to support Chapter 28 of the EIS/EIR (Environmental Justice) excluded non-English speakers within the Delta. Since then, no efforts have been made to publish even the Executive Summary in languages other than in English.

Last year, we also commented that the closing of the BDCP forum to critical comment is contrary to the promise of encouraging public participation. This year, the two open house sessions held on July 28, 2015, in Sacramento and the second on July 29, 2015, in Walnut Grove were ostensibly conducted for the purpose of collecting public feedback on the then-current status of the BDCP and Tunnels Project. The open house process once again avoided meaningful public participation and a traditional public hearing process by presenting a “science fair” style open house. In addition, the open house was hosted during typical working hours, which, while convenient for the agencies which staffed the event, did not allow many community members to participate (and contrary to the open house’s very purpose: to elicit and capture public comments on the BDCP and Tunnels Project). Attendees of these open house meetings conveyed to us that no interpretive services were advertised at these meetings for hearing impaired persons.

#### ***Land Use, Flood Risk, and Affordable Housing***

As we mentioned last year, the Tunnel Project still fails to consider how affordable housing opportunities will still be maintained as land use changes are implemented. Impacts on low-income home owners, such as threats to public safety and lowered home value must be addressed as part of any proposed land use changes for which the RDEIR/SDEIS call. Disproportionate impacts of flooding on renters must be mitigated for all residents of the Delta. The impacts on existing communities of alterations in land use plans must be evaluated, particularly the potential for increased vulnerability to flooding.

A sustainable Delta will require dramatic changes in land use decisions. The Delta is already over-developed, thereby limiting choices for flood attenuation and increasing the potential for catastrophic damage associated with a seismic event. As those choices are made, the potential exists to provide equitable benefits in planning for EJ communities, but there is also the threat of disproportionate impacts on those same communities. For this reason, a sustainable vision for the Delta must identify and account for the particular impacts on EJ communities.

Changes in allowable land use patterns must be an element of a sustainable Delta. Current patterns of development will leave entire communities at risk in the event of one or more seismic event and/or flooding. We are deeply concerned that the Tunnel Project facilities and alignments may foreclose otherwise viable options for improving land use and affordable housing for the Delta’s poorest residents. A disproportionate number of the developments the Tunnels Project would put at risk are populated by low-income, predominantly Latino residents. Changes in flood mapping and zoning will have a profound effect on these developments, while their ability to recover from a flood event is limited.

Moreover, these existing communities may be detrimentally impacted by the advent of upper scale developments protected by new “super levees,” which have the potential to re-route flood

waters in ways that may negatively impact lower income communities. The following figures taken from Draft EIR/EIS (Appendix: Figure 6-5 SPFC and Non-SPFC Levees, 6-6 Reported Delta Levee Problem Areas, 6-7 Effective Federal Emergency Management Agency Flood Zones, 28-1 Minority Populations in the Plan Area, and 28-2 Low-Income Populations in the Plan Area) demonstrate that FEMA flood zone encompasses much of the central, south, and western Delta as well as Suisun Marsh where many low-income and minority Delta residents live. RDEIR/SDEIS fail to analyze the impacts to communities whose transportation routes could be disrupted due to flood impacts.

At an even greater disadvantage are communities that reside in, but don't own property in, floodplains--including tenants and farmworkers. These communities receive less assistance than property owners after a flood event and are more likely to be permanently displaced and suffer a total or near total loss of their movable property. Any emergency plan must target the special needs and vulnerabilities of these residents as well as their capacity to lead their own recovery effort, if it is, in fact, supported with resources.

As development becomes limited and/or more expensive in floodplains, the supply of low-income housing will be curtailed. Any land use changes must include a plan for provision of affordable housing for the current and expected population in the Delta Region. No such plan appears in the RDEIS/DEIR.

### ***Public Health & Water Quality***

The Tunnels Project degrades rather than protects or enhances the water quality in the Delta. In addition, water quality and other assessments in Chapter 25 Public Health are based on many decisions/papers published prior to our drought conditions and do not effectively consider public health impacts for environmental justice communities. The impact of the drought and incomplete environmental assessment confound many of the conclusions made in RDEIR/SDEIS. Several concerns for water quality and its public health impact on environmental justice communities remain with the RDEIR/SDEIS.

The Tunnels Project creates an overall pattern of inequitable and discriminatory water quality impacts, several of which would have public health implications. That general pattern is this: by diverting the Sacramento River right as it enters the Delta, the Tunnels diversions reduce flows and slows down water, which increases residence time, which, in turn, concentrates salinity and pollutants in the western and central Delta, while privileging export water quality south of the Delta over in-Delta beneficial uses. This happens over and over again in the RDEIR/SDEIS modeling results for boron, bromide, chloride, salinity, nitrate, pesticides, mercury, selenium, and dissolved organic carbon. It contributes to why harmful algal blooms will be significant and adverse impacts of the project down the road. These and other water quality constituents, which were not modeled in the RDEIR/SDEIS, all worsen for south and west Delta water ways and the Suisun Marsh and improve for the export pumps. This is a conscious decision to sacrifice in-Delta water quality and the environmental justice communities that rely on it; it is an integral part of the Project design and purpose and the water quality modeling, however incompletely done, bears that out.<sup>6</sup>

<sup>6</sup> See Project Objectives at 1-8, Section 1.1.4.1, lines 18-21, stating "DWR's fundamental purpose in proposing the proposed project is to make physical and operational improvements to the SWP system in the Delta necessary to restore and protect ... water quality within a stable regulatory framework, consistent with statutory and contractual

In addition, as noted in RDEIR/SDEIS Chapter 25-66, there are significant bromide effects on drinking water quality, which relate to precursors for carcinogenic disinfectant byproducts - a significant water supply treatment cost issue for both municipal exporters and in-Delta municipal drinking water suppliers, like Stockton, Walnut Grove, Isleton, Rio Vista, etc. Treatment plan upgrades would further increase the burden of water accessibility on small and low-income communities.

As noted in the RDEIR/SDEIS, public health impacts from *Microcystis* blooms have yet to be fully assessed.<sup>7</sup> As RDEIR/SDEIS state, public health impact would be significant and unavoidable. In addition, RDEIR/SDEIS still fails to comprehensively evaluate the public health impacts on small communities on fish consumption and exposure to methylmercury. Species of fish affected by the Tunnels project are pursued during subsistence fishing by populations already burdened with environmental injustice. Despite the RDEIR/SDEIS stating the adverse effects and negative health impacts of the Tunnels Project, more investigation and analysis needs to be completed.<sup>8</sup> As noted in EWC's letter submitted October 30, 2015, Interior Suisun Marsh salinity is expected to increase substantially from operation of the Tunnels, according to data in the RDEIR/SDEIS.<sup>9</sup> Reverse flows on the lower Sacramento River will increase, which may injure neighboring water right holders. Numerous water quality pollutant criteria and beneficial uses will be violated and conditions degraded. And subsistence fishers may be harmed by worsening mercury and selenium concentrations contaminating fish tissues in the long term, resulting from Tunnels operations.

BDCP's analysis of selenium as a water quality stressor is inadequate for failing to acknowledge or address uncertainties about the regulatory and technological setting of the Grassland Bypass Project and long term management and mitigation of selenium loading to the San Joaquin River in the western San Joaquin Valley.<sup>10</sup> These projects indicate the ecological and public health risks of various scenarios of selenium loading to the Bay Delta Estuary. BDCP irresponsibly downplays the risks and foreseeable costs and circumstances involved.

The RDEIR/SDEIS have conducted no analysis of in-Delta water demand and subsistence fishing patterns represented by these beneficial uses when it conducts its operational studies of the Tunnels Project. These uses are protected by, among other statutes, the Delta Protection Act of 1959. Additional evaluation must be conducted and allow for proper public participation to

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obligations" and Project Objectives at 1-8, Section 1.1.4.1, lines 34-37, stating project objectives include to "[r]estore and protect the ability of the SWP and CVP to deliver up to full contract amounts...".

<sup>7</sup> RDEIR/SDEIS, Appendix A, Chapter 25.3.3.2.

<sup>8</sup> RDEIR/SDEIS, Appendix A, Chapter 28.5.8.7.

<sup>9</sup> Environmental Water Caucus Comments on Recirculated Draft EIR/Supplemental Draft EIS for Bay Delta Conservation Plan and Tunnels Project, submitted October 30, 2015.

<sup>10</sup> The California Water Impact Network provided the State Water Board with testimony about the Grassland Bypass Project's limitations and the broad overview of the challenges Grassland area farmers face in developing and implementing a cost effective treatment technology for concentrating, isolating, managing and sequestering selenium. California Water Impact Network. 2012. *Testimony on Recent Salinity and Selenium Science and Modeling for the Bay-Delta Estuary*, prepared by T. Stroshane and submitted to the State Water Resources Board Workshop #1 Ecosystem Changes and the Low Salinity Zone, September 5 (and 6, if necessary), 44 pages plus appendices. Accessible online 26 October 2015 at [http://www.waterboards.ca.gov/waterrights/water\\_issues/programs/bay\\_delta/docs/cmnt081712/tim\\_stroshane.pdf](http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/tim_stroshane.pdf)

apply the precautionary principle, rather than allowing real-time operational decisions to exacerbate environmental injustices for Delta-dependent communities.<sup>9</sup>

To ensure that community health and the environment are protected in the Tunnels Project, we recommend that decisions on changes in conveyance and operation of Delta water infrastructure be incremental and reversible, dependent upon the measured impact on the ecosystem. This can only be done by having habitat restoration proceed first, so that the public knows it will succeed. Success for the Delta common pool resources should be assured before any Twin Tunnels project is deemed safe to develop. Agricultural and storm water discharges must be limited to protect water quality. Remediation of mine sites and stream beds must be prioritized and ecosystem restoration projects must be prioritized, sited, and designed so as to limit the potential for additional methylation of mercury and the related health impacts to wildlife and human health.

### **Violations of Civil Rights and Environmental Law**

The lack of consideration for environmental justice communities, lack of proper assessment of public health impacts and mitigation efforts, lack of access to information regarding the project, lack of provision of adequate oral and written bilingual information, failure to notice meetings in various languages, and limited public access to the document through required computer access, exorbitant fees violate the below cited principles of environmental justice and constitutes violations of CEQA and NEPA, as well as federal and state civil rights of a significant population of the five Delta counties.

### **Conclusion**

The Tunnels Project fails to consider, fully, impacts on categories including and not limited to public health, water quality, subsistence fishing, land use, flood risk, affordable housing, public participation, and language accessibility for environmental justice communities. The lead agencies violate Civil Rights and Environmental Law and fail to meet Environmental Justice legal standards. For the reasons listed above, the BDCP/Tunnels Project presents an environmental injustice and should not proceed, as proposed.

\* \* \*

For questions about the above comments, please contact Colin Bailey by phone at (916) 432-3529 or e-mail at <colin@ejcw.org>.

Submitted by:

Colin Bailey, J.D.  
Executive Director  
The Environmental Justice  
Coalition for Water

Barbara Barrigan-Parrilla  
Executive Director  
Restore the Delta

Conner Everts  
Co-coordinator  
Environmental Water Caucus

**Appendix:**

Figure 6-5 SPFC and Non-SPFC Levees

Figure 6-6 Reported Delta Levee Problem Areas

Figure 6-7 Effective Federal Emergency Management Agency Flood Zones

Figure 28-1 Minority Populations in the Plan Area

Figure 28-2 Low-Income Populations in the Plan Area





Figure 6-7 Effective Federal Emergency Management Agency Flood Zones

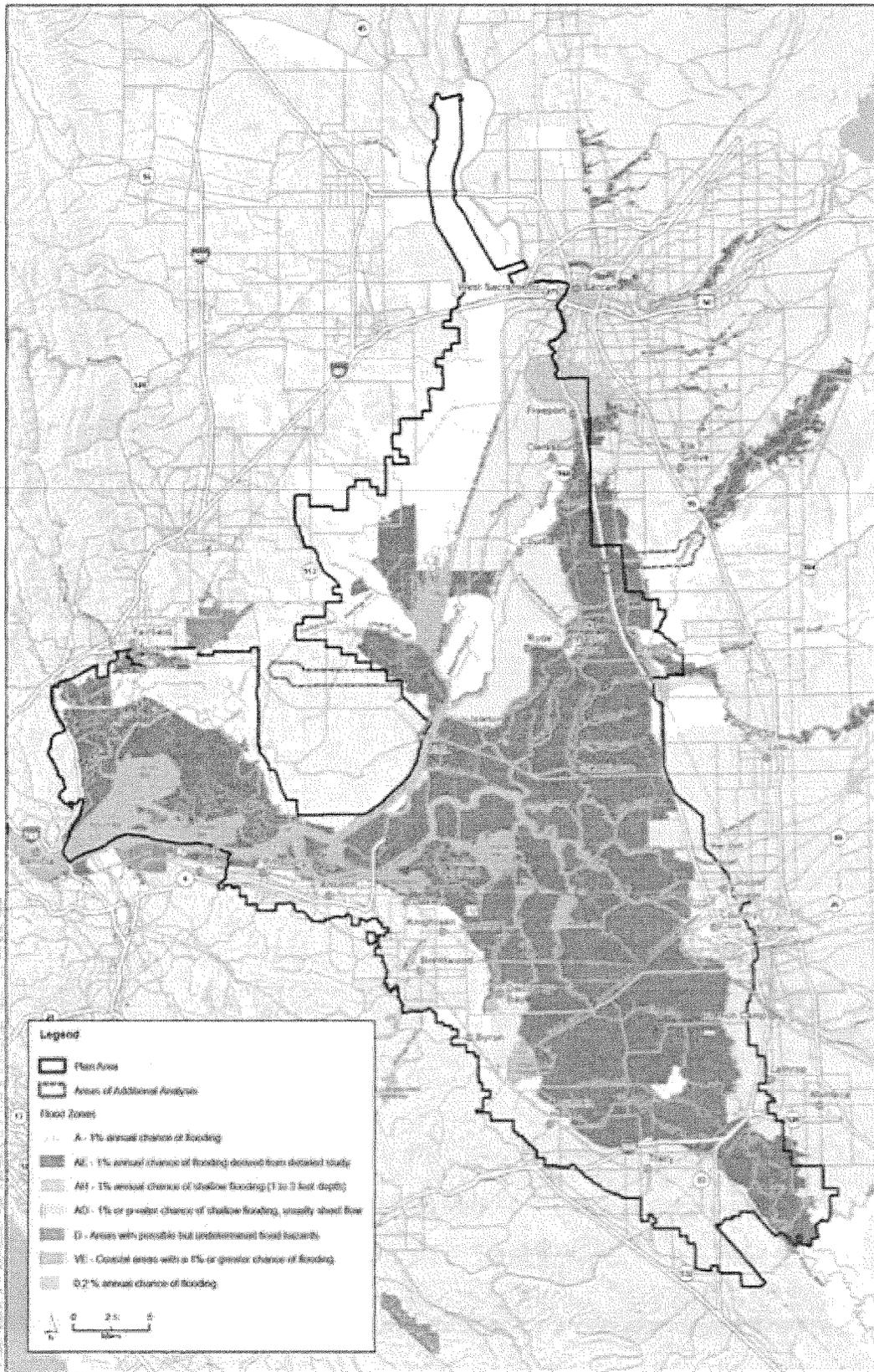
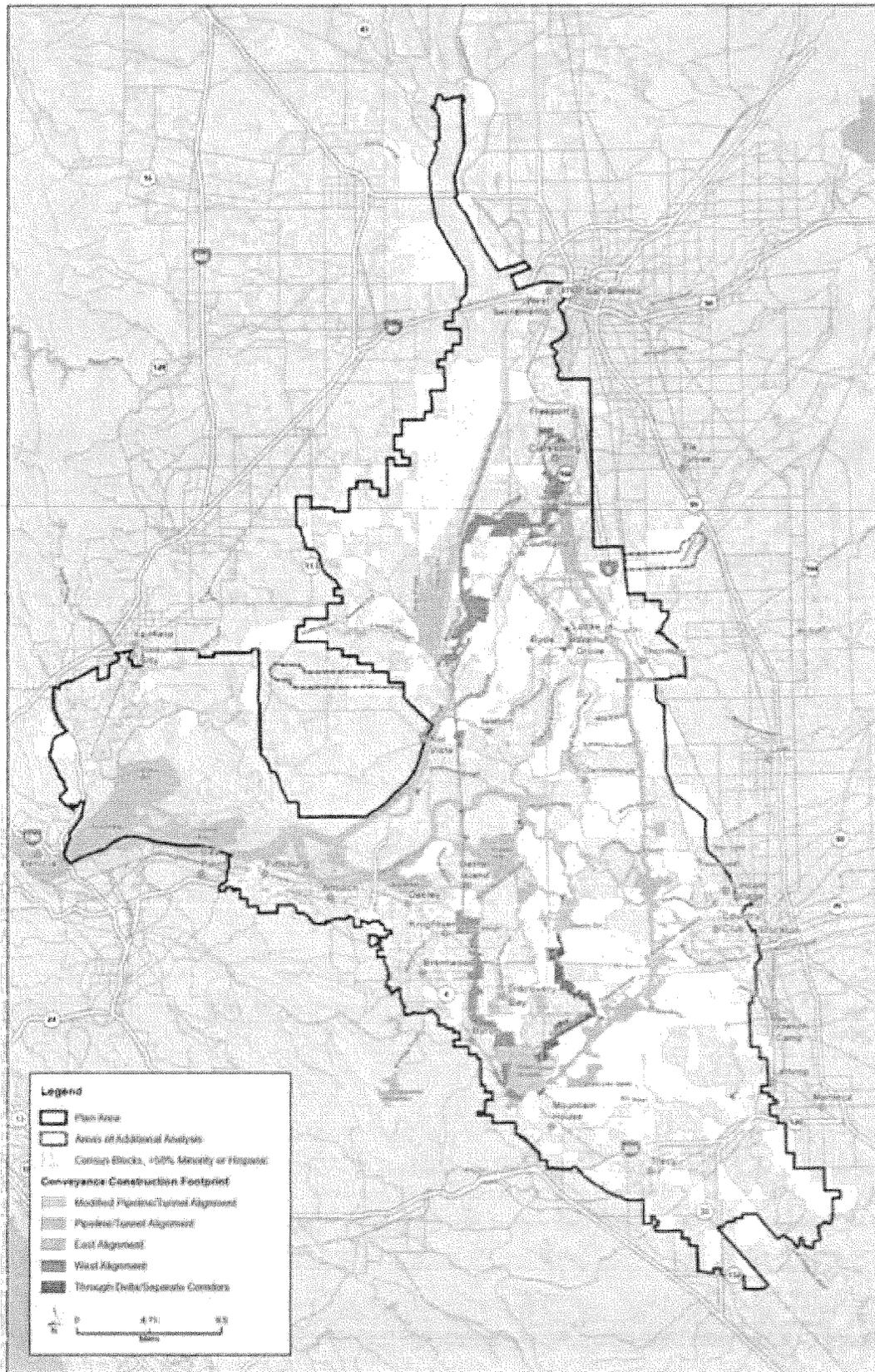


Figure 6-7 Effective Federal Emergency Management Agency Flood Zones

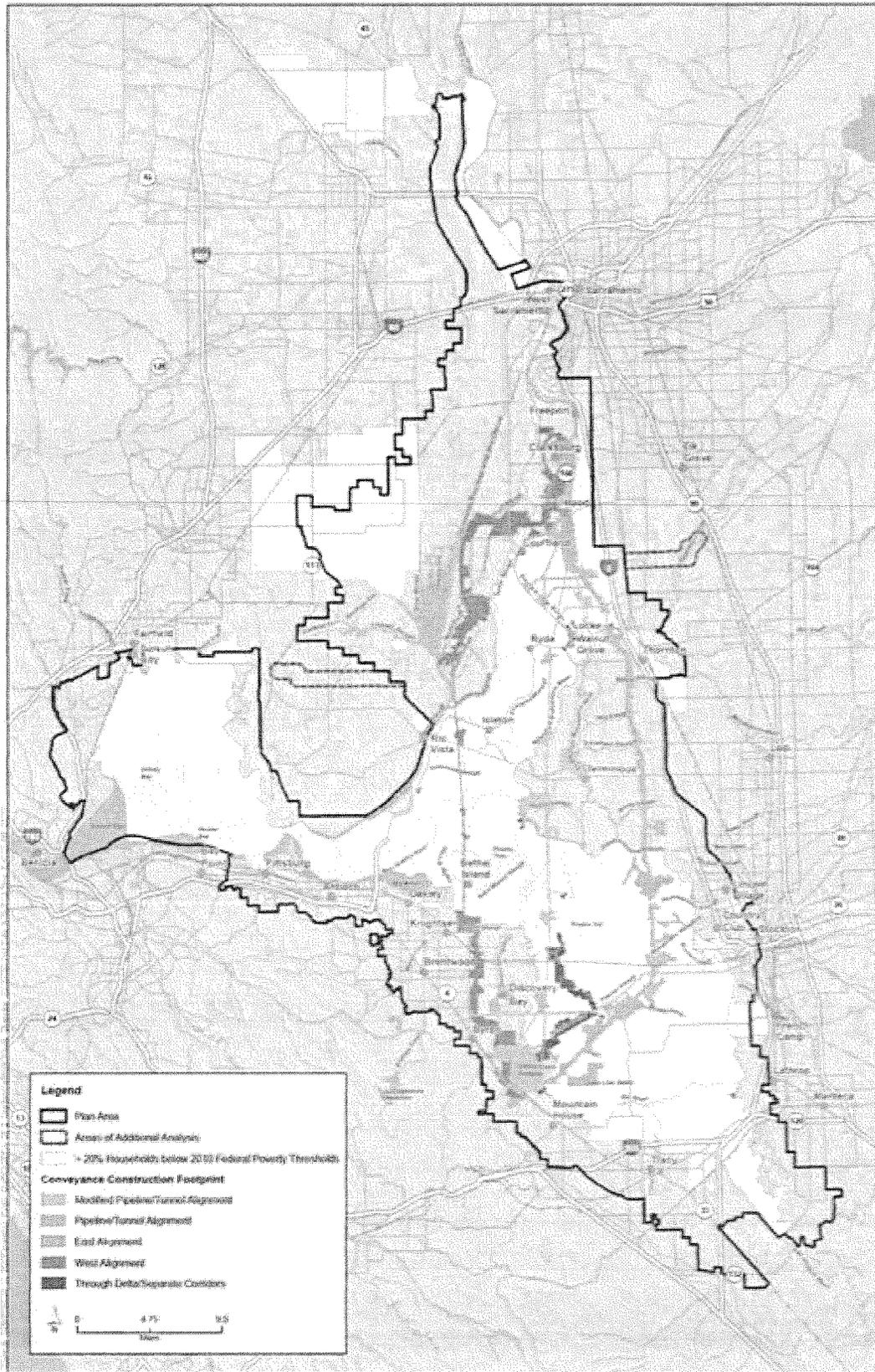
Figure 28-1 Minority Populations in the Plan Area



Baseline Plan Area: 2017-2018; Areas of Additional Analysis: 2017-2018; Conveyance Construction Footprint: 2017-2018

Figure 28-1  
Minority Populations in the Plan Area

Figure 28-2 Low-Income Populations in the Plan Area



Source: Plan Area, 1/2 2010; Area of Additional Analysis, 1/2 2010; Census Data, 1/2 Census Bureau, 2000; Federal Poverty Threshold, 1/2 Census Bureau, 2000.

Figure 28-2  
Low-Income Populations in the Plan Area

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**From:** Esther Min <esther@ejcw.org>  
**Sent:** Friday, October 30, 2015 4:42 PM  
**To:** BDCPcomments  
**Cc:** Colin Bailey  
**Subject:** The Environmental Justice Coalition for Water  
**Attachments:** Tunnels Project Environmental Justice Comments FINAL.pdf

On behalf of Colin Bailey, the Executive Director of the Environmental Justice Coalition for Water and the signatories of the attached letter, The Environmental Justice Coalition for Water groups object to the proposed Bay Delta Conservation Plan/"California WaterFix" Tunnels Project. The Bay Delta Conservation Plan/"California WaterFix" Tunnels Project do not meet Environmental Justice legal standards. We find the Recirculated Draft EIR/Supplemental Draft EIS released this past July lacking proper consideration for low income communities and environmental justice communities. The RDEIR/SDEIS fail to consider, fully, impacts on categories including and not limited to public health, water quality, subsistence fishing, land use, flood risk, affordable housing, public participation, and language accessibility for environmental justice communities.

If you have any questions, please contact Colin Bailey at by phone at (916) 432- 3529 or e-mail at [colin@ejcw.org](mailto:colin@ejcw.org).

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Thank you,

Esther Min, MPH, CPH  
Statewide Program Assistant  
The Environmental Justice Coalition for Water  
(916) 800-3193



CALIFORNIA  
NATIVE PLANT SOCIETY

October 30, 2015

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

*Submitted via electronic mail to: BDCPComments@icfi.com*

Re: Comments regarding the Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement from the California Native Plant Society

To whom it may concern:

The California Native Plant Society (CNPS) provides the following comments on the partially recirculated Draft Environmental Impact Report / Environmental Impact Statement (RDEIR/S) for the Bay Delta Conservation Plan (BDCP) / California WaterFix alternative.

The California Native Plant Society is a statewide non-profit organization that works to protect California's native plant heritage and preserve it for future generations. The Society's mission is to increase the understanding and appreciation of California's native plants and to preserve them in their natural habitat. We promote native plant appreciation, research, education, and conservation through our 5 statewide programs and 35 Chapters across California and Baja California, MX.

Please review and fully consider our following comments.

**1. The analysis of alkali seasonal wetlands in the RDEIR/S needs to differentiate and specify impacts to and mitigations for rare iodine bush scrub occurring near Clifton Court Forebay.**

The rare iodine bush scrub type (*Allenrolfea occidentalis* Shrubland Alliance) of alkali seasonal wetland complex occurs at the extreme northwest edge of its range proximal to the Clifton Court Forebay (within what was termed Conservation Zone 8 in the BDCP DEIR/S). It is not possible to create additional alkali wetlands of this type, therefore protection of this plant community must be through avoidance and/or protection of compensatory mitigation areas.

In the previous BDCP DEIR/S (March 2013), the summary of net effects to alkali wetlands correctly found that:

*“Protection of alkali seasonal wetland complex in Conservation Zone 8 provides the only opportunity in the Plan Area to protect the rarer woody iodine bush scrub type alkali seasonal wetland natural community.” [see BDCP DEIR/S (March 2013), Chapter 5, sections 5.4.7.2 and 5.4.7.3 p. 5-22, lines 1-31]*

However the summary of effects to alkali wetlands provided in the analysis of Alternative 4A (CEQA / NEPA preferred alternative) within the RDEIR/S is less clear on the need to distinguish between alkali wetland types:

*“The construction losses of this special-status natural community would represent a significant impact if they were not offset by avoidance and minimization measures and other actions associated with the project’s environmental commitments. Loss of alkali seasonal wetland complex natural community would be considered both a loss in acreage of a sensitive natural community and a loss of wetland as defined by Section 404 of the CWA. However, **the protection of 150 acres of combined vernal pool/alkali seasonal wetland complex** as part of Environmental Commitment 3, the restoration of 34 acres of these communities as part of Environmental Commitment 9, Resource Restoration and Performance Principles VP/AW2-VP/AW4, and the implementation of AMM30 Transmission Line Design and Alignment Guidelines during construction of Alternative 4A **would offset this loss, avoiding any significant impact.** Typical project-level mitigation ratios (2:1 for protection and 1:1 for restoration) would indicate 4 acres of protection and 2 acres of restoration would be needed to offset (i.e., mitigate) the 2 acres of loss. AMM1, AMM2, AMM3, AMM4, and AMM10 would also be implemented to minimize impacts. Because of the offsetting protection and restoration activities and AMMs, impacts would be less than significant.”* [bold text added for emphasis; RDEIR/S Section 4 - New Alternatives in section 4.3.8 *Terrestrial Biological Resources*, under Impact BIO-18 page, 4.3.8-36, lines 1-14]

Because the RDEIR/S fails to make clear that the impacted acres of rare woody iodine scrub will need to be protected within the project area near Clifton Court Forebay (i.e., Conservation Zone 8), and the pieces of information required to make this finding are scattered across different chapters and between different versions of the DEIR/DEIS and RDEIR/RDEIS, we want to emphasize this point herein. The only opportunity to offset impacts to the rare alkali type is to avoid and/or protect suitable acreage of the same type within the area (Conservation Zone 8) where it occurs.

## **2. The RDEIR/S fails to analyze and disclose reasonably foreseeable adverse effects from growth inducing potential of project.**

In the revised Chapter 30 - Growth Inducement and Other Indirect Effects, the RDEIR/S provides additional narrative regarding reasonably foreseeable growth-inducing effects, both direct and indirect, that could be caused by the proposed project.

We agree with the basic assumption employed for the purposes of analyzing growth-inducing potential, that any increase in water supplies and/or improvements in water supply reliability associated with the proposed project will stimulate growth. However, the conclusion of the subsequent analysis fails to provide disclosure of reasonably foreseeable affects in areas poised for significant growth but currently limited by water availability.

Specifically, the RDEIR/S fails to include an analysis - or even a mention - of how and where growth-inducing effects would occur in places like the southern San Joaquin Valley as a result of project implementation. The RDEIR/S avoids such analysis by continuing the unacceptable practice found within the the BDCP DEIR/S (2013) of selectively claiming which analyses of future conditions are too speculative to be considered, and which are not. For example, the RDEIR/S correctly finds that:

*“Developing housing and implementing the services needed for population increases would generate impacts at locations where that growth would occur.”* [RDEIR/S Chapter 30, p. 30-4, lines 22-23]

But then shirks its responsibility to analyze and disclose further the impacts associated by stating:

*“Identifying the specific locations and characteristics of that growth—and, consequently, the specific environmental impacts of that growth—would be speculative. However, the impacts associated with such development can be characterized generally based on reviews of environmental impacts on general plans in the areas where this growth could occur.”* [RDEIR/S Chapter 30, p. 30-4, lines 23-27]

Modeling greenhouse gas (GHG) emissions and other environmental impacts associated with reasonably foreseeable community growth in affected areas outside of the Delta region (e.g., southern San Joaquin Valley) is deemed too speculative to analyze, though modeling the economic benefits of the project to these indirectly affected areas was not (BDCP *Statewide Economic Impact Analysis Report* (ICF, August 2013)). Further, the RDEIR/S itself attempts to justify by making arguably the most speculative claim of all:

*“...assuming conditions favorable to growth were present, growth would likely still occur absent projected increases in deliveries under the BDCP. Contractors would seek to develop **alternative supplies**. Consequently, the impacts of growth would likely still occur but would be attributable to **other water supply projects**.”* [bold text added for emphasis; RDEIR/S Chapter 30, p. 30-3, lines 29-32]

Which alternative supplies? What other water supply projects could rival the magnitude and duration of water delivery that this project represents?

The RDEIR/S fails to analyze growth-inducing effects that could occur across the southern San Joaquin Valley, a region poised for growth where a burgeoning southland population would move into given increased water availability and reliability. Such a scenario falls well within the realm of what is reasonably foreseeable given the parcelization of major landowners capable of securing water rights in this region, several multi-thousand unit housing development proposals moving northward from Los Angeles, and the development of major transportation infrastructure to / from this region (e.g. High Speed Rail). Lack of water availability is the fundamental obstacle limiting community expansion across the southern San Joaquin Valley. Previously, the BDCP DEIR/S considered adverse effects from growth within the southern San Joaquin Valley (as it relates to the Tulare Lake hydrologic unit area) for only the City of Bakersfield.<sup>1</sup> Analysis of growth-inducing effects of the project to this region remain woefully inadequate.

What potential adverse effects would new communities, much of which would include a commuter population to / from the greater Los Angeles region, have on statewide GHG emission limits and goals? What effects would growth here have on the state’s agricultural economy? How might potential

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<sup>1</sup> BDCP DEIR / DEIS Appendix 30C - Summary of Significant Impacts of Secondary Effects of Growth. See especially Table 30C-3, pp. 30C-37 through 47. (ICF, November 2013)

new community growth resulting from increased water availability impact the valley economies of Fresno, Kings, Tulare, and Kern Counties?

These issues must be addressed as part of any analysis of adverse growth-inducing effects of project implementation, and the RDEIR/S fails to do so. Such an analysis could draw from existing and on-going planning efforts for the region (e.g., HCPs, San Joaquin Valley solar least-conflict lands study) and would not need to be created *de novo*. At the very least, a qualitative consideration of where and how these impacts might occur in the southern San Joaquin Valley, and what impact they would have in a statewide context must be developed in order for the RDEIR/S to meet its obligations to fully analyze and disclose reasonably foreseeable effects caused by the project.

To conclude that increased water availability and reliability will generate growth-inducing pressure south of the Delta, but that, "*Decision-makers alone are able to transform growth-inducing potential or pressure, created by economic or social conditions, into actual growth[,]*"<sup>2</sup> is to shirk the responsibility to analyze within this process the impacts from growth that what will come.

We acknowledge that the analysis of statewide water availability is complex, and that, while calculations can be run and re-run, conclusions will differ depending on what entity performs them. Amid such controversy and clouded opinion one phenomenon remains transparently clear; provide water and communities grow. Never in the history of human civilization has this not been the case. The RDEIR/S only reconfirms the failings of the BDCP to honestly address reasonably foreseeable impacts from population growth in areas where project implementation will result in increased water availability.

CNPS appreciates the opportunity to participate in this public process and provide comments which we hope will improve the proposed project.

Respectfully,



Greg Suba  
Conservation Program Director, CNPS

*Protecting California's native flora since 1965*

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<sup>2</sup> RDEIR/S Chapter 30 p. 30-1, lines 23-25.

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**From:** Greg Suba <gsuba@cnps.org>  
**Sent:** Friday, October 30, 2015 4:33 PM  
**To:** BDCPcomments  
**Subject:** CNPS comments to BDCP/WaterFix RDEIR/S  
**Attachments:** CNPS\_BDCP\_WaterFix RDEIR\_S\_comments\_103015.pdf

To whom it may concern,  
please find attached and fully consider these comments from the California Native Plant Society regarding the BDCP/WaterFix RDEIR/EIS.

Greg Suba  
Conservation Program Director  
California Native Plant Society  
2707 K Street, Suite 1  
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# Central Contra Costa Sanitary District

Protecting public health and the environment

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October 30, 2015

Bay Delta Conservation Plan/California Water Fix  
Comments  
P.O. Box 1919  
Sacramento, CA 95812

ROGER S. BAILEY  
General Manager

KENTON L. ALM  
Counsel for the District  
(510) 808-2000

ELAINE R. BOEHME  
Secretary of the District

**Sent via Email to [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)**

Dear US Bureau of Reclamation Staff:

**Subject: Comments on Bay-Delta Conservation Plan (BDCP)/California WaterFix (CWF) Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)**

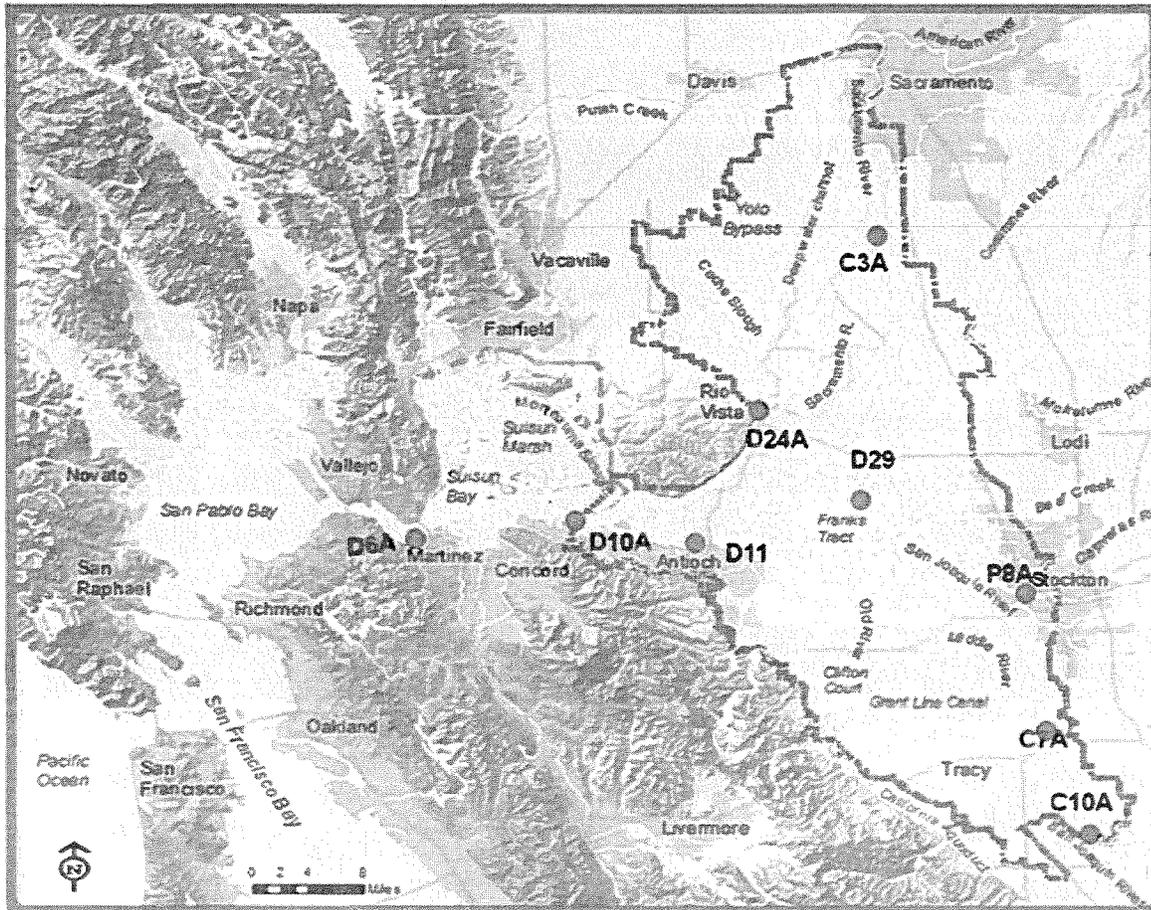
We appreciate the opportunity to provide comments on the subject document. Central Contra Costa Sanitary District (CCCSD) provides wastewater collection and treatment for approximately 476,400 residents in central Contra Costa County. On an average daily basis, we treat approximately 36 million gallons of wastewater and discharge most of that freshwater to Suisun Bay, where it ultimately flows through the San Francisco Bay to the Pacific Ocean. CCCSD operates a small recycled water program that delivers 200 million gallons per year of recycled water to customers located near our treatment plant primarily for landscape irrigation and the potential exists for additional water recycling opportunities.

## **Recycled Water from Treated Wastewater Effluent Should Be Included in the BDCP/CWF**

The RDEIR/SDEIS should consider recycled water available from the enhanced treatment of wastewater effluent from Publicly Owned Treatment Works (POTWs) as an alternative water supply to the proposed project. Locally-available, drought-proof supplies of treated wastewater effluent represent a large, significantly underutilized source of freshwater throughout California. It is critical for California to continue developing local and regional recycled water supplies for use in landscape irrigation, industrial process water, indirect potable reuse, and ultimately, direct potable reuse when feasible. If fully developed, the availability of a large supply of recycled water in northern California, the Central Valley, and southern regions of California could potentially mitigate the need to build such an extensive north Delta diversion facility as proposed in the BDCP. California's response to the water supply challenges posed by severe droughts, climate change impacts, and population growth requires the investment in a portfolio of options that will best serve the water demands of the state. Recycled water should be appropriately considered in long-term planning decisions to develop sustainable water supplies for California.

### Limited Plan Area

While the RDEIR/SDEIS does add analysis in San Pablo Bay, the study area has not been modified since the EIR/EIS, only extends as far as the beginning of the Carquinez Strait (Station D6A), and does not include the entire San Francisco Bay. Since San Francisco Bay is hydraulically connected to the Sacramento-San Joaquin Delta (Delta), the RDEIR/SDEIS should evaluate impacts to the entire San Francisco Bay.



### Outdated Standard Used for Ammonia

In reviewing the RDEIR/SDEIS, it does not appear that any modifications have been made to the ammonia analysis. The standard used to evaluate ammonia throughout both the BDCP and EIR/EIS, released in November 2013, was the standard established in 1999 (1999 Update of Ambient Water Quality Criteria for Ammonia, EPA 822-R-99-014). EPA published the updated ammonia standards on August 22, 2013 (EPA 822-R-13-001 Aquatic life Ambient Water Quality Criteria for Ammonia – Freshwater 2013). The BDCP and EIR/EIS identified the

updated ammonia standard (0.26 ppm ammonia when mussels are present and 1.8 ppm ammonia when mussels are not present) when it was in draft form but the final evaluation of these documents used the 1999 ammonia standard. The 2013 ammonia standard should be used to evaluate the project's potential impacts related to ammonia.

The RDEIR/SDEIS adds language to acknowledge the potential for nitrogen species to impact water quality in the Bay-Delta. In Section 8.1.3.10, the following has been added, "The Delta Stewardship Council's 2013 Delta Plan recommended that the San Francisco and Central Valley Water Boards prepare study plans for the development of NNEs for the Delta and Suisun Bay. The Delta Plan states that the Water Boards should adopt and begin implementation of nutrient objectives, either narrative or numeric, where appropriate, by January 1, 2018." Since the BDCP/WTF has the potential to impact nitrogen concentrations in the Bay-Delta, a quantitative assessment in both the BDCP and the EIR/EIS is warranted. Using the 2013 ammonia criteria would trigger inclusion of ammonia for quantitative analysis, which differs from the result achieved in EIR/EIS Appendix 8C Constituent Screening Analysis, page 8C-28. The qualitative assessments performed in Step 6 of the Appendix 8C Screening Analysis appears to be inadequate considering these important issues.

#### **No Agricultural Contribution to Ammonia in the Delta**

Water Quality Section 4.3.4 related to ammonia has limited discussion of loadings. The section focuses on the ammonia concentrations below Freeport that are calculated from Sacramento County Regional Sanitation District (SCRSD) seasonal permit limits, while remaining silent on the seasonal contribution of agricultural inputs. The section fails to consider potential effects to beneficial uses that are currently the focus of multi-million dollar Region 2 and Region 5 projects to establish NNEs, by stating, "As stated for Alternative 4, any negligible increases in ammonia concentrations that could occur at certain locations in the Delta under Alternative 4A would not be of frequency, magnitude and geographic extent that would adversely affect any beneficial uses or substantially degrade the water quality at these locations, with regard to ammonia." The RDEIR/SDEIS should evaluate ammonia contributions from agriculture and not solely from point sources such as POTWs.

#### **Insufficient Evaluation of Selenium**

The evaluation of downstream selenium impacts in Section 4.3.4 assumes an assimilative capacity for selenium in the Western Delta of 1.3 µg/L. This is a much larger value than is currently being used in the proposed 2015 Total Maximum Daily Load (TMDL) for Selenium in North San Francisco Bay, which assumes an assimilative capacity of 0.5 µg/L. As a result of this inconsistency, the impact of Delta exports to North San Francisco Bay due to the recommended project alternative is understated and should be reevaluated.

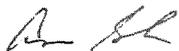
Section 4.3.4 lists the anticipated increases in selenium exported to the western Delta and Suisun Bay as 0.01-0.04 µg/L, while the decreases in selenium in the Delta exports are listed at 0.05-0.09 µg/L. Completing a simple mass balance results in a conservative difference of 0.045 µg/L or 790 kg/year of selenium unaccounted for in the Delta. This removal of selenium

in the Delta is not captured as increasing biota concentration in the tables presented in Appendix B: Supplemental Modeling Results for New Alternatives. Improved modeling for selenium and its transformations in the Delta is warranted. This conclusion is supported by a 2012 report prepared by Tetra Tech to aid the San Francisco Regional Water Quality Control Board in preparing the North San Francisco Bay Selenium TMDL, which states, "Given the importance of the riverine sources of selenium on bioaccumulation and the potential changes in the riverine inputs associated with Delta conveyance proposals, better characterizations of the magnitude of the selenium sources and transformations within the Delta are warranted."

The RDEIR/SDEIS does not include modeling for the proposed alternative and instead relies on the results produced in the EIR/EIS for Alternative 4, Scenario H3 for the Late Long Term. Modeling should be performed for the recommended project alternative to appropriately evaluate downstream selenium impacts. Modeling will capture impacts from increased residence time. Increased residence time (up to 10 days in some locations) will lead to additional selenium bioaccumulation in species inhabiting the western Delta and Suisun Bay, water bodies considered nurseries for protected species, such as green sturgeon. Tissue concentration increases in green sturgeon and other fish will lead to potential exceedances of the proposed North San Francisco Bay Selenium TMDL. Any downstream impacts should be mitigated by the project proponents and not passed on to other dischargers via other regulatory processes.

We appreciate the opportunity to provide these comments. If you have any questions or need further clarification on the comments in this letter, please contact Environmental and Regulatory Compliance Division Manager, Lori Schectel at (925) 229-7143 or via email at [lschectel@centralsan.org](mailto:lschectel@centralsan.org).

Sincerely,



*For* Roger S. Bailey  
General Manager

ecc: CCCSD Board of Directors  
Barbara Baginska, San Francisco Regional Water Quality Control Board  
Ann Sasaki  
Jean-Marc Petit  
Lori Schectel  
Mary Lou Esparza  
Randy Schmidt  
Melody LaBella

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**From:** Velisa Parks <vparks@centralsan.org>  
**Sent:** Friday, October 30, 2015 4:26 PM  
**To:** BDCPcomments  
**Cc:** bbaginska@waterboards.ca.gov; Ann Sasaki; Jean-Marc Petit; Lori Schectel; Mary Lou Esparza; Randy Schmidt; Melody LaBella; Paul Causey; Mike McGill; Jim Nejedly; Tad Pilecki; Dave Williams  
**Subject:** BDCP/CWF Comments  
**Attachments:** CCCSD BDCP RDEIR-SDEIS Comment Letter 10-2015.pdf

US Bureau of Reclamation Staff:

Central Contra Costa Sanitary District appreciates the opportunity to provide comments on the above subject. Please review the attached document. If there any questions, please contact Environmental and Regulatory Compliance Division Manager, Lori Schectel at 925-229-7143 or via email at [lschectel@centralsan.org](mailto:lschectel@centralsan.org).

Regards,

***Velisa Parks***

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October 30, 2015

BDCP/Water Fix Comments  
P.O. Box 1919  
Sacramento, CA 95812  
Via email to: [BDCPComments@icfi.com](mailto:BDCPComments@icfi.com)

RE: Comments on the Partially Recirculated Draft Environmental Impact Report (RDEIR)/Supplemental Draft Environmental Impact Statement (SDEIS) on the Bay Delta Conservation Plan/California Water Fix

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To Whom It May Concern:

As both a conservation organization and Delta land owner, The Nature Conservancy (TNC) has been actively engaged in the Delta for many years to advance the recovery of endangered species and restore its unique ecosystem, which supports 750 species of plants and animals, some of which are found nowhere else on Earth. Guided by science, we endeavor to apply practical solutions that work for nature and people.

Although the original Environmental Impact Report (EIR) for the Bay Delta Conservation Plan (BDCP) has been substantially revised addressing comments from stakeholders, including TNC, resulting in the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (referred to in our comment letter as the (REIR/S) we remain concerned that the California Water Fix project will not result in meeting the needs of people while sufficiently improving the health of the Delta and its associated species. We take this opportunity to provide comments on the REIR/S in the hope that they will be considered and used to inform further changes to alternatives, operations and project modifications that are conducive to protecting and restoring habitat in the Delta. Our comment letter focuses on the following areas of concern we hope the project proponents will consider:

- Need to integrate EcoRestore and Water Fix programs: Creating a mosaic of restored habitats in the Delta will not alone be sufficient to achieve intended recovery objectives. Measures of success also should be based on restoring ecosystem functionality and will require sufficient dedicated flows to ensure positive outcomes for multiple species and habitat types.

- Protecting adequate flows for ecosystem restoration: Water flows must begin at a sufficient baseline level to achieve conservation outcomes and have enough flexibility to meet the needs of the environment and appropriate levels of export. Water Fix lacks sufficient information to determine whether and how adequate flows will be measured and allocated to protect species and ecosystem values.
- Providing a clear role for independent science and adaptive management: There is a clear need to improve the role of independent science and adaptive management beyond the process outlined in the REIR/S.
- Commitment to Implement Conservation Measures: The roles and responsibilities for actually implementing habitat programs and projects described in the REIR/S are not clearly defined. The de-linking of EcoRestore and Water Fix creates substantial uncertainty about how, when and where habitat restoration actions will occur in the Delta.
- Tunnel siting: Construction and operation impacts on Staten Island must be addressed. TNC cannot voluntarily agree to DWR's proposal to locate the water conveyance tunnels under Staten Island if such activity and associated surface impacts would violate the Conservation Easement; however we recognize that DWR, as a state agency, has the legal authority to condemn property under California's eminent domain laws.

The attached set of comments explains each of these issues in more detail. If you have questions about these comments, please contact Jay Ziegler at The Nature Conservancy at 916-449-2857 or [jay\\_ziegler@tnc.org](mailto:jay_ziegler@tnc.org).

We appreciate the opportunity to comment.

Sincerely,



Mike Sweeney  
Executive Director  
The Nature Conservancy, California

## The Nature Conservancy

### Comments on the RDEIR/SDEIS for the Bay Delta Conservation Plan/California Water Fix

The Sacramento San Joaquin Delta (Delta) is a key natural resource for the entire state of California. Not only is it an integral part the State Water Project (SWP) and Central Valley Project (CVP) water delivery systems, but it is also a diverse ecosystem and the largest estuary on the west coast of Americas, home to over 700 species of fish and wildlife. Its central location and habitat make it both an infrastructure corridor for humans and migratory path for numerous species. However, there are many problems facing the Delta that if left unresolved will result in the continuing rapid decline of numerous species and the ecosystem, reduction in water supply reliability, reductions in water quality, and increase potential for levee failures in response to sea level rise and anticipated larger storm events due to climate change.

The Bay Delta Conservation Plan (BDCP or Plan) of 2013 aimed to improve both water supply reliability and ecosystem health. The Nature Conservancy (TNC) has been actively involved in the development of the Plan for over 8 years and submitted extensive comments on the previous draft EIS/EIR. As a conservation group and landowner in the Delta, TNC is intensely interested in the management of the Delta and its related water resources, and the terrestrial and aquatic habitat values it represents. TNC has a large, active portfolio of conservation programs encompassing multiple Delta and upstream habitats. The construction and future operations of the Water Fix project will have a substantial impact on the Delta, and therefore TNC's lands and conservation interests. We would add that while much of the focus of the Water Fix and related mitigation has been on aquatic flows and habitat values, it is imperative that habitat for migratory birds and terrestrial habitat must also be prioritized in the development of conservation strategies that provide for both sustainable management of water as well as other resource values in the Delta.

Currently, water flows and project operations in the Delta are being operated based on minimal standards required by biological opinions, which are failing to improve ecosystem health and improve water supply reliability. Current project operations, exacerbated by drought, are causing the decline in health and population of many species with some in danger of extinction. Populations of many native aquatic species including Longfin Smelt, Green Sturgeon, Delta Smelt and winter-run Chinook salmon have been subjected to intense stress and have declined drastically. In fact, extreme measures had to be taken, including the rearing of salmon in the San Pablo Bay, to prevent population collapse of fall-run Chinook and protect this salmon fishery over the past several seasons. Further disruption from the construction and proposed operations of the Water Fix project will likely worsen, not improve overall ecological conditions in the Delta.

Although it is said that operation of California Water Fix will improve flows through the Delta, Mount et al. (2013) found that there is very little difference in projected average exports in project operations during dry and critical years compared to the No Action Alternative (NAA).

Additionally, this study found that mitigation for take of salmon associated with the new facilities is highly uncertain to be successful. They conclude by saying that mitigation efforts alone are unlikely to foster any significant increase in salmon population and that the risk of extinction for Chinook salmon will remain high.

TNC recognizes the vast number of comments received regarding the BDCP Environmental Impact Report (EIR), and appreciates the effort put forth by DWR to address those comments. These efforts have resulted in a Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (referred to in our comment letter as the REIR/S) that has been improved in many aspects, including fish and aquatic habitat analyses, water quality, air quality impacts, and increased detail of project descriptions. Some alternatives were also modified to reduce environmental impact. However, many important considerations have not been fully addressed, and many questions are not adequately answered, and changes in the Water Fix plan, and certain modeling assumptions raise new questions about the viability of the Water Fix to achieve intended goals.

In order for ecological conditions to improve in the Delta, there must be a paradigm shift in how flows are managed. Management should be based upon a framework that integrates long-term, sustainable ecosystem management in the Delta for the benefit of multiple species and multiple habitat types. While we acknowledge that the current historic drought has caused extraordinary challenges in meeting both water quality and conservation goals in the Delta, such conditions are likely to occur as a result of climate change – with or without new infrastructure – and the analysis of such conditions is lacking in the REIR/S. The development of new infrastructure – as proposed to be operated in the REIR/S would not, as a result, provide enduring benefits to the Delta ecosystem or affected threatened and endangered species - apart from the potential to address reverse flow phenomena at Old & Middle Rivers. Fundamentally, it is *how the tunnels are operated* that will drive whether or not the ecosystem can actually be managed in a way that promotes sustainable water management and ecosystem recovery.

We have reached a moment in which we need to have a more direct dialogue and clear set of operating conditions that is fully consistent with the objectives of the Delta Reform Act to “reduce reliance on the Delta as a source of water supply.” (Cal. Water Code sect. 85021) Additionally, there is a fundamental need for a comprehensive adaptive management regime in the Delta that can adjust and respond to changes in flow conditions, multiple environmental stressors (e.g. water quality degradation, increasing populations of invasive species, flow dynamics that better mimic the Delta’s natural hydrology, etc.) as well as the long-term effects of climate change.

The current REIR/S is woefully inadequate in providing a predictable framework for adaptive management actions that should be the foundation for a strategy to restore and protect ecological health in the Delta. As noted in the recent Independent Science Board Report, “Flows and Fishes in the Sacramento-San Joaquin Delta,” (August 2015), “implementation of a

comprehensive, focused, and strategic framework for scientific research linking water flow to the complex processes influencing fishes is required for both the Delta ecosystem and Delta science. Such a system must be wholly integrated, provide transparent access to science and scientific analyses, and effectively integrated in the proposed operations for the California Water Fix. The current REIR/S is lacking this critical framework.

The Ecological Flows Tool (EFT) developed by TNC is one potential tool that can be applied to help drive adaptive management actions in better managing flows to meet multiple habitat and species conservation objectives. EFT is designed to improve the management of the riverine and riparian ecological resources of the Sacramento River and the Delta. Developed with the insight of over 70 experts and supported by the Department of Fish and Wildlife's Ecosystem Restoration Program, the EFT consists of a decision analysis framework that includes over 60 ecological indicators spanning six Sacramento River species/habitat groups and seven Delta species/habitat groups. Combined with hydrologic driving models, the EFT can be used as an effective instrument for long-term adaptive management. In addition, robust monitoring must be included as part of adaptive management of the system, with operations modified with new information to ensure that these species indeed benefit from the designed conservation measures.

As we noted in our comments to the Draft BDCP Plan of 2013, the timeframe over which this project would be implemented, combined with the uncertainties in how aquatic and terrestrial systems and species will respond to implementation necessitate that an experimental approach be taken. Restoration experiments and extensive monitoring of system response should be fully integrated into system operations before, during and after implementation. Also, following implementation, operations of the dual conveyance system should be flexible and required to change according to new information collected on how the aquatic and terrestrial ecosystems, including covered species, are responding to the changes and restoration projects.

#### **Environmental Implications of Separate Initiatives – California Water Fix and California EcoRestore**

The most significant change to the Bay Delta Conservation Plan (BDCP) is that it has been split into two separate initiatives. The Water Fix initiative will focus on conveyance needs – and only address direct mitigation requirements of the project - and the EcoRestore initiative will focus on restoration, initially described as an effort to restore “at least 30,000 acres of habitat in the Delta”, which is significantly lower than the proposed 100,000 acres under the BDCP. Over the next five years, restoration of these initial 30,000 acres of habitat must be viewed as an experiment to inform much wider restoration efforts in the Delta. There is much we can learn in the process of undertaking individual habitat restoration projects, but simply an assembly of projects is unlikely to deliver upon the objective of achieving comprehensive restoration and recovery – or even stabilization of existing threatened and endangered fishes in the Delta.

Section 7 of the Endangered Species Act (ESA) requires that federal agencies insure that their actions do not jeopardize the continued existence of an endangered species or result in the adverse modification of its habitat. If, following consultation as provided for in the Act, it is determined that the proposed action is likely to jeopardize the species or habitat, the agency shall suggest reasonable and prudent alternatives that would allow the project to continue without causing jeopardy (*San Luis & Delta-Mendota Water Authority et. al. v. Jewell*, 2014). As such, governance conditions and the role of state and federal wildlife agencies are more predictable as applied to the Water Fix, thereby enabling agencies to seek modification of project operations, but only to the standard of “avoidance of jeopardy.” This standard is insufficient to recover affected fishes (e.g. Delta smelt, longfin smelt, winter and spring run Chinook) and do not apply to the protection of critical habitat values for migratory birds and waterfowl dependent upon the Delta.

While the authority of the agencies under Section 7 of the Endangered Species Act is clear with regard to modifying project operations to avoid jeopardy, this level of authority has proven to be inadequate in arresting the continued and dramatic decline of listed species in the Delta. The revised administrative permitting change does not change the status of the beleaguered Delta species and the deteriorating environment in which they live. A landscape scale ecosystem-wide approach is essential for a successful mitigation and restoration program in the Delta. Unfortunately, the current draft REIR/S gives little attention to this critical condition. We cannot simply assume that the development and operation of a water project of the scale proposed here (9,000 CFS) will provide systemic ecological benefit in the Delta. While the proposed dual operations of the new conveyance and south Delta pumps may likely have the effect of reducing negative flows on Old and Middle Rivers, even these outcomes would likely have little effect on population recovery of endangered fishes.

Recognizing the deteriorating Delta environment, we urge that the goal of Water Fix and EcoRestore should be more than maintaining the status quo conditions for wildlife and habitat – which is actually a formula for continued decline. Wetlands and riparian habitat are shrinking, and the Delta ecosystem as a whole is declining. The continuing development of permanent crops is also threatening important terrestrial habitat in the Delta. Because it is difficult to measure or offset impacts from both of these initiatives individually, it is necessary to make these goals apply equally in both the Water Fix and EcoRestore programs, thereby helping to achieve the “dual goals” of water supply reliability and reduced reliance on the Delta as a source of water supply.

The REIR/S should include greater emphasis on a statewide water conservation strategy as a fundamental tool to reduce reliance on the Delta as a water supply source. This strategy is consistent with the California Water Action Plan. During the on-going drought, both urban and agricultural water conservation strategies have proven effective at reconciling dramatic reductions in available water supply. Water transfers, the potential for other water project modifications, and permit modifications should also be evaluated in the context of statewide

efforts to reduce the need for water supplied from the Delta. All water users increasingly realize that both surface and groundwater are a limited and valuable resource that need to be conserved and used efficiently whether the state is in drought conditions or not. Broad, sustained conservation will help achieve both water supply resiliency and ecosystem preservation. Additionally, there is a need for clarification that restoration and mitigation actions undertaken as a part of either Water Fix or EcoRestore should be designed to reconcile overall water demand that serve to reduce pressure on the Delta.

To better ensure consistency with the Delta Plan and to help protect ecological conditions in the Delta in alignment with other objectives, we believe other authorities should be applied in reviewing operations of the water projects – beyond the existing role of state and federal wildlife agencies. In particular, the Delta Stewardship Council (DSC) is vested with authority to protect these multiple objectives (Cal Water Code § 85022, 85034, 85210 et. seq.). As noted above, there is an urgent need for a new operating regime consistent with both habitat and species protections as well as water supply reliability goals. A role for the DSC would also enhance a wider public understanding of how project operating decisions, land use, habitat restoration and other values are incorporated in the Delta. Specific recommendations to achieve these objectives should include:

- A clear role for the Delta Independent Science Board (ISB) and Independent Science Program to provide an outline for biological goals and metrics and a plan to attain those goals based upon adaptive management strategies to improve overall ecological conditions in the Delta. The Ecological Flows Tool (EFT) could be used to provide a framework for this approach that would incorporate flow conditions in the Delta that more closely mimic the historic natural flows and hydrology that characterize the unique ecosystem values of the Sacramento-San Joaquin systems and the Delta<sup>1</sup>.
- The ISB should propose annual, inter-annual and long-term objectives for flows in the system designed to improve overall ecological conditions in the Delta. As part of this process, the Delta Science Program should develop a comprehensive benchmarking system designed to better meet ecological flow needs and other objectives including groundwater sustainability which has a direct impact on long-term surface flows both above and into the Delta. In this context, the Delta Science Program should assess multiple habitat values, existing conditions, and strategies for adaptive management actions necessary to achieve improved ecological conditions in the Delta. These recommendations are consistent with recommendations included in the

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<sup>1</sup> The Ecological Flows Tool (EFT) combined with hydrological models can be used effectively to inform adaptive management strategies. The decision analysis framework that includes over 60 ecological indicators spanning six Sacramento River species/habitat groups and seven Delta species/habitat groups. The use of this tool and its development has led to a greater awareness of the value of flexibility to manage ecosystem trade-offs over time.

- The Delta Stewardship Council should be vested with the authority to adopt, amend, or reject recommendations of the Independent Science Board.

While the Stewardship Council is not vested with regulatory authority pertaining to biological conditions, as a practical matter under the Delta Reform Act, the Stewardship Council has an integrating role in Delta policy matters and is the right place to both review ecological objectives in the Delta and to conduct a public forum in which scientific recommendations could be aired, discussed and evaluated. Such a process would necessarily include discussion and awareness of how systemic changes such as the proposed Water Fix project are either succeeding or failing to meet expectations for improved ecological conditions in the Delta. This role for the Stewardship Council would complement the role of the State Water Quality and Resources Control Board in requiring certain flow standards into and above the Delta under the Bay-Delta Water Quality Control Plan Update Process.

An adaptive management system is critically important to effective management of the Delta. Uncertainties as a result of climate change, modelling assumptions, estimation of ecosystem effects and benefits, and various other unknowns make it impossible to address situations in any way other than on a case by case basis. For example, if mitigation outcomes are deemed by the advisory panel to be insufficient, there must be enough flexibility to adapt the mitigation program to meet conservation objectives.

The REIS/R outlines an adaptive management element as part of its science program to guide and adapt operations over time and appropriately acknowledges the significant uncertainties around function of the Delta ecosystem and its response to BDCP / Water Fix implementation. However, the description on adaptive management provided in the REIS/R focuses more on how it is organized, rather than what will be done. The current description does not provide an understanding of how adaptive management would work for the project or how it would be tied to EcoRestore. The adaptive management plan should more explicitly describe an experiment-based approach to achieving the mitigation and conservation objectives. Additionally, while a commitment to funding an adaptive management program is acknowledged, no details are provided on the potential sources of that funding or how it will be administered.

It is important adaptive management be integral to project planning and design, rather than an adjunct to project operations.

### **Operations**

Under Alternative 4A, some upstream reservoirs (including Folsom, Shasta, and Oroville) would have a decreased storage volume by late September. This will decrease the flexibility to manage for cold water releases for salmonids heading up river to spawn. We did not note any mitigation for this potentially significant impact. Reliance upon new storage to offset this need is a questionable assumption as such storage should be applied to supplement the need for flows

that are required beyond existing regulatory requirements. Management protocols need to be put in place to make certain there is enough cold water available when needed under all water year types.

Additionally, flow conditions need to be managed in ways that increase both seasonal and inter-annual hydrologic variability (particularly dry and critically dry years) to help suppress invasive species and promote natives. Operations must incorporate the needed range of total flows and require flexibility in magnitude, timing and duration.

The REIS/R analyses show that Water Fix operations will have significant/adverse impacts to Chinook salmon and green sturgeon spawning and egg incubation habitat, yet no mitigation is proposed. The final determination is that no feasible mitigation is possible to address the impacts. Given the state of these fisheries today, such a finding is inconsistent with efforts to reestablish fish populations or likely, even in meeting the Section 7 standard of avoidance of jeopardy in light of precariously low fish populations. While it may not be possible to address direct impacts, conservation actions need to be developed to promote the overall health and abundance of these species, and these actions need to be tied to Water Fix obligations and responsibilities.

The scientific consensus is that reducing exports particularly in drier years and allowing more variable flows will have the greatest impact on restoring the Delta ecosystem (Hanak et al. 2013). In fact, construction of new tunnels in the Delta coupled with increased storage in both surface and groundwater facilities north and south of the Delta offer the opportunity for “exporting more water in wetter years and less in drier year.” Yet a review of the proposed operations indicates that more water will be exported in the wetter years with about the same amount of water exported in drier years. In our view, this type of operation at best, maintains the status quo of the Delta ecosystem which we know is deteriorating and not sustainable to support many native species.

We request that the REIS/R describe an alternative that takes advantage of the new conveyance facilities to implement the “more in wet and less in dry” export strategy coupled with the water conservation actions that we know are possible and called for in the Governor’s Water Action Plan. Overall, the operations of the tunnels in regards to temperature, flow, and other environmental considerations are not adequately described in the REIS/R. Regulating these factors to ensure the health of the ecosystem and all its biological resources needs to be made a clear objective and driving force in operational decisions. Although water delivery needs will change, other factors including climate change, species needs, and invasive species impacts will require additional changes to operations to preserve the ecosystem while still delivering water.

Finally, the conservation benefits associated with water management should be considered in operational decisions. For example, flooding of wetlands has a great benefit for shorebirds and

other species. The benefit of these actions should be taken into account when water transfers and permits are being considered.

### Freshwater Flows

Estuaries are highly productive, complex systems that depend on freshwater flows that provide for many important biological and physical processes. In short, the quantity, timing and quality of freshwater flows are linked directly to four physical estuarine conditions – salinity, sediment, dissolved and particulate material. In turn, these four processes are directly linked to water quality conditions, food web dynamics and species composition, abundance and distribution (Alber 2002, Peirson et al. 2002).

As noted in Appendix C “Supplemental Modeling Requested by State Water Resources Control Board Related to Increased Delta Outflow”:

*“Increased fall Delta outflow will shift the low salinity zone further downstream in the Delta, likely resulting, based on current understanding of the science, in more favorable conditions for Delta smelt habitat in the western Delta and Suisun region. Similarly, increased winter/spring Delta outflow will shift the low salinity zone further downstream into the Suisun region likely resulting in more favorable conditions for longfin smelt and Delta smelt habitat. Higher Delta outflow during this period could also shift pelagic fish further from the export pumps and assist out-migrating salmonids. Additionally, the increased winter/spring Delta outflow would push fresh water through the Delta, past the Suisun region, and out into the San Francisco Bay likely benefiting native estuarine species that have evolved under conditions of seasonally fluctuating salinity.”*

To meet multiple species needs and to avoid jeopardy of threatened and endangered species, the California Water Fix needs to assure sufficient freshwater flow in all seasons and in all water year types (particularly during dry and critically dry years) to maintain key ecological processes. The preponderance of scientific data conclude that increased average outflow, along with more variable outflows are required to achieve conservation outcomes in contributing to the recovery (and therefore avoid jeopardy) of threatened and endangered aquatic species (Mount et al. 2012, Moyle et al. 2011, National Research Council 2012, Hanak et al. 2013). The current plan raises significant concerns about the adequacy and ability of the Water Fix to provide flows necessary to avoid jeopardy. Our concerns include the following and support the more detailed comments provided to the California Natural Resources Agency by the Natural Resources Defense Council, The Bay Institute and Golden Gate Salmon Association:

- The analyses and modeling are flawed in numerous ways. For example, CalSIM II modeling (for flows and temperatures upstream) is too coarse (monthly time step) to detect changes on the timescales that are relevant to most species. In addition, the Water Fix documents acknowledge that real world operations will be different from the projected operational outputs of Calsim. However, those outputs are then used as inputs to additional models

(e.g., temperature modeling, Delta Passage Modeling, etc.) which raises questions as to usefulness of the additional model outputs used to estimate impacts.

- The DEIR/S analyses of alternatives with a North Delta Diversion (the tunnels) clearly indicate that endangered species like salmon, sturgeon, steelhead, and smelt will continue to suffer impacts due to project operations which are not adequately addressed by the proposed project operations. These impacts occur upstream and in the Delta.
- There will be broad scale negative alterations to the ecosystem that accompany Water Fix which require further analysis. For example, the loss of sediment inputs to the Delta and estuary (both because of diversion of sediment and because of decreased flows to mobilize sediments) will have negative effects on fish species that need increased turbidity for cover and for restoring tidal marshes (which are sediment starved). In addition, decreased sediment and turbidity combined with increased Delta residence times predicted under project alternatives will facilitate harmful algal blooms (*Microcystis*). In addition, the additive effects of declines of the estuary's most abundant prey species will have impacts far afield such as on bird and fish species, and marine mammals that rely on forage fish for prey.
- The No Action Alternative (no tunnels) according to the Water Fix documents acknowledges substantial adverse impacts to endangered and non-endangered species (e.g., fall run Chinook salmon). As a result, comparison of project alternatives to the NAA condition tends to obscure and minimize the potential harm from alternative operations. The NAA will require significant mitigation in order to avoid impacts and, therefore, alternatives that produce "similar" or worse impacts should do the same. As described in the REIR/S, it is virtually impossible to discern what operations will be in the future and what the real impacts of any of the alternatives will be. In part, this is why we have underscored the importance of an integrated adaptive science and adaptive management framework to be included in project operations.

### Ecological Flows Tool Results

There are approximately 276 references to the Sacramento River Ecological Flows Tool (SacEFT) in section 4 of the BDCP REIR/S, as well as several significant misinterpretations of the model. EFT is comprised of sub-models that represent both the Sacramento River (SacEFT) and the Delta (DeltaEFT) ecoregions; both sub-models comprise the EFT. We suspect that given the nature of some of the misinterpretations a variety of other problems may exist. One example of this is in the use of only one of the six (6) EFT Winter-run Chinook indicators (juvenile standing) in the Draft EIR/EIS analysis, which resulted in an incomplete analysis. Another example is the dismissal of the results that showed adverse effects under some conditions, primarily in late summer. EIS/EIR authors these results as inaccurate based on the fact that EFT had high sensitivity. However, an accurate EFT prediction of positive or adverse effects requires review of EFT Effect Size (ES) results and Net Effect Scoring (NES). The proper use of the NES would yield more accurate results. The most thorough and accurate application of EFT to BDCP

alternatives is contained within Alexander et al. (2014). We request the BDCP REIR/S authors review the Alexander et al. 2014 report and correct their findings appropriately. This closer review of EFT results will help to reconcile some apparently conflicting results noted in Section 4 of the BDCP REIR/S. We are willing to work with you to this end, and urge you to contact us.

### **Migratory Waterbirds and Sandhill Cranes**

The Delta is a critically important landscape for migratory waterbirds, including compatible cultivated lands and managed wetlands. While the REIR/S has addressed many of the concerns raised in previous comments to the BDCP regarding impacts to migratory waterbirds, including cranes and on Staten Island specifically (see comments for Staten Island below), we remain concerned that the impacts of this project are not being fully addressed or mitigated. For Greater Sandhill Cranes, the REIR/S identifies 145 acres of direct construction impacts to roosting/foraging habitat, plus direct impact to 7,161 acres of foraging habitat. In addition, a total of 20,243 acres of roost and foraging habitat are predicted to be impacted by indirect disturbances from noise and nighttime lighting. While these areas have been identified according to their potential impact to Sandhill Cranes, many of these areas are also important for other migratory waterbirds and thus can be considered as part of the impacts to many other waterbird species as well. To mitigate these impacts, the REIR/S proposes protection of 7,300 acres of high value cultivated foraging habitat, plus creation of an additional at least 160 acres, as well as restoration of 595 acres of roosting habitat. Given the potential for permanent impacts to loss of habitat and disturbance that causes abandonment of these sites by cranes and other birds, TNC feels that the proposed mitigation measures are insufficient.

Almost 3,000 acres of roosting habitat and over 17,000 acres of foraging habitat will be impacted to some degree. We recommend that the Sandhill Crane roosting habitat goal be revised up to 3,000 acres of wetland and appropriately flooded agricultural land. Also, while 48,000 acres of cultivated lands are proposed for protection to support covered species, the REIR/S is not specific enough in what management will be required. We recommend that more specific post-harvest crop management guidelines be specified, using the management practices that have been developed and tested at Staten Island, Stone Lakes and other properties. At least 20,000 acres of the 48,000 protected cultivated lands should have management specifically targeted to benefit Sandhill Cranes. Also, we propose that any mitigation by creating supercharged habitats should also include early experimentation with creating and testing response to determine whether birds can be attracted to them. Finally, we recommend that the identification of protected and restored lands be guided by a spatially-explicit reserve design analysis that should be completed before implementation to ensure that investments are made that maximize connectivity and resiliency of protected and restored lands.

We also remain concerned about the potential impacts of the proposed overhead powerline, particularly the 230kV powerline that will be travel from the east, along Lambert Road. TNC appreciates the relocation of proposed powerlines off of Staten Island and overall reduction in

number of permanent and temporary lines in the new project design, however there are remaining concerns about the risk that new powerlines pose to cranes. Regardless of reducing the number of proposed power lines elsewhere, new lines in risk zones may cause mortality, as cranes will be unfamiliar with the location of these lines. Research has shown bird diverters to be only partially effective. The proposed line along Lambert Road may be particularly problematic since this is a core use area for cranes and other waterbirds. This line will be installed within 1 km of three known crane roost sites and surrounding foraging habitats, including in between two roost sites in the Stone Lakes area. Even with flight diverters, these lines and others in the project area may cause mortality of Sandhill Cranes. The proposed minimization and mitigation measures will not eliminate this potential impact. Therefore we urge that the powerlines relocated or installed that are associated with the Project be undergrounded, as this is the only sure way to avoid avian-powerline interactions.

### **Water Transfers & Groundwater Conditions**

BDCP activities should not directly or indirectly impede Level 2 and Level 4 water deliveries to federal refuges, state wildlife areas, and private wetlands (identified in the Central Valley Project Improvement Act). Currently, all alternatives appear to detrimentally affect Level 2 deliveries to refuges. Level 4 deliveries do not appear to be included in the supply at all. Additionally, water supplies of private and public wetlands in the Sacramento and San Joaquin Valley are also likely to be determinately affected. Impacts on habitat values in the rivers and tributary systems above the Delta should be carefully monitored in the context of project operations and mitigation to protect multiple habitat values. Monitoring of groundwater conditions and implementation of the Sustainable Groundwater Management Act (SGMA) is essential to protect habitat values in the context of both "short" and long-term water transfers and should be included as an objective in the Water Fix program.

### **Wetlands and Water Purchases**

All alternatives, especially alternative 9, result in the loss of wetlands. The resultant impacts and timing and details of mitigation measures are not provided. These impacts need to be identified and appropriate mitigation actions should be determined based on those findings.

The REIR/S states that spring outflow will be met through water purchases in order to protect the ecosystem. However, it is not specified who makes these water purchases, from whom the water is purchased or the funding sources used for the purchases. It is important that these details be made clear. Public monies should not be used for meeting project obligations.

Additionally, it is stated that in the event that water purchases cannot be made to meet spring outflow releases they will be covered through operations of the CVP and SWP. It is not discussed what will occur if this does not happen. A contingency plan, such as back up or reserve storage, should be in place. Spring outflow models also operate under the assumption that there will be a reduction in exports combined with releases from Lake Oroville. How likely

is this to happen? Is this simply a modeling assumption or a commitment to be included within operating permit terms?

### **Monitoring and Water Quality**

In many cases species level monitoring is necessary in order to determine the relationships between the organisms and the conditions of the delta (water quality, flow, etc.) Although this level of monitoring is mentioned for several groups of aquatic organisms, TNC recommends that it also be applied to shorebirds, waterfowl, and riparian songbirds. Established monitoring protocols (e.g. Pacific Flyway Shorebird Survey, Mid-winter Waterfowl Survey) would be sufficient for this. Specifically, the Sandhill crane, tricolored blackbird, western burrowing owl, and Swainson's hawk should be monitored. Maintenance plans should be developed in order to track the health of these populations. Specific performance metrics should be used to determine the health of the populations. Habitat loss impacts should also be measured, and migratory bird populations monitored. Specifically White Goshawk and Aleutian Canada Goose surveys should be conducted.

The REIR/S also has many changes to CEQA and NEPA documentation based on new and updated environmental analysis. Many of these analyses now say that specific water quality impacts will be less than significant. Even for those which the new analysis revealed the same result, the sensitivity analyses now say that effects will be less than significant. For example, chloride concentrations and electrical conductivity were shown to be significantly and unavoidably impacted in alternatives 1A, 1B, 1C, 2A, 2B, 2C, 3, 4, 5, 6A, 6B, 6C, 7, 8, and 9, yet now the sensitivity analysis asserts that the magnitude of the impacts to biological resources is substantially less than previously indicated. Clear explanations for these new determinations are warranted. What is the reasoning for these new determinations that effects will be less than significant?

In addition, the effects of droughts on water quality are not sufficiently described. The REIR/S states that prolonged dry weather and drought conditions are likely to have adverse effects on water quality and may cause an influx of salt water into the delta. However there is not analysis on what these effects may be and what magnitude they will have. In addition, in cases of significant droughts (like the one we are currently experiencing) it is becoming normal for water quality standards to be further degraded by the relaxation of regulatory standards as a consequence of petitions to the State Water Resources Control Board from the DWR and USBR. Because this has become a normal occurrence during most dry periods it should be reflected in the operations of the SWP. Consequently in the interests of full disclosure we request a description of the impacts and benefits associated with this action.

### **Biological Resources, Conservation and Restoration Actions**

Although the current BDCP has split the conservation and restoration actions from the water delivery infrastructure aspects, they are not unrelated. The separation of Water Fix and EcoRestore effectively changes conservation objectives tied to the project, and both aspects of

the project need to work towards those goals. As previously mentioned, close coordination between the two initiatives is necessary to achieve this, and should be made a priority. Both initiatives should receive feedback from the other and adjust accordingly to ensure the project is cohesive and successful.

As noted above, the REIR/S has a strong focus on endangered species. Although this is not a misplaced emphasis, these considerations effectively preclude important attention to wider ecosystem and habitat values and the need for considerations to other covered and non-covered species that still may be affected by the Plan. Although they might not be endangered now, the destruction of their habitat or displacement due to construction may significantly affect their population. This is particularly true of shorebirds, waterfowl, and organisms in the tidal marsh habitats.

### **Prioritization of Restoration Based on Impact**

Restoration actions should be prioritized based on the level of impact. High impact actions, including the Yolo Bypass, Tidal Wetlands Restoration, and Non-Tidal Marsh Restoration should be prioritized due to their high impact. Prioritizing high value actions will bring about the greatest improvement in ecosystem health quickly and help ensure the efficient use of funds. Additionally, specific types of habitats must be conserved. The loss of a specific type of wetland, freshwater wetlands, for example, should be offset with the creating of the same type of wetland. All types of habitats are important, and the balance should be maintained to ensure the overall health of the ecosystem.

The overall conservation strategy of the BDCP should plot the offsetting of the loss of brackish, freshwater, and managed wetlands, as well as associated uplands. These habitats are essential to waterfowl, shorebirds, and many other organisms.

When habitat quality is being evaluated, post-harvest management of cultivated lands should be considered. The current REIR states that when possible, tilling would be deferred or some lands left unharvested to increase the amount of forage available. Although this is a good start, the loss or conversion of managed farmland due to BDCP actions also needs to be taken into account. Conservation strategies and NEPA/CEQA mitigation should provide for offsetting the loss of rice and other crops that support foraging and breeding habitat for birds covered by the BDCP (greater Sandhill crane, tricolored blackbird, western burrowing owl, and Swainson's hawk).

Although the draft REIR/S mentions invasive aquatic vegetation control and introduction prevention actions, it does not describe how invasive species control will be considered in operational decisions. Control of invasive species will not only be valuable to the ecosystem, but also to water quality and management of Water Fix infrastructure. Control measures need to be outlined and an implementation plan created to prevent the spread of invasive species.

## Potential Impacts to TNC Properties

### McCormack Williamson Tract

McCormack-Williamson Tract (MWT) is an approximately 1,600-acre "island" in the North Delta. TNC purchased MWT in 1999 using federal funds granted from the US Fish and Wildlife Service to TNC through the CALFED Bay Delta Program. When TNC purchased MWT it also became the sole landowner in Reclamation District (RD) 2110.

MWT is protected by approximately 8.8 miles of non-project levees and has flooded several times over the last few decades. Due to its location, geography, and ecological history, MWT is viewed as a prime site for restoration of fresh water tidal marsh, seasonal wetlands and riparian forest.

TNC and RD 2110 are collaborating with the California Department of Water Resources (DWR) to complete planning and permitting for the MWT Levee Modification and Habitat Development Project (LMHDP). LMHDP objectives include improving flood control in the North Delta and benefiting aquatic and terrestrial habitats, species and ecological processes. DWR has executed a Project Funding Agreement with RD 2110 to complete LMHDP planning, design, and permitting. Based on the current schedule, implementation of LMHDP could possibly begin as early as 2018, pending permits, however neither DWR, TNC nor RD 2110 are obligated to undertake the construction and restoration phase of the LMHDP, should the project proceed beyond permitting.

The LMHDP design includes removing portions of the MWT levee system (see NDFEIR Alternative 1-A). The modified pipeline/tunnel alignment for Water Fix Alternative 4 includes a tunnel alignment, work area, and temporary access road on MWT (see Water Fix Figures M12-4, Sheet 3 of 8).

*Inundation following LMHDP:* An analysis of MWT topography and tidal influence indicates that most of the MWT interior will be inundated at mean tide level following levee removal, including the tunnel alignment, work area, and temporary access road on MWT, as indicated in Water Fix Alternative 4. Assuming LMHDP construction proceeds in advance of any potential work on the Water Fix tunnels, DWR should address the apparent conflict between the proposed Alternative 4 features and inundation anticipated on MWT following LMHDP construction.

*Transmission tower stability:* An existing transmission tower on MWT is directly in the path of the tunnels proposed by Water Fix Alternative 4. That tower (approximately 2000 ft. in height) is supported by several guy wires. Subsidence due to tunnel construction could impact the transmission tower, its operations building, and guy wire anchors. DWR should address how potential effects of the tunnels on the MWT transmission tower and supporting equipment will be resolved.

### Staten Island

Staten Island is owned by TNC and managed by Conservation Farms and Ranches (a non-profit affiliate of TNC) as a diversified agricultural property with a specific focus on wildlife friendly farming. Specifically, Staten is one of the most important sites in California for wintering Greater Sandhill Cranes (Ivey and Herziger, 2003) and management at Staten is focused on improving habitat conditions for this species. In addition, the island is managed to provide valuable habitat for waterfowl, shorebirds, and other wildlife.

TNC acquired fee title to Staten Island in 2001 with two grants provided by the State of California. The California Natural Resources Agency granted California Proposition 204 funds to TNC because the Agency determined that the protection of Staten Island would help achieve the goals of the CALFED Ecosystem Restoration Program by (1) protecting critical agricultural wetlands for continued use by significant numbers of migratory birds; and (2) allowing development and refinement of economically viable wildlife-friendly agricultural practices. DWR granted California Proposition 13 funds to TNC because DWR determined that the protection, management and use of Staten Island for wildlife-friendly agricultural purposes would (1) preserve agricultural land; (2) protect wildlife habitat; and (3) protect the floodplain area from inappropriate or incompatible development.

The land use at Staten Island is restricted by a Conservation Easement Deed granted by TNC to DWR in 2001. We remain concerned that construction activities related to installation of the tunnels on Staten Island and the related impacts on crane habitat, as proposed by DWR, would violate the terms of the Conservation Easement which encumbers Staten Island. California law specifies that conservation easements are permanent (California Civil Code, § 815 et. seq.). TNC cannot voluntarily agree to DWR's proposal to locate the water conveyance tunnels under Staten Island if such activity would violate the Conservation Easement; however we recognize that DWR, as a state agency, has the legal authority to condemn property under California's eminent domain laws.

Specifically, we have the following concerns and recommendations:

Despite improvements by DWR to minimize the direct effects of conveyance construction to Sandhill Cranes on Staten Island, TNC has many of the same concerns previously expressed in detailed comments to the original EIR/EIS. There remains a high degree of uncertainty regarding the crane response to the construction impacts located on and around Staten Island. Although the physical footprint of construction activities on Staten has been reduced to 100 acres, project activities are likely to indirectly impact much of the surrounding area through lighting, noise, and construction traffic. While the REIR/S acknowledges the significant uncertainties regarding how cranes will respond to the disturbances and habitat modifications that will result from construction activities and post-construction operations and maintenance on Staten Island, it still concludes that no negative impact to cranes are expected due to the mitigation measures. However, the REIR/S lacks data on effectiveness of several of the mitigation measures, including the proposed noise and light barriers which are largely

unknown. TNC is bound by a conservation easement held by the Department of Water Resources which conveys explicit obligations to protect habitat values for sandhill cranes and other migratory birds. These obligations are inviolable under the law. TNC cannot voluntarily agree to the Department of Water Resources' proposal to locate the water conveyance tunnels under Staten Island, we recognize that DWR, as a state agency, has the legal authority to condemn property under California's eminent domain laws.

- It remains unclear as to what construction activities will actually occur within the fall/winter time period of crane activity, leaving great uncertainty about how severe project impacts will be on the population. The REIR/S still provides no guarantee that construction activities will be limited to outside the crane wintering season. Nighttime construction may still occur during the crane season, despite insufficient evidence that it can effectively be mitigated. TNC continues to recommend that no project activities in the vicinity of crane use areas occur during the crane wintering period from September through March.
- The effects of fragmentation on the foraging/roosting habitat network within the landscape around Staten Island have yet to be addressed. Habitat changes occurring within the daily flight radius of crane roosting sites may affect roosting activity, even if local conditions remain suitable. Avoidance and Minimization Measure 6 specifically requires that the area used for Reusable Tunnel Material (RTM) storage be minimized in crane foraging habitat, however the significant RTM footprint has been moved from Staten Island to Bouldin Island, another important foraging area for cranes that roost on Staten. The relocation of RTM off of Staten Island is a step in the right direction, however the increased impact to Bouldin Island still results in significant habitat loss for cranes that depend on the area. Furthermore, in Chapter 12 and appendix D.3 of the REIR/S, there is inconsistent information on the location of the RTM and the associated impact to the cranes using the area. AMM20 still indicates the RTM footprint on Staten is a worst-case scenario, alluding to its continued consideration as a potential option. As suggested for migratory waterbirds and Sandhill Cranes specifically above, we recommend that protection and restoration efforts be implemented well in advance of implementation to ensure that the potential impacts on Staten and connected properties, like Bouldin Island, are fully mitigated prior to construction.
- The loss of crane habitat needs to be considered as part of cumulative effects including the loss of habitat already resulting from land conversion to unsuitable foraging crops affecting the forage availability and carrying capacity of the Delta overall for Greater Sandhill Cranes. Forced movement of sandhill cranes off traditional use areas to increasingly limited areas for roosting and foraging habitat regionally not only create challenges for ensuring the cranes identify and utilize new areas, but it also may result in increased competition between cranes and geese where suitable habitat remains.

- Impacts to cranes and the farming operation due to long-term operations and maintenance of permanent facilities were also not discussed in avoidance and minimization measures, while the planned location of conveyance remains underneath some permanent crane roosting areas. Questions remain regarding what would happen if the underground equipment breaks and digging from the surface is required for repairs at the location of an active crane roosting site.
- Larger habitat effects due to impacts on the farming operations and irrigation practices on Staten and surrounding areas have not been effectively addressed. Viable farming operations are essential for providing suitable crane foraging and roosting habitat. AMM20 says CM1 activities on Staten Island will be staged so they do not disrupt flooding and irrigation capacity, however necessary irrigation occurs throughout the year for the crop growing season and for fall/winter habitat creation. Impacts to the pumping and irrigation structure on Staten and the potentially significant effects that dewatering for tunnel construction could have on island subsidence have also not been adequately analyzed. Salinity levels are also expected to increase throughout the Delta and salinity will move inland as a result of new North Delta diversions, potentially having significant effects to the crop production capacity on Staten Island.

### Summary

Our comments underscore the key conclusion that the construction of new conveyance in the Delta as described in the REIR/S is unlikely to achieve intended ecological or water supply outcomes. The prescribed operations scenario for the project is much like the original criteria proposed in the prior BDCP EIR/S, though we recognize additional operating assurances, change in permit authority, and additional dedication of flows for long-fin smelt which may be beneficial. However, overall operations are still left to regulatory fiat and short-term minimal flow assurances to protect endangered and listed fishes in the Delta.

In order to achieve intended outcomes, there must be a more direct linkage between science, adaptive management and public engagement explicitly provided for in project governance. To achieve better understanding and integration of coordinated management of flows and restoration actions, the California Water Fix must be more clearly aligned with specific, science-based restoration objectives that recognize the need to manage flows, habitat and water operations in a coordinated way. It is our assessment that the project must be operated with greater flexibility – consistent with an approach to export less in dry and moderate years, and allow for more exports in wet years – consistent with long-term goals to protect multiple habitat types and species.

We believe that the authority of the Delta Stewardship Council should be recognized in providing a role for the Council to review, analyze and convene scientists to recommend adaptive science and project operations that can better achieve both ecological restoration goals and ensure consistency with the Delta Plan.

Project operations must better integrate an adaptive management regime that is more consistent with variability that is seen in the Sacramento, San Joaquin Delta, and move away from the incremental annual minimum flow requirements that have effectively created a “steady state” flow management regime in the Delta. The active use of scientific decision support tools like the Ecological Flow Tools is necessary to provide better benchmarks on how wildlife agencies and water contractors can better manage the system – with or without new conveyance – to achieve ecosystem restoration, water conservation, and water supply reliability goals.

We are concerned that the Section 7 permit mechanism under the Endangered Species Act is a flawed approach in evaluating a project that is a \$15 billion investment and which is designed for a 100-year project life. Given the cost of this investment, the permitting process should recognize that the project has the potential to further alter Delta water quality, land use and species conservation goals. The ecological assurances described in the DEIR/S are insufficient to imagine that the project as proposed could achieve either designed water supply or ecological goals.

In sum, we know that the status quo is a recipe for the continued demise of the Delta ecosystem and the continued decline of threatened and endangered species there – as well as broader fish and wildlife habitat values. While there have been some modifications to operations included in the REIR/S, the proposed operations scenarios for the project are largely the same as those advanced under the prior BDCP. Further, the assurances of a comprehensive habitat restoration approach, integration of independent science and adaptive management, together with improved flow regimes and a structure for adaptive science management is lacking in the REIR/S. For these reasons, as proposed, we do not believe the permitting approach to separate the Water Fix from EcoRestore can succeed in the primary goal of improving ecosystem conditions and reducing reliance on the Delta as a source of water supply.

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Attached are comments on the proposed Water Fix REIR/S. Please confirm receipt of this document. Thanks.

Jay Ziegler

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Re: Comments to BDCP / California WaterFix Partially Recirculated Draft Environmental Impact Report / Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)

Ladies and Gentlemen:

The San Joaquin River Exchange Contractors Water Authority ("Exchange Contractors") submits the following comments to the Revised Draft Environmental Report and Supplemental Draft Environmental Impact Statement.

The Exchange Contractors' previous comments upon the 2013 Draft EIR and EIS are incorporated herein as if set forth in full.

The Exchange Contractors further reserve the right to utilize the comments and objections of other parties to the sufficiency and compliance of the documents with legal requirements of CEQA and NEPA as a basis for satisfying the requirement of exhaustion of administrative procedures and notifications of the legal and factual insufficiencies of the Drafts and Recirculated Draft and Supplemental Draft in any legal or administrative challenges to the processes or documents.

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- I. NEPA and CEQA are clear. The alternative projects proposed must be described in specific terms sufficient to identify the probable environmental impacts and provide for a weighing process of all significant impacts of the Project Alternatives. The proper lead agency must be chosen, and the Project Alternatives must be accurately described. Here, the assumption is that the requirement of ESA agency Section 7 entitled "Consultations and Incidental Take Authority" will determine how the facilities constructed will be operated and used. If this is so, the DWR is not the proper lead agency and cannot identify alternatives in an understandable form. The Project Alternatives are not properly described. There is an alternative approach that could comply with CEQA and NEPA which has not been employed.**

The proper way to define potential impacts of the Project Alternatives is to conduct the consultation and conclude the Section 7 process. If DWR is proposing to build these facilities subject to a constantly shifting Section 7 process in determining the operating criteria, the proper lead agency is the ESA Federal authorities and State authorities because they make the decisions. If we are to have an unreliable water supply system in California and expensive tunnel and pumping facilities potentially standing idle during significant periods, draining the financial resources that could be used to support other water projects and facilities, that alternative is not defined. The Endangered Species agencies are apparently placed in charge of that decisionmaking as lead agency under the DWR interpretation of the Federal and California ESA processes. If so, the proper Lead Agency for this Recirculation Process is NMFS, USFWS and California DFW, and this Supplement and Recirculation Process only creates a cloud of words and no specific understanding of how the Project will operate and therefore impact the environment.

In regard to the revision of Scenario H, Section 4.1.2.2 of the Supplement states:

"Alternative 4A, Starting Operations, will be determined through the continued coordination process as outlined in the Section 7 consultation process and 2081(b) permit prior to the start of construction. An adaptive management and monitoring system, as described below, will be implemented..." (Page 4.1-5).

This is a violation of CEQA and NEPA in describing alternatives. It arises from the fact that the operations, if any are permitted (unlike the 50-year habitat plan alternative) to transport water at times is not known when the decision to commence construction is made. The proper lead agency has the burden of including an analysis of alternatives and their impacts, but here there is no minimum improvement or change in reliable water conveyance or mortality to fish species from the project specified. Instead, whatever the Federal or State ESA agencies require will be a condition of the Project. It is well-established that the lead agency must be properly chosen, and although other agencies may be required to issue authority, the lead agency must determine the alternative project. *Laurel Heights v. Regents of University of California*, 47 Cal.3d 376, 406 (1988); *Planning & Conservation League v. DWR*, 83 Cal.App.4th 892, 904-907. Here,

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the lead agency (DWR) is proposing to construct facilities with no precondition that they will ever be used or how they will be used.

This is analogous to writing an EIR for a new railroad mainline, never specifying what number of trips regulators will have to authorize to avoid the capital and operation costs of the new line requiring that passenger and rail traffic on existing railroad lines, and safety efforts on those existing lines, being slashed and eliminated.

**Remedy:** The Alternative needs to specify the minimum use and utility permitted for the new facilities that Section 7 consultation and California (CESA) authority related to smelt protection will permit. A specific statement that the Project will not proceed unless these operating characteristics are available would require completion of Section 7 and CESA before construction occurs.

The problem that Section 7 authority lapses periodically and new consultation is required, or that authority may not be renewed, must also be considered. If the environmental impacts are too severe, a change in the Federal and State legislation is a permissible mitigation condition to be sought, permitting a Section 7 authorization for the life of the project which will allow the costs of the Project to be borne by the DWR and CVP.

Without some range of operating capacity use during the 50-year debt amortization period, the impacts of an alternative cannot be appraised as to whether costs would deprive the levee maintenance and other water transportation budgets for facilities currently in use to pass water through the Delta from being maintained.

**Alternative Remedy:** If DWR truly intends to proceed with construction and does not intend to weigh in this document the environmental effects of constructing but not operating the Project Facilities to yield water deliveries because there is no 50-year assurance from Section 7 consultation, the USFWS, NMFS and California Fish & Wildlife may be the proper lead agencies instead of DWR. *CEQA Guidelines* §15051(b) (lead agency will be the agency with the greatest responsibility for supervising or approving the project). How can DWR weigh the alternatives when its description assumes that operational judgment and procedures will be determined by the ESA agencies, potentially after construction?

Without such conditions, this project is similar to attempting to describe impacts from building a 100-floor presidential tower but being unable to analyze the impacts because it is never allowed to be occupied.

**Possible Further Correctional Measure:** The Federal Endangered Species Act provides for a State to petition for appointment of a Federal panel (Endangered Species Committee) to override or determine alternative measures to those specified in a Section 7 consultation procedure. 15 USC 1535-6. If the lead agency (DWR) specified in its EIR that the Tunnel/WaterFix Project would not be implemented or constructed unless either the Section 7 consultation procedure or the exemption procedure from the Endangered Species Committee established under Section 7 permitted utilization of the facilities in such a fashion that there would still be sufficient monies to maintain levees and conveyance of the remaining waters to be

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transported through the Sacramento/San Joaquin Delta, the contention that DWR is the proper lead agency and the process under both Federal and State law may be supportable.

Without such a statement and description of alternatives, no focus upon alternatives and mitigation of significant environmental impacts is feasible because the Federal and State ESA agencies who it is presumed will attempt to utilize this document to satisfy their NEPA and CEQA requirements have no means of measuring the impacts of their edicts, and DWR (and the CVP) could well implement a costly project which denies reasonable maintenance of existing facilities with severe environmental impacts which have not been considered.

The Draft EIR/EIS failed to include or consider the environmental impacts caused by the economic costs of this Project. To avoid citing dry legal precedent, and in an attempt to gain the decisionmakers' attention to the failure to achieve the objectives of an EIR/EIS process which can be cured at this stage, the Supplement must consider that unless there is assurance that sufficient water can be diverted and transported through these facilities, the costs of repaying capital will for at least 50 years be devoted to this "tool" with no utility arising from its installation. The alternative must be considered of devoting those monies to local reservoirs, water conservation, dredging and Delta levee improvements. This is the purpose of an EIR/EIS: to weigh alternatives and their environmental effects.

**II. The "Collaborative Science Process" referred to in pages 4.1-19-20 and the Memorandum of Agreement for Adaptive Management at 4.1-30-3 do not attempt to quantify the environmental impacts from terms that may be required in Section 7 as reasonable and prudent measures or as CESA Section 2081(h) permit conditions. To understand alternatives, they must be clearly spelled out. What the ESA and CESA agencies will require is key to describing alternatives and impacts.**

This alternative operation regime of waiting for the ESA agencies to order the suspension of use of CVP and SWP project facilities under claimed ESA authority or CESA authority has been proceeding unabated for more than 20 years. This Project Description proposes that vagueness and uncertainty as an underpinning for additional new facilities. NEPA and CEQA do not permit alternatives made of smoke and mirrors, no matter how politically correct "protecting the Delta fisheries" is viewed.

This draft confronts the contradiction between NEPA and CEQA requirements and the supposed ESA/CESA authority. Delaying the confrontation and thus disguising impacts and alternatives is not lawful.

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**III. The SWRCB requirements on proposed operation of the proposed facilities in regard to deliveries of CVP and SWP water must be described in regard to ranges of a specified preferred alternative. If the SWRCB orders some other range, the EIR/EIS cannot be sufficient for the SWRCB's desired or permitted Project.**

Instead of specifying a water operation criteria conserving Shasta, Oroville and Folsom storage and providing a preferred operations scheme which will yield amounts of water deliverable North and South of the Delta in light of the existing coordinated Operations Agreement between the CVP and SWP, the authors describe the Project as one which will transport water permitted to be transported by the orders of the SWRCB, with the SWRCB to "fill in the blanks". The result is that no realistic Project Alternative is actually identified, nor can the impacts of alternatives be judged.

This document is supposedly to be relied upon by the SWRCB as a responsible agency as the basis of its determinations, yet one is hard put to find the orders of the SWRCB that will be sought and the impacts to both the ecosystem and the users of water thereby which the SWRCB and public is entitled to in judging a means of mitigating for impacts of the proposed Project. Instead, the "Collaborative Science Process" and the Adaptive Management Process referred to on pages 4.1-19-20 and 30-33 is offered as a substitute.

As an example, if the SWRCB insists upon released Shasta water temperatures not exceeding a certain temperature during monthly periods and releases cannot be made for Delta water quality mitigation or transportation through the tunnels, or for Delta outflow to the Bay as occurred in 2014 and 2015, the tunnel project has consumed more than \$20 billion that is not available for other projects and uses (such as fish hatcheries and cold water storage reservoirs). The absence of that money or funding which will be devoted to these facilities and no longer available for maintenance and operation of existing facilities or installation of others has potentially severe impacts upon the human environment. There is no discussion of those impacts because there is no specification of the operating criteria which will be sought from the SWRCB Water Quality Plan and for the addition of point of diversions for the tunnel intakes and exits. It is impermissible to propose facilities and then contend you cannot examine impacts from its operation because other agencies can direct operations. The public is entitled to comment upon impacts from the preferred operating criteria to be sought by the Lead Agency.

Section 5.2.1.12 is entitled "Socioeconomics" but contains no consideration of how the dedication of these costs by water users or by the State or Federal government to construction of this Project with no assured right to use the facilities to provide income from more reliable water use, would cause environmental impacts. Economic impacts which cause significant physical impacts on the environment must be identified and mitigated for if feasible. Public Resources Code §20180 subd. e(2); *Hecton v. People of the State of California* (2<sup>nd</sup> Dist. 1976) 58 Cal.App.3d 653, 656; *Bakersfield Citizens for Local Control v. City of Bakersfield* (5<sup>th</sup> Dist. 2004) 124 Cal.App.4th 1184; 40 CFR 1508.14 (NEPA EIS must consider foreseeable impacts on the environment from economic impacts of alternatives).

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The “Cumulative Impact” sections of the Recirculated document do not identify economic forces resulting in physical impacts to the environment (p. 5-43-44) and suggests the reader review Chapter 30 for indirect effects upon the physical environment. However, Chapter 30 contains no examination of the potential environmental impacts if the costs of repayment of capital and operation/maintenance of these facilities are not recoverable from water users because the costs exceed either the benefits of greater reliability or there are no benefits of more reliable water delivery because adaptive management and collaborative processes do not create additional water delivery flexibility.

The most obvious insufficiency in examining economic force caused environmental impacts in the draft EIR/EIS is the absence of any examination of the likely environmental impacts from increased deterioration, and therefore the failure of, Delta levee maintenance and repair. It is foreseeable that this diversion of available cost funding from Delta levee maintenance could result in potential interruption of agricultural supplies in mid-irrigation season in the Delta and South of the Delta and the loss of significant crop production and potentially permanently damaging a substantial portion of the South-of-Delta agricultural use environment. There is an assumption which is never tested in this Draft Report that public resources are unlimited and therefore no adverse environmental impacts can arise from having two systems rather than one. Pricing agricultural production water above crop income promptly ends farming production...an enormous environmental impact.

Chapter 16 provides no discussion of the effects of a dual system and its costs, and the potential of depriving the DWR and CVP of the means to fund and pay for Delta levee maintenance for the “dual system.”

In our initial comments we pointed out the absence of quantification of how economic viability would exist for dredging Delta channels and buttressing and repair of Delta levees to transport water, while at the same time the State of California was adding to water users' economic burdens the cost of paying bonds for a tunnel project in excess of \$20 Billion Dollars. This Supplement and its recirculation compounds the insufficiency. If the plan alternative is that municipal, industrial and agricultural uses will not pay all costs, it should be specified. Without cost projections to users, the alternatives cannot be appraised. Will every landscape service in every city served be put out of business? Will every dairy or new crop operation be shut down?

Figure 9-6 entitled “Levee Vulnerability” shows almost all of the levees critical to maintaining a viable dual system as highly vulnerable (red) or medium vulnerability (purple), but there is no examination of whether devoting California citizens and water users' economic resources to a tunnel project will in fact limit or constitute a deprivation of funding ability for the existing levee system. The author of the EIR never asks or answers whether only municipal and industrial users will be able to afford the tunnel, and therefore, agricultural land use in the Central Valley is sentenced to extermination because municipal and industrial users will no longer bear the costs of maintaining and buttressing levee systems against rising ocean levels.

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The EIR/EIS never examined or quantified the financing plan to maintain and pay the capital costs of both systems, and therefore, the significant environmental impacts of spreading a limited resource (money to pay for water) over new, expensive tunnel facilities is not mentioned. If we were only told that municipal and industrial users would pay an additional \$400/ac/ft for all water received and SWP contractors for agricultural use and CVP contract waters would pay an additional \$200/ac/ft for all water received South of the Delta, we could determine whether agricultural land would be fallowed, and whether landscaping water use would be terminated in cities. If we were only given the economic costs of both systems to compare with proper improvement and maintenance of the existing levee system, some comparison of the environmental impacts from these new costs and expenses could be made. An EIR/EIS that does not provide this information is insufficient and is not in compliance with the law.

Respectfully submitted,

SAN JOAQUIN RIVER EXCHANGE CONTRACTORS  
WATER AUTHORITY:

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PAUL R. MINASIAN, Counsel

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Ladies & Gentlemen,

Attached for your consideration are the Comments to the BDCP/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) which is being submitted on behalf of the San Joaquin River Exchange Contractor's Water Authority.

Thank you.

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