

LOCAL AGENCIES OF THE NORTH DELTA

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August 20, 2015

SENT VIA EMAIL (dmurillo@usbr.gov; mark.cowin@ca.water.gov)

David Murillo
Director
Reclamation Mid-Pacific Region
801 I Street, Suite 140
Sacramento, CA 95814

OCT 28 2015

Mark Cowin
Director
California Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

**RE: DCE CM 1 Property Acquisition Management Plan for the
California Water Fix/BDCP Alternative 4A**

Dear Messrs. Murillo and Cowin:

I am writing to you on behalf of Local Agencies of the North Delta (“LAND”)¹ regarding the draft DCE CM 1 Property Acquisition Management Plan (“Property Acquisition Plan”) for the California Water Fix/BDCP (“Tunnels”) recently obtained from the Metropolitan Water District (“MWD”) pursuant to a Public Records Act request. The existence and content of the Property Acquisition Plan is concerning on many levels to the LAND districts and landowners, many of whom own properties slated to be taken for the Tunnels. LAND member district water supplies will also be adversely affected by the proposed Sacramento River diversions.

¹ LAND member agencies cover an approximately 118,000 acre area of the Delta; LAND participants include Reclamation Districts 3, 150, 307, 317, 349, 407, 501, 551, 554, 556, 744, 755, 813, 999, 1002, 2111, 2067 and the Brannan-Andrus Levee Maintenance District. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms. Several of the LAND districts are also cooperating agencies with the Bureau for purposes of NEPA review of the Tunnels project.

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First, the undated Property Acquisition Plan, which lists 300 parcels slated for use in the Tunnels project, calls into question the proper consideration of alternatives by the Bureau of Reclamation (“Bureau”) and Department of Water Resources (“DWR”). Under the National Environmental Policy Act (“NEPA”), in particular, a lead agency cannot make a decision on a project before NEPA review is completed. The fact that the NEPA/CEQA lead agencies are moving forward with a Property Acquisition Plan for just one of the alternatives in the Water Fix/BDCP environmental review documents at the same time as other alternatives are supposedly still being considered, indicates that full consideration of the alternatives described in the environmental review documents is not occurring.

Second, the fact that the Property Acquisition Plan was obtained from MWD indicates that the water export contractors are exerting an unusual, and likely impermissible, level of control over what is described as a state and federal public works project. The active participation by MWD (and perhaps other unidentified state and federal water contractors) in the development of plans to take private property for the Tunnels project calls into question the commitment of the state and federal governments to actively manage the development of the Tunnels project in the public interest. While MWD answers only to its ratepayers, BOR must consider the public interest of the entire nation, and DWR must consider the interests of the entire state. Given the massive negative impacts not only on private property and farmland in the Delta as well as the severe degradation of water quality in the San Francisco Bay Delta that would occur as a result of the Tunnels, it is imperative that public agencies represent all of their constituents. Moreover, the water contractors should not have an unduly enlarged role in decisionmaking on the Tunnels project.

Third, the fact that the documents were obtained from MWD calls into question the commitment of the Bureau and DWR to communicate with affected property owners in the Delta regarding impacts on their homes, farms and communities. It appears that the water contractors are privy to essential information regarding the impacts of the project on specific properties prior to any attempts to provide that information to the affected landowners themselves. In a separate letter submitted to DWR on August 19, 2015, we have requested all documents pertaining to the development and review of the Property Acquisition Plan so that we may learn more about the apparently flawed process by which the Bureau and DWR appear to be undertaking planning for the Tunnels project. Delta landowners that are impacted by the Tunnels project have a right to know what is planned for their properties, which impacts their decisions as to how to manage their farms and lands in the coming years. Moreover, these property

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acquisition issues fall within the purview of the Bureau's NEPA cooperating agency process with several LAND districts, yet no attempt to bring this information forward in that process has been made.

In addition to the concerns described above, we have the following specific questions regarding the Acquisition Plan:

1. Press reports indicate DWR had the Acquisition Plan prepared and it was paid for by certain undisclosed water tunnel contractors.
 - a. What role, if any, did Metropolitan Water District, perform in the preparation of the Property Acquisition Plan?
 - b. Which water contractors or other entities have received the Property Acquisition Plan?
 - c. It appears a policy decision was made to provide the Property Acquisition Plan only to those who paid for it. If so, who made that policy decision?
 - d. What is the justification for providing these agencies with this information while withholding it from affected landowners?
 - e. What policy guidance was followed by DWR or given to DWR that directed the selective disclosure to of the Property Acquisition Plan to MWD and other water contractors?
2. Who, at DWR or other department, agency or office, directed that the Acquisition Plan be prepared?
3. Has DWR approved the Acquisition Plan? If so, who approved it and when?
4. Has DWR informed the prospectively impacted county officials regarding the properties to be taken within their respective jurisdictions?
5. When does DWR intend to inform landowners that their land is slated to be taken for the Tunnels project?
6. What, if any, role has the Bureau had in the development of the Property Acquisition Plan?
7. A Water Fix Fact sheet released today, August 20, 2015, indicates that there are potentially 192 impacted parcels.

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- a. What is the reason for the discrepancy between the 300 parcels listed in the Property Acquisition Plan and the 192 parcels referenced in the Fact Sheet?
 - b. Have any new parcels been "added" to the acquisition list that were not included in the version of the Property Acquisition Plan listing 300 parcels?
8. What are the budget estimates for implementing the Property Acquisition Plan, who prepared those estimates, and what assumptions were used in the tabulations?

We respectfully request written responses to these questions as soon possible, along with your respective agencies' responses to the concerns described in this letter.

Sincerely,

By: 
Osha R. Meserve

cc: Senator Lois Wolk (Mindy.Simmons@sen.ca.gov)
Senator Cathleen Galgiani (senator.galgiani@senate.ca.gov)
Assembly Speaker Toni Atkins (speaker.atkins@assembly.ca.gov)
Senator Kevin De Leon (kip.lipper@sen.ca.gov)
Senator Mark Leno (senator.leno@sen.ca.gov)
Assemblymember Jim Frazier (assemblymember.frazier@asm.ca.gov)
John Laird (Kimberly.goncalves@resources.ca.gov)
Congressman John Garamendi (Brandon.Minto@mail.house.gov)
Congressman Jerry McNerney
Jared Blumenfeld, Regional Director, U.S. EPA, Region IX
(blumenfeld.jared@epa.gov)
Christina Goldfuss (christina_w_goldfuss@ceq.eop.gov)
LAND Member Districts

From: Emily Hannah Freilich <ehf02014@MyMail.Pomona.edu>
Sent: Thursday, October 29, 2015 11:37 PM
To: BDCPcomments
Subject: Oppose the Delta Tunnels/California Water Fix (Alternative 4A)

To Whom it May Concern,

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

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

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

First, the remaining water in the Delta is critical for the natural habitat. While the natural habitat may not have a lobbying force, it is an essential part of the California economy. Our farms and communities cannot operate without the ecosystem services a functioning estuary provides. Functioning estuaries and healthy rivers clean water, support life that improves air quality, biodiversity, and land which in turn supports human and agricultural health. As climate change worsens, in no small part due to actions such as the California Water Fix, healthier estuaries and rivers make California more resilient to extreme weather events, help to decrease the variability in water flows, and sustain a working environment that can adapt to changing conditions.

Furthermore, the value from recreation, tourism, birding, and fishing in the Delta is immense. Recreation and tourism in the Delta generate \$750 million annually while the

salmon industry alone generates \$1.5 billion annually. Taking more water from the already strained Delta will cause irreversible harm to these economies, communities, and culture of California.

More than just taking away opportunities, diverting more water from the Delta will actively harm Delta farmers. These farmers are already facing saltwater intrusion, making their irrigation water unusable. As more water is removed from the Sacramento River, salt water intrusion increases and these farmers lose out so others can get water much less efficiently, at great expense to taxpayers, and great destruction with to the environment and overall California economy.

Given all the tunnels, dams, and pipelines California currently uses, it is clear that California's drought problems are primarily a result of bad water policy and water use rather than an environmental crisis. California has been in this race for more water for decades and is only harming its ability to adapt to climate change and to create a sustainable future. Building more tunnels will not help us to work out of this drought. Only by making more effective management, drought friendly agriculture, and the correct economic incentives can we sustain our cities, our food systems, and our natural ecosystems into the future. We can create jobs, ecosystem services, and a livable future by adapting water systems to be more efficient, to work smarter not harder. The California Water Fix is not the way to the future. It is the way backwards to a future characterized by more destruction. I implore the Bureau of Reclamation and the California Department of Water Resources to move away from this dead-end path and to instead choose from the many options that will improve the California's environmental, social, and economic health.

Sincerely,
Emily Freilich

Undergraduate Student

Pomona College

Karen Wilson
3505 Sonoma Blvd, #320
Vallejo, CA 94590

Oct. 30, 2015

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

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

Re: Reject California's Proposed Delta Tunnels Project—No Mitigation Can Make It Comply with the Clean Water Act

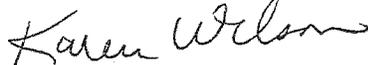
Dear President Obama and Madam Secretary:

The importance of estuaries has been recognized as the most scarce component of watershed systems. The proposed Delta Tunnels are so large they could easily drain the entire Delta Estuary of essential freshwater

For decades freshwater diversions from the San Francisco Bay Delta estuary have been a highly contentious issue within the electorate, courts and regulatory agencies because of the potential damage to one of the largest estuaries on the west coast of North America and the impacts to surrounding watersheds, communities and water dependent industries. Past efforts to build similar water export projects were rejected by voters, and with good reason.

If you are presented with this project, I am sure you will recognize that it cannot be modified to comply with the Clean Water Act. **Further resources should not be spent by U.S. Dept of the Interior on the Delta Tunnels**, but rather focused on the new "EcoRestore" that has been broken out as a separate project.

Thank you,



Karen Wilson
Karenwilson19@hotmail.com

Encl: BDCP/California Water Fix Comments on Partially Recirculated DEIR/Supplemental DEIS

President Barack Obama
The White House
1600 Pennsylvania Ave., NW
Washington, D.C. 20500

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

BDCPComments@icfi.com

Karen Wilson

October 29, 2015

BDCP/WaterFix Comments

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

Dear BDCP/California WaterFix staff

I received a copy at the "Open House" in Sacto on 7-28-15 of the BDCP/Calif Water Fix, Partially Recirculated DEIR/Suppl DEIS, where I took the opportunity to speak with the representative regarding fisheries issues. The answers I got were related to structures and installations "to better protect fish," with no answers to the number of increased counts. I was hoping to be able to read answers, and was disappointed to find that habitat restoration measures beyond what is considered mitigation for conveyance structures has been moved to EcoRestore.

How can these be separated, when all must be considered in Cumulative Effects Analysis?

Then, plowing thru to Section 5 on the disk, it is clear that even with mitigation, the Adverse Negative Water Quality Effects are in violation of both State and Federal Water Quality Laws. This is a reason to stop this re-evaluation of this project. Full Stop.

A cornerstone of the State Water Board and Regional Water Board's regulatory authority is the Antidegradation Policy (Resolution 68-16), which is included in the Basin Plans as an appendix. However, the Water Tunnels project Draft EIR/EIS and RDEIR/SDEIS fail to discuss or analyze constituents which will "degrade" water quality. These documents do not evaluate whether the designated beneficial use is degraded and what it means for Clean Water Act compliance.

A CWA Section 401 certification cannot be legally issued unless the project as a whole (*i.e.*, rather than the individual discharge mandating the 404 permit) meets water quality standards, which includes meeting beneficial uses designed to protect Delta species and ecosystems. The Water Tunnels project will fail across the board
There is no defensible anti-degradation analysis.

As noted above, in its August 2010 flow criteria report, the Water Board found that “[t]he best available science suggests that current flows are insufficient to protect public trust resources,” and that “[r]ecent Delta flows are insufficient to support native Delta fishes for today’s habitats.” However, flow regimes proposed by the current Water Tunnels project rely on water quality (including flow) objectives that have been failing to protect Delta ecosystem and aquatic species beneficial uses for the last 15 years or more. These include: Water Right Decision 1641 (D-1641)28; the 2006 San Francisco Bay/Sacramento-San Joaquin Delta Estuary Water Quality Control Plan; the 2009 NMFS Biological Opinion (BiOp); and the 2008 USFWS BiOp.

Further, the Water Tunnels project notably incorporates “bypass flows” that ostensibly establish the minimum amount of water that must flow downstream of the planned north Delta intake. Rather than protecting Delta flow, the Water Tunnels project reduces average annual Sacramento River flow downstream of the North Delta intakes. Reduced flows downstream of the north Delta intakes extend all the way past Rio Vista as well. Because it fails to put needed flows back into failing waterways, the **Water Tunnels project will violate water quality standards.**

Section 101(a) of the Clean Water Act (CWA), the basis for the antidegradation policy, states that the objective of the Act is to “restore and maintain the chemical, biological and physical integrity of the nation’s waters.” Section 303(d)(4) of the CWA carries this further, referring explicitly to the need for states to satisfy the antidegradation regulations at 40 CFR § 131.12 before taking action to lower water quality. These regulations (40 CFR § 131.12(a)) describe the federal antidegradation policy and dictate that **states must adopt both a policy at least as stringent as the federal policy and implementing procedures.**

The **CWA requires the full protection of identified beneficial uses.** The Federal Antidegradation Policy, as required in 40 CFR 131.12 states, “The antidegradation policy and implementation methods shall, at a minimum, be consistent with the following:

(1) Existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.” The Delta is classified as a Tier II, “high quality,” waterbody by US EPA and the SWRCB. EPA Region 9’s guidance on implementing antidegradation policy states,

“All actions that could lower water quality in Tier II waters require a determination that existing uses will be fully maintained and protected.”

California’s antidegradation policy is described in the State Antidegradation Guidance, SWRCB Administrative Procedures Update 90-004, 2 July 1990 (“APU 90-004”) and USEPA Region IX, (“Region IX Guidance”), as well as Water Quality Order 86-17.

California's Antidegradation Policy (Resolution 68-16) requires that:

- Existing high quality water will be maintained until it has been demonstrated that any change will be with the maximum benefit to the people of the State.
- The change will not unreasonably affect present and anticipated beneficial uses.
- The change will not result in water quality less than prescribed in the policies.

Beneficial uses includes fisheries. The Delta is recognized as being threatened by reductions in freshwater flows through the Delta. "[H]igher water exports" are among the factors the RDEIR/SDEIS admits "have stressed the natural system and led to a decline in ecological productivity." (RDEIR/SDEIS 1-10). Further, "There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta." (Draft EIR/EIS ES-10; RDEIR/SDEIS ES-6). The RDEIR/SDEIS admits that "the Delta is in a state of crisis" and that "Several threatened and endangered fish species . . . have recently experienced the lowest population numbers in their recorded history." (RDEIR/SDEIS ES-1).

In chapter 4 of the RDEIR/SDEIS, the Water Tunnels "would degrade the quantity and quality of rearing habitat for steelhead relative to Existing Conditions" and "would reduce the quantity and quality of rearing habitat for larval and juvenile green sturgeon relative to Existing Conditions." (ch. 4, 4.3.7-22; 4.3.7-296). In chapter 5, "Effects Analysis" of the BDCP Draft Plan (December 2013), "Sacramento River attraction flows for migrating adult winter-run Chinook salmon will be lower from operations of the north Delta diversions under the BDCP" and "Plan Area flows have considerable importance for downstream migrating juvenile salmonids and will be affected by the proposed north Delta diversions . . . Because of the north Delta diversions, salmonids migrating down the Sacramento River generally will experience lower migration flows compared to existing conditions . . . As with winter-run Chinook salmon, it was assumed with high certainty that Plan area flows have critical importance for migrating juvenile spring-run Chinook salmon." (Plan, ch. 5, 5.3-29; 5, 5.4-17).

Aqua-60 in Executive Summary shows Adverse impacts after mitigation for migration conditions.

CEQA requires that unless the Water Tunnels project is dropped, a new Draft EIR/EIS sufficient to provide for meaningful public review and comment must be prepared and circulated.

ES.1.3 Areas of Known Controversy

As noted in your long list of controversial areas, these proposals have been a highly contentious issue within the electorate, courts and regulatory agencies because of the potential damage to one of the largest estuaries on the west coast of North America and the impacts to surrounding watersheds, communities and water dependent industries. Past efforts to build similar water export projects were rejected by voters, and with good reason

As currently proposed, the State of California's water tunnels project does not comply with Federal law.

Recreation

Under Recreation, there are no mitigations recommended to prevent long-term reduction of recreation opportunities and experiences as a result of constructing the proposed water conveyance facilities (REC-2 and REC-10). Although there is a typo in the footnote, only conveyance-structure mitigations are mentioned. This leaves a SU=Significant and Unavoidable negative impact to boating and fishing recreation under CEQA and A= Adverse under NEPA.

Alone, these make the whole project unacceptable.

Similar unavoidable negative impacts

Similar admissions are made, even after mitigation, in the critical areas of Spring Chinook Salmon (AQUA-60), Groundwater (GW-5&6&7)(except in the immediate area of construction), and Permanent Farmland conversions including Williamson Act Lands (ES-82 & ES-43).

Impacts to water dependent industries that count on a healthy bay and estuary have been ignored or brushed aside. Drinking and recreational contact water quality impacts, including flow related toxic harmful algae blooms will impact millions of people who depend on a healthy estuary to live, play, work, farm and fish

Have the CVP and SWP made progress in meeting required mitigation measures including the required purchase of 27,000 acres of endangered species habitat for current operations?.

Trinity River below Lewiston

I am concerned that Fig.4.3.2-9 &10 do not reflect realistic values for avg wet yrs or long-term avg years.

People need to vote

It seems essential that all people in the nation need to vote on this project, since the economic viability and natural resources have so much affect on the people of the United States of America.

In Summary

The Delta has problems that need to be addressed, and the California Water Action Plan is addressing some of them, but the CA Water Fix tunnels won't fix them. It won't produce more water, more reliable supplies, or improved conditions for the environment in the Delta.

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

There are no alternatives that reduce water exports and increase Delta flows for consideration by the public and decision-makers. Such alternatives have a far better chance of complying with the Delta Reform Act and the federal Endangered Species and Clean Water Acts.

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Via U.S. Mail :
The Honorable Sally Jewell
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v

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2015/05/21/14
10:41 AM EST

From: Annie Hoagland <anne@jb-comm.com>
Sent: Thursday, November 05, 2015 2:20 PM
To: BDCPcomments
Subject: Comment Letters
Attachments: AR-M550U_20151105_132318[2].pdf; AR-M550U_20151105_132437[2].pdf; AR-M550U_20151105_132235[2].pdf; AR-M550U_20151105_132159[2].pdf

Please see attached comment letters, which were received by the California Natural Resources Agency prior to the October 30th comment deadline.