APPENDIX G5: 2008 INTEREST GROUPS PRELIMINARY SCOPING

COMMENTS
Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

1) The scope should be limited to "Tide beach" not Swamp Overflow
2) Most if not all of the Clarksburg area is under The Williamson Act
3) Area should be limited to west of Deep water channel
4) There are natural gas lines, state Deep utility lines, etc.
5) Clarksburg is rich, highly productive agriculture
6) How do you plan to mitigate for loss of jobs, housing, infrastructure, livelihood for those who have lived in the area for generations.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.
May 15, 2008

Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. Box 942836, Sacramento, CA 94236

Dear Ms. Brown,

The Bell Gardens Chamber of Commerce is concerned about the declining health of the Sacramento-San Joaquin Delta and its fading reliability of water supply for two-thirds of all California's residents as well as for half of the nation's produce.

We commend the Bay Delta Conservation Plan's collaborative effort among water agencies, environmental organizations, state and federal agencies. BDCP is key to mapping out a comprehensive conservation plan and solution for the Delta. The key to a reliable system is a restored Delta ecosystem and rebuilt water conveyance system.

Bell Gardens Chamber of Commerce supports BDCP's goal of placing the environmental health of the Delta and the reliability of our state's water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quality in wet years to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Delta Conservation Plan.

The success of the BGCP is essential to the continued economic health of California.

Sincerely yours,

Dennis R. Grizzle, Executive Director
Bell Gardens Chamber of Commerce
Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

BIOCOM, the association for the Southern California life science community, has more than 550 member companies in Southern California. The life science industry in San Diego County alone contributes 8-point-5 billion dollars to the economy.

Thank you for coming to San Diego to give me the chance to comment on behalf of my organization on the development of the Bay-Delta Conservation Plan.

BIOCOM was born in the early 1990s in the midst of a devastating drought. It was born because the life science industry recognized an urgent need to come together and push for actions that would enhance our region’s water reliability.

Today, we again see a need for urgent action. But this time it’s not only San Diego County’s water reliability that’s at risk – it’s the reliability of California’s water system.

The issues facing the Bay-Delta are tough and complex. But they need to be addressed, and addressed quickly. California’s water system cannot work without a plan that creates a more stable and sustainable Delta. And if California’s water system breaks down, industries such as ours are at risk of breaking down, too.

We support the Bay-Delta Conservation Plan because it maps out a comprehensive approach for solving the Delta’s most critical issues. It does so in a way that puts restoring water supply reliability on equal footing with restoring habitats for fish and wildlife. It is the foundation of a long-term solution for meeting the state’s future water needs.

We commend the Bay Delta Conservation Plan’s collaborative effort to date among water agencies, environmental organizations, and state and federal agencies, and urge your Steering Committee to make every effort to keep the plan on track for approval by 2010.

Over the years BIOCOM has strongly advocated for sound water policies and programs. These include programs that enhance regional water conservation efforts and expand the use of reclaimed water. Many of our member companies have embraced conservation and the use of reclaimed water for years, and many more are taking similar steps now. The life science community knows that finding more efficient ways to use this precious resource is the right thing to do for our future.

In an ultra-competitive industry, one of the few true growth industries in our state, and with other states spending millions to attract our companies and research institutes, water reliability in California is essential to the survival of the life science industry here. We need your help and leadership to push forward a comprehensive Bay-Delta plan that meets the critical water needs of our industry and our state.
Ms. Brown,

My name is Warren Bogle, I am a sixth generation Delta Farmer and hopefully my son will be the seventh. My family and I own and operate Bogle Vineyards, Inc in Clarksburg. I am writing because of serious concern over your proposed project. Obviously, sense our family and employees live, work and depend on the Clarksburg fertile farm land to make a living we are not for turning it into a title Marsh. I attended the scoping meeting in Clarksburg on April 30th and was very disturbed by the attitude of all the paid public officials. I felt their attitude was that this was no big deal but they don’t live here they were just paid to be there. On so many levels turning the Delta into a swamp or whatever you want to call it is wrong. I am sure many people have talked about the economic factors and tax consequences. I want to talk about the community. Living in Clarksburg my whole life, except for the years I left for College, it is a very special place. There are not many places left in California where everybody knows everybody else, where the crime rate is pretty much zero, and where neighbors actually care and help each with only a phone call. These are the values that are getting lost in society today and with this project you will lose a community that doesn’t really exist in very many places anymore. I think one of our fellow community members/farmer, Jeff Merwin, said it best at the scoping meeting when he said “What should be on the endangered species list is the Family Farmer and communities like ours”.

Warren Bogle
President
Bogle Vineyards, Inc.
warren@boglewinery.com
(916) 744-1669 (office)
May 5, 2008

Delores Brown
Chief Office of Environmental compliance
California Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

The Western Carwash Association (WCA) has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California's residents as well as for half of the nation's produce.

WCA is an association of car wash owners in the twelve western states, with a large membership from California. Our conveyor operators conserve precious water by using specialized high-pressure nozzles and recycling up to 85 percent of the water used per car.

We commend the Bay Delta Conservation Plan's collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan—and, a solution—for the Delta. And, the key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

WCA supports the BDCP's environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state's water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Sam Olivito
Executive Director
May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: Comment Letter—Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan

Dear Ms. Brown,

The California Farm Bureau Federation ("Farm Bureau") is a non-governmental, non-profit, voluntary membership California corporation whose purpose is to protect and promote agricultural interests throughout the State of California and to find solutions to the problems of the farm, the farm home and the rural community. Farm Bureau is California’s largest farm organization, comprised of 53 counties. Farm Bureau currently represents approximately 91,000 members in 56 counties. Farm Bureau strives to protect and improve the ability of farmers and ranchers engaged in production agriculture to provide a reliable supply of food and fiber through responsible stewardship of California’s resources.

Farm Bureau appreciates the opportunity to provide comments on the Department of Water Resources’ development of the Bay Delta Conservation Plan ("BDCP").

Farm Bureau sees the Bay-Delta Conservation Plan ("BDCP") as a potential way, at least partially, to resolve various heretofore insurmountable problems, relating to the reliability of exported water supplies from the Bay-Delta system on one hand, and a steady decline in key species and the Bay-Delta ecosystem on the other. The HCP/NCCP model may serve as a vehicle to overcome financing issues that have plagued past efforts to address recurring problems in the Bay-Delta and also to directly link positive actions for the benefit of listed species and the environment to water conveyance and water operations actions by way of a regulatory permitting process to achieve compliance with state and federal endangered species laws.

This promise of a potential long-term solution is the reason our organization requested and accepted a seat on the BDCP Steering Committee and it is the reason we remain at the table
and support and remain committed to the process as it moves forward. At the same time, as a statewide agricultural trade association, consistent with our overall mission and policies, we have on-going concerns related to the potential effects of some proposed BDCP actions on agriculture in the Delta region, as well as upstream areas and Northern California. Significant historic problems and tensions related to these concerns persist within our State—and, while the immediate and very real impacts of the current, largely litigation-driven crisis are playing out in the export-dependent areas of the State, we believe it is also necessary to consider and deal forthrightly with the potential long-term effects of proposed actions on other areas of the State as well. These comments are offered not impede the progress of the BDCP planning effort, but rather to raise certain critical issues that will, in our view, inevitably require direct and deliberate attention to achieve a truly durable and acceptable outcome for the state as a whole.

Consideration of Deliberate Water Quality Mitigation Measures Both In BDCP EIR/EIS And As Part of On-Going HCP/NCCP Planning That Currently Assume Dual Conveyance:

A recent staff-level, technical submission by the Farm Bureau to the BDCP Conveyance Workgroup identifies and discusses several salinity control options; a focused technical effort by the BDCP could no doubt identify many more. In addition to analyzing and comparing any dual and fully isolated conveyance alternatives to an improved through-Delta alternative, the BDCP EIR/EIS should immediately initiate an analytical effort to identify a range of potentially feasible mitigation options to address, significantly reduce, and avoid potential Delta salinity impacts of a potential dual or isolated conveyance facility. These efforts should begin at once in analyses for the BDCP EIR/EIS process, but should also proceed as an express part of the BDCP on-going HCP/NCCP planning activities that are currently assembling a conservation strategy on the basis of an assumed dual system of conveyance.

Inclusion in BDCP EIR/EIS of Potential Improved Through-Delta Conveyance Alternatives That Substantially Achieve BDCP Objectives, While Avoiding Adverse In-Delta Water Quality Impacts:

CEQA and NEPA require consideration of a range of alternatives (and of a statutorily required “no project” or “existing conditions” alternative) as a means, not only to assess potentially significant adverse environmental effects under each of the various alternatives, but also to evaluate the relative merits of alternatives that could avoid or reduce potentially significant adverse effects that might arise under another alternative. This analysis is required even where it such an alternative might in some degree impede full attainment of some project objectives.

Pursuant to the BDCP Points of Agreement, on-going analysis of a preferred dual-conveyance direction is to include:

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1 See attached “Suggested Direction for An Analytic Effor That May Achieve BDCP Water Supply and Ecosystem Objectives While Appropriately Anticipating and Addressing Adverse Water Quality Impacts of Dual or Isolated Conveyance” and associated materials (revision dated May 29, 2008).
consideration of potential “[m]odifications to existing south Delta facilities to […] improve the State Water Project’s (SWP) and Central Valley Project’s (CVP) ability to convey water through the Delta while contributing to near and long-term conservation and water supply goals”;  

evaluation of “the ability of a full range of design and operational scenarios to achieve BDCP conservation and planning objectives over the near and long term,” including the “use of the new facilities in conjunction with existing facilities,” but also scenarios potentially involving “full reliance on the new facilities to use of the new facilities in conjunction with existing facilities”;  

identification of “issues relating to the potential effect of the conveyance system on in-Delta water quality,” and consideration of “potential actions that may help meet appropriate water quality objectives for the duration of the plan.”

Unlike a modified through-Delta conveyance alternative that at least ensures a consistent and generally adequate level of freshwater inflow to the Delta in that the total amount of inflow would not differ significantly from current conditions, any dual conveyance alternative with a substantial around-Delta component alone will necessarily represent an overall reduction in Delta inflow (regardless of timing, operations, etc.). Because of this significant difference between an improved through-Delta and any dual conveyance or isolated conveyance alternatives, it will be absolutely necessary to develop and analyze at least one improved through-Delta alternative in the BDCP EIR/EIS at a commensurate level of detail to any dual of isolated alternative.

To meet BDCP export water supply and species conservation objectives and, at the same time, substantially avoid adverse, in-Delta water quality impacts, at least one improved through-Delta alternative should go significantly beyond the through-Delta improvements considered by the Metropolitan Water District of Southern California (MWDSC) and others, as an interim option and for a narrower set of the specific objectives, early on in the BDCP process. In addition, any improved through-Delta alternative involving an isolated Middle River conveyance corridor and siphon under Old River should examine both cost-saving measures (in terms of substantial, initial estimates on levees armoring costs, for example) and feasible measures to maximize the water supply potential of such an alternative (e.g., necessary channel dredging, low-lift pumps, etc.). In particular, the EIR/EIS should utilize useful elements from Russ Brown’s “Delta Corridors” concept as modeled, refined and supplemented by the South Delta Water Agency.  

See “Points of Agreement” at 3.

2 See id. at 4.

4 Id. at 7.

Whether such an improved through-Delta alternative will be capable of substantially achieving water supply and species conservation objectives of the BDCP, while avoiding important adverse water quality effects when compared to other alternatives, is unclear at this time. Nevertheless, this is a necessary analysis and comparison that must occur in the EIR/EIS.

**Water Transfers:**

Removing or reducing current impediments to conveyance across the Delta could greatly facilitate water transfers from agricultural uses in Northern California to other uses in Southern California. However, these actions could negatively result in a significant reallocation of water supplies, leading to potential fallowing or permanent loss of agricultural land, rising prices for agricultural water, significant socioeconomic impacts in communities and regions of the state that currently depend on agriculture as a source of income, new growth in export-dependent areas of the State, and other potential, adverse, environmental impacts. The BDCP EIR/EIS should consider such impacts, including potential sources and volumes of transferred water and ways in which such impacts could be avoided or reduced.

At the same time, new water marketing opportunities could help to increase water supply reliability statewide, reduce or avoid groundwater overdraft conditions in areas South of the Delta, and potentially create new opportunities for more effective ecosystem protection. The BDCP EIR/EIS should examine both potential adverse effects and benefits of increased water transfers as a possible consequence or outcome of improved conveyance. Legal incentives to encourage active water markets, while avoiding adverse effects, should include retention of water rights to transferred water, mitigation for third-party effects, as well as area of origin and local groundwater basin protections.

**Levees / Flood Control:**

BDCP actions that would potentially remove private lands from local tax rolls and levee assessment districts, or that reduce the economic viability of Delta agriculture overall by increasing Delta salinity, could lead to a decline in local investment and capacity to maintain and improve levees. This could lead to the unplanned loss of numerous Delta islands, with potential widespread adverse impacts on water quality, water supply, species conservation, and habitat restoration. The BDCP EIR/EIS should consider the potential for such impacts and adopt appropriate mitigation measures, including measures to reduce and avoid adverse large-scale water quality and farmland conversion impacts, in order to provide the conditions for an economically viable agricultural economy that will continue to maintain and improve Delta levees over time. In addition, the BDCP EIR/EIS should also consider and address potential adverse seepage and downstream flooding effects associated with potential restoration of Delta lands for habitat use.

Farmland Conversion & Impacts on Agricultural Economy:

Future implementation of proposed habitat restoration and conveyance improvements for the BDCP has potential to convert significant amounts of important farmland and to otherwise significantly impact agricultural operations in the BDCP Planning Area. Both CEQA and NEPA require consideration of impacts to agricultural lands. Impacts to existing farmland or agricultural operations in the planning area should be clearly identified, avoided, and mitigated to the maximum extent possible. Numerous feasible options to avoid, reduce, and lessen significant impacts on agricultural land exist, including the following:

- Siting of restoration and conveyance facilities to avoid conversion of productive farmland.
- Avoiding impacts to high-value agricultural lands and instead directing proposed habitat restoration projects toward alternative marginal and flood-prone lands whenever possible.
- Phasing restoration floodplain and tidal marsh habitats over time, to avoid significant impacts and allow existing uses of the land to continue in the interim.
- Maintaining agricultural water supplies of sufficient quantity and quality to enable continued farming of a wide range of crops in the Delta, including high-value, non-salt-tolerant crops.
- Adopting a willing-seller-only policy with respect to acquisition of necessary lands.
- Utilizing available public and existing conservation lands before acquiring or otherwise restricting lands in private ownership.
- Utilizing easements, as opposed to fee title acquisition, to maintain private ownership of agricultural lands and commercially viable agricultural whenever possible.
- Preserving existing agricultural land at a 1:1 or greater ratio, including in particular lands on the periphery of the Delta that could serve both presently and in the future as a ‘bulwark’ against urban encroachment, cumulative farmland loss, long-term subsidence and potential loss of lower elevation lands, future sea level rise, etc.
- Allotting buffers to avoid adverse impacts to adjacent lands.
- Providing payments in lieu of taxes or local tax offsets to compensate losses of local tax revenues resulting in significant public acquisition of private owned lands.
Providing economic incentives for Delta farmers to undertake actions that benefit covered species and ecosystem health, while allowing economic uses to continue on privately held lands.

Working with private landowners and adopting specific mitigation measures to address impacts to adjacent lands, increased flood risks, incompatible timing of floodplain inundation, etc.

Providing significant, sustained investment in research, including financial incentives for voluntary implementation of landscape-level demonstration projects to develop practices, technologies, and methods to facilitate a potential transition to carbon farming, new crop types, and other alternative forms of agriculture for the purpose of achieving greater long-term sustainability in key areas of the Delta, as appropriate.

Fully compensating farmers for truly unavoidable, adverse impacts.

Cumulative & Indirect Impacts:

The BDCP EIR/EIS should analyze potential statewide farmland conversion and growth inducing impacts from new conveyance. Agricultural land that might be lost to water quality impairments or habitat restoration in the Delta, to induced urban growth in the San Joaquin Valley or Southern California, or to water transfers and fallowing to the North should all be considered in EIR/EIS. Furthermore, when considering the environmental and economic impacts of Delta farmland conversion it is relevant to consider impacts to the human food supply, the implications for long-term food security, domestic versus foreign production, and cumulative and indirect impacts from farmland conversion both nationally and throughout the State of California.

Closing:

Thank you for the opportunity to provide our comments and concerns. We look forward to further involvement and discussion with the Department of Water Resources on the development of the Bay Delta Conservation Plan.

Sincerely,

Kari E. Fisher
Associate Counsel
SUGGESTED DIRECTION FOR AN ANALYTIC EFFORT THAT MAY ACHIEVE
BDCP WATER SUPPLY AND ECOSYSTEM OBJECTIVES WHILE
APPROPRIATELY ANTICIPATING AND ADDRESSING ADVERSE WATER
QUALITY IMPACTS OF DUAL OR ISOLATED CONVEYANCE

REVISED
SUBMISSION BY NGO CALIFORNIA FARM BUREAU FEDERATION FOR TIMELY
DISCUSSION AND CONSIDERATION IN THE BDCP PROCESS

MAY 29, 2008
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REVISED
SUBMISSION BY NGO CALIFORNIA FARM BUREAU FEDERATION FOR TIMELY DISCUSSION AND CONSIDERATION IN THE BDCP PROCESS

MAY 29, 2008

PROBLEM STATEMENT:

Directly or indirectly, Delta salinity is a problem that affects the whole of the State of California. It is and will remain a problem for Delta agriculture, and for urban and agricultural South-of-Delta contractors of the CVP and SWP, as well as ecosystems associated with or connected to the Delta. Some of obvious causes of this problem include saltwater intrusion from the San Francisco Bay and Pacific Ocean, tidal mixing and trapping, marine sediment formations on the west side of the San Joaquin Valley, inadequate drainage and disposal of discharge from the San Joaquin Valley, insufficient dilution and insufficient flows in the San Joaquin River, elevated salt loads in runoff to the San Joaquin River, upstream and in-Delta diversions, and exports from the South Delta by the SWP and CVP.

Elevated salinity in the Delta affects water levels for Delta diversions and impairs water quality for irrigation in the South, West and Central Delta. Elevated salinity in the South Delta is a problem for urban areas that draw on the Delta as a source of drinking water (as a source of bromides and, thus, of carcinogenic disinfection byproducts, as well as costly blending and treatment processes). Excessive salinity in imported water adversely affects drinking water quality for urban water purveyors within the State Water Project, whereas the impact of Delta salinity on the Contra Costa Water District and City of Antioch, with their intakes in the West Delta is critical. Elevated salinity is a problem for agriculture in the San Joaquin Valley, Tulare Basin, and other areas of the State where salt loads in exported water concentrate in soils and groundwater, threatening crop yields, water supplies, and long-term agricultural productivity. Finally, saltwater intrusion and high salinity can signal a lack of necessary inflow for fish, which can in turn increase contaminant loads, degrade habitat, and contribute to other problems, including low dissolved oxygen and the proliferation of invasive species such as Corbula amurensis and Egeria densa.

Without corrective measures, as demand for water supply grows and California’s climate changes, problems related to saltwater intrusion and insufficient Delta inflow will predictably worsen. A more immediate concern, however, is that construction and
operation of an isolated or dual facility in the Delta, without significant mitigation, will
degrade Delta water quality and, thus, greatly impact in-Delta agriculture and in-Delta
water supplies for irrigation. If poor water quality makes farming in the Delta
uneconomic, there will be fewer income and revenue generating uses and lower levee
assessments from reclamation districts and private landowners to maintain Delta levees.
Without sufficient investment and upkeep, existing levees will fail increasingly, gradually
converting large areas of the Delta to poor-quality open-water habitat, greatly increasing
the tidal prism, and further deteriorating water quality for remaining beneficial uses. Poor
in-Delta water quality will make any through-Delta component of dual conveyance
impractical, particularly during the drier part of the year that coincides with the irrigation
season, if not year-round.

It is possible that dual or isolated conveyance could solve some of the water quality and
water supply reliability problems of Delta exporters. This, however, assumes existing
water rights, area-of-origin protections, endangered species requirements, and protection of
existing beneficial uses can be surmounted without significant reductions in exports.
Without continued freshwater flows into the Delta, it is not clear that this will be the case.

The BDCP process has hypothesized a number of potential advantages that could accrue
from dual or isolated conveyance to fish species and the ecosystem, including substantial
avoidance of entrainment risks, fewer constraints on restoration of desirable habitats, and
(in theory) greater variability, more natural hydrology and enhanced functioning of the
Delta ecosystem as a natural estuarine system. Here again, though, continuing freshwater
flows into the Delta are the essential ingredient: Without these, no amount of physical
habitat or reduced entrainment can sustain or recover flow-dependent species and
processes—and bypassing the Delta by diverting a significant portion of Sacramento River
flow around the Delta will quite obviously reduce the ability to provide such flows with
existing water supplies, while still protecting prior water rights and existing beneficial
uses.

Isolated or dual conveyance, then, without continuing freshwater flows through the Delta,
may have adverse impacts on species and, given existing legal and regulatory constraints,
may not ultimately achieve intended water supply reliability benefits either. Finally, the
most obvious and inevitable casualty of an isolated or dual system without significant
mitigation would be Delta agriculture—and not only agriculture in the South Delta, but
quite probably agriculture in the North, Central, West and East Delta as well.

**SUGGESTED DIRECTION FOR INQUIRY DIRECTED TOWARD A SOLUTION:**

To explore candidly and forthrightly whether it is possible to address serious potential
conflicts between conveyance and water supply on one hand and Delta agriculture and the
ecosystem on the other, it is necessary to explore, as quickly as possible, the full range of
potential methods to provide freshwater flows to the Delta and offset flows that would be
lost to a Sacramento River diversion. If feasible means to provide adequate freshwater
flows to the Delta in a dual or isolated scenario exist, an optimized suite of available
mitigation methods should be made a prominent and deliberate part of BDCP planning.
Simple arithmetic forces a conclusion that mere operational measures and flexing of regulatory standards and rules will be insufficient to resolve the conflict between an isolated facility and in-Delta water quality. In order for such a system to function for the intended purpose and still accommodate other needs and priorities, rapid identification of an optimized package of physical and functional mitigation measures is a critical need that the BDCP and other planning processes must begin to address at once. To help catalyze and orient this exceedingly important evaluation as soon as possible, the remainder of this memo describes a broad menu of potential mitigation tools. An optimized combination of tools from this menu could help greatly to avoid some of the adverse impacts of alternative conveyance, while at the same time meeting critical water supply and species conservation objectives of the State as a whole.

**MENU OF POSSIBLE MITIGATION OPTIONS REQUIRING IMMEDIATE ATTENTION IN THE BDCP AND OTHER PLANNING PROCESSES:**

I. **THE DELTA TRIBUTARIES:**

A. **DELTA TRIBUTARIES, SEPARATE PROBLEM STATEMENT:**

The current water balance of the Delta is conspicuously dominated by the Sacramento River and its tributaries, including the Feather, Yuba and American Rivers. To a large extent, this is a natural consequence of the northern California’s much wetter hydrology. Further contributing to this north-south imbalance, however, is the lack of inflow to the Delta from the San Joaquin River itself and from several major eastside tributaries. The Mokelumne and Hetch-Hetchy Aqueducts, for example, in the immediate upstream vicinity of the Delta, remove substantial volumes of water from the Delta watershed. This artificial removal of major tributary flows shifts much of the burden of salinity control and instream flows for fish to the Sacramento River and its tributaries to the north, the New Melones reservoir on the Stanislaus River, and the SWP and CVP export pumps in the South Delta. Linked directly or indirectly to this circumstance, one observes numerous related problems in the South Delta. Thus, (1) salinity at Vernalis and in the South Delta routinely exceeds established standards for irrigation; (2) falling water levels require rock barriers and other extraordinary measures to maintain diversions from Delta channels; (3) low dissolved oxygen in the Stockton Deep Water Ship Channel on the Lower San Joaquin and in South Delta channels impairs conditions for migrating salmon; (4) invasive, sediment-trapping aquatic weeds proliferate along with the non-native predatory fish species that thrive in them; (5) a variety of contaminants including salt, boron, and selenium enter the Delta at elevated concentrations.

An isolated conveyance structure around the Delta would significantly worsen existing water quality problems in the South Delta and adjacent areas of the Delta by shifting Delta hydrodynamics from a Sacramento River-dominated, perennial freshwater water system to a more saline and tidally influenced environment, characterized by reduced circulation and lower inflow overall, and proportionately greater poor-quality San Joaquin River inflow in particular. Without deliberate and robust mitigation, salinity and other water quality of problems of the South and West Delta will be replicated and extended northward from the
South Delta and inland from the Bay. Thus, lands currently devoted to higher value crops in the Central and South Delta would see dramatic declines in productivity, significantly increased leaching requirements, and fallowing or conversion to lower value, salinity tolerant crops such as those grown currently in the Western Delta or other uses. In addition to the adverse effects on Delta agriculture, degraded water quality, higher contaminant loads, and reduced outflow would adversely affect other beneficial uses, fish species, and ecological processes.

B. DELTA TRIBUTARIES, POSSIBLE SOLUTIONS:

As detailed above, there are numerous potentially deleterious consequences of an isolated facility without tributary flows and without mitigation. This dire portrait, however, presupposes that a future isolated facility would be operated exclusively or preferentially to any remaining through-Delta method of conveyance. In contrast, it is possible that an isolated facility operated non-preferentially, or an isolated facility sized and designed to facilitate permanent water exchange arrangements on one or more of the Delta’s eastside tributaries, could help to reduce some adverse impacts of such conveyance, while simultaneously contributing to the conservation of covered species and reduced regulatory restrictions on exports. A less constrained future conveyance system, therefore, could potentially facilitate and enable opportunities for water exchange arrangements that would not otherwise be possible. Furthermore, benefits associated with such water exchange arrangements, in terms of unmet needs or current vulnerabilities of key partners, could serve to make such exchanges mutually advantageous and more attractive.

C. DELTA TRIBUTARIES, POTENTIAL WATER EXCHANGE OPTIONS:

1. POTENTIAL MOKELUMNE AQUEDUCT EXCHANGE WITH THE EAST BAY MUNICIPAL UTILITY DISTRICT:

Potential Mokelumne Aqueduct Exchange with the East Bay Municipal Utility District: In recent years, the East Bay Municipal Utility District (EBMUD) exported an average of 245,000 acre-feet annually via the Mokelumne Aqueduct to the San Francisco Bay Area,\(^1\) and EBMUD holds water rights of up to 364,000 acre-feet annually from the Mokelumne, subject to streamflow and the water supply needs of senior water rights holders.\(^2\) EBMUD’s current supply from the Mokelumne River and growth within its service area make it vulnerable in times of drought.\(^3\) In dry years and in the future, EBMUD’s water supplies are also vulnerable to senior and area-of-origin water rights in the Mokelumne

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\(^1\) See California Water Plan Update 2005, Volume 3, Chapter 7, at 7-8.
River watershed. Future growth, both within EBMUD’s service area and in the Mokelumne River watershed, will place further strains on EBMUD’s existing water supplies. Potential reduced reliability from declining snowpack and early runoff forecast possible additional vulnerabilities related to EBMUD imported Mokelumne River supplies. Other perennial concerns of EBMUD include (1) the Mokelumne River’s extremely variable hydrology, (2) periodic service interruptions related to excessive turbidity, (3) the prospect of severe rationing during multi-year droughts such as the historic 1977-78 and 1987-1991 droughts, (4) obligations to downstream users and to meet instream flow requirements, (5) seismic and flood vulnerabilities in the Delta and throughout the Bay Area, and (6) limited opportunities to participate in interregional water transfers or conjunctive use possibilities North or South of the Delta.

More reliable Sacramento River water from an isolated facility could provide an incentive for EBMUD to forego diversions from the Mokelumne River under certain conditions as a way of partially addressing water quality impacts in the Delta and, at the same time, improving conditions for fish.

Camanche and Pardee, with capacities of 417,000 acre-feet and 198,000 acre-feet, respectively, and both controlled and operated by EBMUD, could provide flexibility in regulation and timing of releases to the Delta. Significant restoration of tributary flows in the Mokelumne River could in turn greatly lessen the adverse impact of these facilities on historic fisheries below these dams. A proposed intertie between EBMUD’s Mokelumne Aqueduct and the SFPUC’s Hetch-Hetchy (the SFPUC-Hayward-EMBUD Intertie) could facilitate transfers among these Bay Area water purveyors or from outside the region. SFPUC’s Hetch-Hetchy system includes an existing Milpitas Intertie and two South Bay Aqueduct interties. Similarly, a proposed connection between EBMUD’s Mokelumne Aqueduct and Freeport Regional Water Project and Contra Costa Water District’s Los Vaqueros Reservoir would further enhance the potential for regional water exchanges.

In a future scenario involving dual or isolated conveyance through the Delta, Zone 7, State Water Project and Central Valley Project contractors would benefit from a dual or isolated conveyance facility. Future interties between Delta-Mendota Canal and California Aqueduct, EBMUD’s Mokelumne Aqueduct and/or SFPUC’s Hetch-Hetchy Aqueduct would, in effect, connect the Bay Area to water markets North and South of the Delta. This could in turn favor water exchanges that would increase the reliability of Bay Area supplies, while reducing reliance on imported supplies from the Mokelumne and Tuolumne Rivers.

Such water exchange arrangements among Bay Area agencies and with areas North and South of the Delta could help to mitigate adverse water quality impacts from isolated or dual conveyance by replacing a portion of the Central and South Delta’s lost inflow from

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4 See California Water Plan Update 2005, Volume 4 at 4-647, 4-649.
7 See EBMUD 2005 UWMP at 2-5, 2-11.
the Sacramento River. Supplemental Mokelumne River flows could be particularly important in dry years, when water quality conditions in the Central and South Delta would be most impacted. Furthermore, increased Mokelumne River flows could help to mask potential false cuing effects from possible increased Sacramento River flows from DCC reoperation, a Through-Delta Facility, or a Middle River conveyance corridor.

2. POTENTIAL HETCH-HETCHY AQUEDUCT EXCHANGE WITH THE CITY OF SAN FRANCISCO:

Hetch-Hetchy Aqueduct Exchange with the City of San Francisco: In recent years, the San Francisco Public Utilities Commission (SFPUC) diverted an average of 267,000 acre-feet a year from the Tuolumne River via the Hetch-Hetchy Aqueduct.\(^8\) From SFPUC’s Hetch-Hetchy / O’Shaughnessy Reservoir (360,000 acre-feet),\(^9\) en route to the City of San Francisco and environs, the Hetch-Hetchy Aqueduct passes under New Don Pedro Reservoir (operated and controlled by Turlock Irrigation District and Modest Irrigation District, with a total capacity of 2,030,000 acre-feet).\(^10\) Of this 2 million acre-feet of total storage capacity, SFPUC has rights to store between 570,000 and 740,000 a year for use at times when senior rights on the Tuolumne allow export of this water. Below New Don Pedro, on the Valley Floor, the SFPUC’s aqueduct passes under both the federally controlled Delta-Mendota Canal (DMC) and state-controlled California Aqueduct. With some modifications to existing infrastructure, SFPUC’s storage at Hetch-Hetchy, Cherry Lake, Lake Lloyd, and its “water account” in New Don Pedro reservoir could be used to both regulate releases into the Tuolumne River and maintain carryover supplies year to year. As noted above, new interties between the SFPUC’s Hetch-Hetchy reservoir, the DMC, and the California Aqueduct could be used in combination with planned and existing interconnections to CCWD, the Santa Clara Valley Water District (SCVWD), Zone 7, EBMUD, and others to facilitate mutually beneficial exchanges of exported Sacramento River water, in lieu of water currently diverted by the SFPUC from the Tuolumne River. Storage in existing or potential future Bay Area reservoirs, including a possible Los Vaqueros Expansion, would supplement SFPUC’s storage in the upper watershed.

In the case of the Tuolumne River and SFPUC’s Hetch-Hetchy Aqueduct, as with the Mokelumne River and EBMUD’s Mokelumne Aqueduct, foregone tributary water would remain in the river, augmenting freshwater flows to the South and Central Delta. Such an arrangement could potentially reduce the current burden on the CVP’s facilities at New Melones to meet South Delta agricultural standards. In addition, such an option could provide a functional equivalent of recirculation from the DMC, while avoiding potential

\(^8\) See California Water Plan Update 2005, Volume 3, Chapter 7 at 7-8.
\(^9\) See California Water Plan Update 2005, Volume 4 at 4-649. For a detailed information concerning SFPUC’s existing facilities and current water planning activities see also the SFPUC’s “2005 Urban Water Management Plan for the City and County of San Francisco (http://sfwater.org/mto_main.cfm/MC_ID/13/MSC_ID/165/MTO_ID/286) and June 2007 Draft Program Environmental Impacts Report for SFPUC’s Water System Improvement Program (http://www.sfgov.org/site/planning_index.asp?id=80530).
\(^10\) See id. at 4-646.
fish cuing problems associated with the latter. In combination with potential restored flows from Friant in the Upper Reaches of the San Joaquin River, supplemental Tuolumne River flows could help restore salmon and other anadromous fish in the San Joaquin River and its tributaries. Lastly, of relevance to South Delta agriculture, particularly in dry years and late summer, these restored tributary flows could help to correct the historic problem of insufficient tributary flows to the Delta that an isolated or dual conveyance facility would significantly worsen.

3. SAN JOAQUIN AND SACRAMENTO COUNTY WATER USERS ON THE MOKELOMNE, CALAVERAS, AND STANISLAUS, LOWER SAN JOAQUIN RIVERS:

a) SAN JOAQUIN COUNTY AND SOUTH DELTA INSTREAM FLOW AUGMENTATION THROUGH SMALL-SCALE WATER TRANSFERS, CONJUNCTIVE MANAGEMENT OR SUBSTITUTE WATER SUPPLY:

San Joaquin County and South Delta Instream Flow Augmentation: Local water agencies in San Joaquin County that rely currently upon variable surface water supplies and limited local groundwater might have an interest in contracting for firm, relatively high quality deliveries from an isolated facility, in lieu of water such districts might otherwise divert from the Mokelumne, Calaveras, Stanislaus, and Lower San Joaquin Rivers. While this concept would require much additional reconnaissance in terms of its actual feasibility, potential beneficiaries on the Lower Mokelumne include Woodbridge ID, Woodbridge WUCD, Lockeford CSD, North San Joaquin WCD, and the City of Lodi. Similarly, potential participants on the Calaveras River and Lower San Joaquin include Stockton East Water District, the City of Stockton, the County of San Joaquin, the California Water Service Company, the Cities of Lathrop and Manteca, and the Central San Joaquin Water Conservation District. Lastly, in the Delta itself, it may be possible to directly improve flows and future water quality in the South and Central Delta by directly delivering substitute or supplemental water from an isolated facility to agricultural users on the Lower San Joaquin.

b) SOUTHEASTERN SACRAMENTO COUNTY & FOLSOM-SOUTH CANAL:

Southeastern Sacramento County and Folsom-South Canal: The unfinished Folsom South Canal runs 27 miles, north-to-south, from Lake Natoma and Nimbus Dam to the Sacramento Municipal Utility District’s (SMUD’s) defunct Rancho Seco Nuclear Power Plant on the Consumnes River. Originally, the Canal was to continue an additional 42-miles south. Because the CVP’s Auburn-Folsom South Unit was never completed, however, historically expected water supplies from Auburn Dam and the American River

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11 See Section II.A.3 below.
12 See USBR Mid-Pacific Region Office description of planned CVP Auburn-Folsom South Unit project (http://www.usbr.gov/dataweb/html/auburn.html).
13 Ibid.
have never materialized for a number of agricultural and municipal water users in Sacramento and San Joaquin Counties that depend, as a result, on limited local surface and groundwater supplies.

As part of its Freeport Regional Water Plan project, EBMUD is currently constructing a pipeline from the end of the existing Canal, south to EBMUD’s Mokelumne Aqueduct.14 Under a negotiated agreement with the Sacramento County Water Agency (SCWA), EBMUD plans to divert up to 110 thousand acre feet from the Sacramento River in “dry” years only, via the existing section of Folsom South Canal, and by pipeline from the end of the existing FSC to the Mokelumne Aqueduct near Camanche Reservoir.15 SCWA will utilize the FRWP, in all water year types, to divert up to 95 thousand acre feet from Sacramento River for service to Rancho Cordova and to the rapidly urbanizing Elk Grove, Laguna, Vineyards areas, south and east of Sacramento and north of the Consumnes River.16 In addition, as a settlement of previous claims against the EBMUD, EBMUD will utilize unused capacity in its Folsom South Connection to wheel a small amount of CCWD’s total CVP contract entitlement for storage at Los Vaqueros.17

South of SCWA’s Zone 40, the Galt Irrigation District, Clay Water District, and Omochumne-Hartnell Water-District (on the Consumnes River above Cosumnes Preserve and South and East of Elk Grove) lie along the southern-most alignment of the existing Folsom South Canal, but rely primarily or entirely on local groundwater, local streams, and the Consumnes and Mokelumne Rivers, as opposed to surface water deliveries from Folsom-South Canal. On-going groundwater recharge, conjunctive management, and stream restoration efforts by these still largely agricultural districts, SCWA, The Nature Conservancy, and others18 could be expanded with potential deliveries of purchased surface water supplies from Folsom Lake, including water supplies no longer required by SMUD for use at Rancho Seco or possible entitlements associated with historic water rights applications related to Auburn Dam. Direct deliveries from Folsom South Canal could (1) reduce pressure on local groundwater supplies, (2) improve flood control for the City of Sacramento, (3) support the local agricultural economy by increasing local water supply reliability, (4) increase instream flows for fish and wildlife and floodplain restoration purposes, and (5) potentially increase freshwater flows in the North and Central Delta.

Other water exchange possibilities in this area include the use of unassigned wet and normal year capacity in EBMUD’s FRWP Folsom South Canal Connection facilities to

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14 For a detailed description of this project see EBMUD’s 2005 UWMP, supra, at 2-13 and 2-14.
15 See Freeport Regional Water Project description at http://www.freeportproject.org/nodes/project/index.php; July 2003 FRWP Draft EIR/EIS (http://www.freeportproject.org/nodes/project/draft_eir_eis_v1.php). Note “dry” years, for purposes of the FRWP settlement, are defined as rationing years in which EBMUD’s base supply fall below 500,000 acre-feet.
16 Ibid.
17 See EBMUD 2005 UWMP at 2-11.
18 For information, see website of the South Sacramento Agricultural Water Authority (http://sscawa.org/sscawa/projects.cf). Regarding the related Central and South Sacramento County Regional Water Partnership, see EBMUD UWMP 2005 at -2-21 and 2-22.
carry out conjunctive use projects in Central and South Sacramento County and North Eastern San Joaquin County. Similarly, while such projects would need to be sensitive to concerns relating to local groundwater, large-scale storage and conveyance capabilities in EBMUD’s Mokelumne Aqueduct and at Pardee and Comanche Reservoir could combine with local needs in historically declining groundwater basins to favor additional conjunctive use and groundwater banking arrangements and, potentially, return tributary flows to the Delta.  

II. OTHER POTENTIAL PHYSICAL MEASURES TO MAINTAIN ACCEPTABLE WATER QUALITY IN THE DELTA:

A. WATER ROUTING OPTIONS TO COUNTERACT SALINITY INTRUSION, STAGNATION, AND WATER QUALITY DEGRADATION IN THE CENTRAL AND SOUTH DELTA:

1. THROUGH-DELTA FACILITY:

Through-Delta Facility: One or more screened diversions in the vicinity of the CVP’s existing Delta-Cross Channel gates and/or Georgiana Slough could work in tandem with dual conveyance, providing freshwater flows from the Sacramento River into the interior Delta. From there, water would flow toward the export pumps, primarily, via the South Fork Mokelumne River and Middle River. Diversions through such a screened facility to meet water quality standards and improve flow and habitat conditions could occur year-round, without the current constraints on gate operations related to the outmigration of juvenile salmon in the Sacramento River.  

A screened through-Delta facility is a component of at least one concept for a through-Delta conveyance that could help to conserve species by achieving greater isolation of water conveyance from key fish migration corridors. In addition, such a facility could work well in support of a dual conveyance alternative that maintains in-Delta water quality, while at the same time achieving water supply reliability elsewhere in the state. For example, with adequate dredging of relevant conveyance channels, increased flexibility from a screened Sacramento River diversion could be used to alter the timing and volume of exports in dry versus normal and wet years.

Investigation of a through-Delta facility was one of the through-Delta measures outlined in the CALFED ROD and EIR/EIS and to have been studied and potentially implemented in

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19 See, e.g., information regarding efforts of the existing Northeastern San Joaquin Groundwater Banking Authority (http://www.gbawater.org/).
20 One option in particular, designated “TDF Alignment S” in DWR’s December 7, 2007 “Delta Conveyance Improvement Studies Summary Report,” would increase capacity of the existing DCC by 50%, while avoiding extensive dredging associated with other potential alignments. This option would necessitate significant levee improvements along a South Mokelumne-Middle River conveyance corridor—but so too would virtually any other option that seeks, meaningfully, to mitigate the substantial adverse water quality impacts of a dual or isolated conveyance alternative.
support of the CALFED ROD’s preferred alternative, involving continued through-Delta conveyance, with a potential decision point on conveyance after year 7 of the CALFED program.\textsuperscript{22} Unfortunately, as summarized in a recent status report,\textsuperscript{23} while DWR and others have done numerous technical studies on such a facility, these studies have not produced any result, in terms of a well-developed, potentially implementable concept.

Given the significant water quality implications of the dual and isolated conveyance options currently being considered, study of a potential through-Delta facility merits much more rigorous and systematic study. Continued study of a through-Delta facility should occur on an expedited and greatly intensified basis, as a deliberate and integrated part of any studies of dual or isolated conveyance.

2. MODIFIED DCC OPERATIONS:

Modified DCC Operations: Modified operations of the Delta Cross Channel gates were conceived in the CALFED ROD as a less robust means to achieve some of the water quality, improved conveyance, and water supply reliability objectives of a through-Delta facility. Studies of potential modified DCC operations were to be completed well within the first seven years of the CALFED program before any decision on a potential through-Delta facility.\textsuperscript{24} To date, such studies have yet to produce any definitive result\textsuperscript{25}—and remain, it seems, a barrier to serious study of a more robust alternative involving a through-Delta facility. In addition to studies of a through-Delta facility, which should proceed immediately and without delay, modified DCC operations should remain as part of the range of potential mitigation alternatives warranting deliberate and focused consideration by the BDCP at this time.

3. RECIRCULATION:

Recirculation: Studies and potential implementation of possible "recirculation" of exported Sacramento River water from the Delta-Mendota Canal to the San Joaquin River are required as conditions of the State Water Quality Control Board’s 1995 Water Quality Control Plan for the Sacramento-San Joaquin Bay-Delta, Water Rights Decision 1641, Public Law 108-361 (the “CALFED Bay-Delta Reauthorization Act”),\textsuperscript{26} and the CALFED Record of Decision. Recirculation would serve to provide alternative means of meeting flow and salinity requirements at Vernalis and protecting downstream beneficial uses, while reducing current reliance on upstream releases from New Melones and pumping restrictions on the CVP and SWP facilities. The Bureau of Reclamation and the Department of Water Resources have completed various small-scale pilot studies, as well

\textsuperscript{22} For a comprehensive list of unrealized water quality and conveyance commitments from the CALFED program, see the August 28, 2000 CALFED ROD at 23-29, 48-52, 65-69.
\textsuperscript{24} See CALFED ROD at 23-24, 50-51.
\textsuperscript{25} See ibid.

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as a Plan of Study and, under the current schedule, a Draft EIS/EIR and Final Feasibility Study are expected out in late summer 2008 and spring of 2009, respectively.  

Studies to date suggest recirculation could provide a partial solution to several problems, but have, at the same time, highlighted certain barriers to implementation, as well as some potential adverse effects. Thus, on one hand, recirculation could enable several potential positive outcomes, including (1) reduced reliance on releases from New Melones and, thus, more reliable water supplies for upstream users on the Stanislaus River; (2) reduced reliance on groundwater and, thus, reduced overdraft and salinity intrusion in local groundwater basins resulting from unreliable or insufficient surface water supplies; (3) increased water supply reliability to the CVP and SWP, with a possible less frequent need for pumping curtailments; (4) improved flows and higher DO for migrating salmon; (5) improved flows, lower salinity, and higher water levels for South Delta agriculture; (6) assistance with requirements relating to San Joaquin River TMDLs for dissolved oxygen, salinity, and boron; (7) potential coordination to help meet objectives of the San Joaquin River Restoration settlement (NRDC v. Rodgers Friant settlement); (8) improved water quality consistent with objectives of the Regional Water Quality Control Board’s Salinity Management Plan, work by the San Joaquin River Water Quality Management Group, and the West Side Region Drainage Plan. In contrast, potential barriers and problems associated with recirculation include (1) the potential for adverse fish imprinting, straying, and entrainment effects associated with higher exports and artificial re-routing of Sacramento River in the Lower San Joaquin; (2) potential interference with deliveries or reduced water supply to CVP and SWP contractors and impacts on San Joaquin River Exchange Contractors or at San Luis Reservoir.

A significant problem with the recirculation scenarios studied to date—and, thus, with any Draft EIS/EIR or Feasibility Study—is that these scenarios look only at existing conveyance. Thus, assumptions regarding entrainment impacts and water deliveries may ignore potential opportunities and the increased flexibility that could come with dual or isolated conveyance. In addition, existing studies have not considered how dual or isolated conveyance could significantly worsen, extend, and compound the existing problems recirculation is intended to address. While dual or isolated conveyance might help ensure more reliable exports, it could simultaneously ensure the need for higher upstream releases from storage—thus, not only increasing the burden on New Melones, but also extending this burden to other reservoirs, including Oroville, Shasta, Folsom and others.

While dual or isolated conveyance would likely worsen, compound, and extend existing water quality problems in the South Delta, however, it is at the same time pertinent to note that such conveyance could potentially remove some barriers to implementation of recirculation. Thus, specifically, by removing some of the current constraints on exports,

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dual or isolated conveyance could make it possible to export and recirculate additional Sacramento River water, without impacting deliveries to export contractors of the CVP and SWP, or competing with other priorities, such as water transfers and the EWA, or the wheeling of refuge water.

As for the problem of potential adverse impacts on fish from false imprinting, straying, or entrainment, it would be necessary to evaluate whether such potential, adverse impacts truly outweigh the potential benefits of increased instream flows, dilution, and higher dissolved oxygen. If such an evaluation clearly shows the impacts on fish to outweigh the benefits, it would still be necessary to weigh any potential adverse effects on fish against the corresponding benefits to water quality and water supply reliability. Lastly, if concerns relating to imprinting and straying prove overwhelming adverse it may be possible to achieve a functional equivalent of recirculation, as discussed above, through potential water exchanges to restore tributary flows on the Mokelumne and Tuolumne Rivers. These uncertainties aside, there can be no doubt that recirculation is an important tool in the toolbox of actions to mitigate the potential adverse impacts of dual or isolated conveyance on flows and water quality.

B. MIDDLE & OLD RIVER CORRIDORS, SOUTH & WEST DELTA BARRIERS:

1. FRANKS TRACT PROJECT AND/OR POTENTIAL NEAR-TERM BARRIERS:

Franks Tract Project and/or Potential Near-term Barriers: Relatively simple improvements at Franks Tract in the western Delta have potential to significantly reduce salinity in the Central and South Delta and, also, provide benefits to fisheries by reducing entrainment risks at the State and Federal pumps. In particular, current analyses suggest an operable gate on Three-Mile Slough could yield significant benefits for both fisheries and water quality. Still more recent analyses for the BDCP show that a pair of operable barriers just east of Franks Tract, in Connection Slough and Old River at the upper northwest corner of Bacon Island, or on either side of Quimby Island, could allow CVP and SWP through-Delta operations to continue, while very significantly reducing entrainment risks at the state and federal facilities. Initial modeling suggests that use of these barriers in combination with an operable gate on Three-Mile Slough and potential modified operations of the Delta Cross Channel could increase the effectiveness of these barriers still further.

In relative terms, options involving in-Delta barriers, and particularly movable barriers, would be inexpensive, easily reversible, and conducive to adaptive management. Such infrastructure would have utility, both near-term and as a potential component of some longer term solution. Like the South Delta Improvements Project barriers, Franks Tract Project and other feasible in-Delta barrier options are, essentially, ‘no regrets’ actions.

28 See “DELTA TRIBUTARIES, POTENTIAL WATER EXCHANGE OPTIONS” above.
29 See further discussion below.
Along with SDIP and a potential Old River Corridor, BDCP studies of dual and isolated conveyance should take a comprehensive look at the use of in-Delta barriers to realize mutually supporting water quality, reliability, and fisheries benefits.

2. SOUTH DELTA IMPROVEMENTS PROJECT:

South Delta Improvements Project: The purpose of a series of operable barriers under the proposed South Delta Improvements Project (“SDIP”) would be to improve water quality and water levels in the South Delta, while simultaneously benefiting fisheries and increasing operational flexibility and water supply reliability. The project is specifically identified in the CALFED ROD for early implementation as an element of that program’s “Conveyance” package of actions. Furthermore, a preliminary assessment of dual conveyance recently completed by DWR’s South Delta Regional Office suggests these operable barriers would be fundamentally important to water quality management in the South Delta. Stage I of the SDIP project would provide immediate benefits, in all of the identified areas, independent of a separate, deferred decision regarding any potential raising of current regulatory limits on pumping. At the same time, where biological impacts could be avoided or mitigated, the possibility of higher pumping limits at select times in the future could help to correct the current disconnect between timing of exports and water year type. Like Franks Tract and other potential in-Delta barrier options, SDIP is a “no-regrets” action with few unmitigable adverse impacts on one hand, and substantial water quality, water supply, and fisheries benefits to appease a whole range of varied interests on the other. Unfortunately, despite a completed EIR/EIS, implementation of the SDIP project remains elusive. Along with Middle River Conveyance and a future Franks Tract Project, useful elements of the SDIP project should be expressly incorporated in BDCP planning for alternative conveyance at this time.

3. MIDDLE & OLD RIVER CORRIDORS:

Middle & Old River Corridors: In concept, the Middle River Conveyance option resembles the BDCP’s Conveyance Option 2. The concept involves use of the South Mokelumne and Middle River as a dedicated conveyance corridor to the South Delta—and “isolation” of Old River as a dedicated fish passage corridor. The concept has been preliminarily studied in various incarnations to date, by the Metropolitan Water District of Southern California (MWDSC) and the Department of Water Resources (DWR), by Jon Burau of the USGS (as the “Eco-crescent” concept) and, in the greatest detail it seems, by the concept’s originator, Russ Brown of Jones & Stokes, in a “Delta Corridor” paper, as subsequently refined with funding and conceptual input from the South and Central Delta Water Agency (SDWA and CDWA).

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30 See CALFED ROD at 48-50.
Near-term or long-term, either singly or in combination with an isolated facility, a through-Delta conveyance option similar to the “Delta Corridors” concept described by Russ Brown could have various benefits, as follows: (1) By drawing exports from an isolated water supply corridor linked to the Sacramento River, such an option would avoid much of the current tidal mixing and recycling of salts from and to the South Delta via the CVP; (2) By directing the entire flow of the San Joaquin River down Old River, sediment, phytoplankton, productivity, and turbidity that is current lost to stagnant and anoxic conditions in the Stockton Deep Water Ship Channel and exports by the CVP and SWP, would instead reach the Suisun Marsh and the larger estuary below and possibly improve food availability there; (3) Sacramento River water diverted year-round through the DCC and/or Georgiana Slough would protect existing beneficial uses by maintaining the historic “Delta pool,” while at the same time leaving the isolated Old River fish passage corridor for possible experimentation with variable salinity, subject to existing water quality standards and the remaining consumptive water needs of diverters in that portion of the Delta; (4) dredging along the South Forth Mokelumne would serve the dual purpose of increasing channel capacities and could provide a significant volume of dredge material for levee improvements, so as to relieve flood pressures on adjacent leveed farmland; (5) such dredging and flood benefits could support the objectives of proposed flood and habitat improvements on McCormack-Williamson Tract and/or the Lower Consumnes and Mokelumne Rivers; (6) subject to possible relocation of affected diversions to the water supply corridor to the east, dead sloughs produced by barriers on lateral channels, such as Woodward Cut, Railroad Cut, and Connection Slough, could be used in experiments to establish open water pelagic fish habitat and simulated or partially constructed, but self-sustaining “drainage channels”; (7) in contrast to a dual facility, many relatively simple and inexpensive modifications to the existing through-Delta system could be easily reversed or used for experimental adaptive management; (8) water standards establish for the protection of existing beneficial uses could go largely unchanged; (9) such an alternative could potentially combine with a dual facility, at such time as one were constructed.

The BDCP “Conservation Strategy Options Evaluation Report,” dated September 17, 2007, alluded to certain engineering constraints associated with the particular Middle River concept considered in that document. Our understanding, based in part on assertions in the report itself and in part on subsequent clarifications by the BDCP consulting team, is that some or all of these engineering constraints are surmountable. Furthermore, we have reason to believe that the cost-estimates from a “conveyance assessment” recently completed by DWR for the Delta Vision Blue Ribbon Task Force do not include possible less expensive means of constructing and protecting a through-Delta corridor. Ultimately,
whether some variant of Middle River Conveyance functions as part of a potential interim solution or as a long-term option, feasible means of removing engineering obstacles and optimizing performance should be an integral part of the BDCP and other related planning efforts.

C. LONG-TERM EWA OR SUCCESSOR:

Long-term EWA or Successor: The Environmental Water Program, emerging from the CALFED program, relies on water transfers from willing sellers to establish a kind of “bank account” of dedicated environmental water. To date, the EWA has focused primarily on fish benefits associated with deliberate alterations in the timing of exports. Assets from the Environmental Water Account are expended either to enhance flows for fish or to offset water supplies lost during voluntary curtailments at the pumps.

While it is no doubt true that some incidental environmental and water quality benefits from the EWA have accrued in upstream areas and the Delta, direct augmentation of tributary flows or improvement of water quality have not been a significant focus of the EWA program to date. With the prospect of dual or isolated conveyance in the future, it is possible that instream flow augmentation and water quality mitigation could become express objectives of a future EWA or successor program, along with fisheries protection and direct avoidance of adverse effects from exports.

Similarly, separate “pots” of current and potential future environmental water could be managed in some integrated fashion to achieve multiple objectives, including salinity control in the Delta, as well as fish protection and enhanced in-stream flows. Potential options here include (b)(2) and (b)(3) water under section 3406 of the Central Valley Project Improvement Act (CVPIA), VAMP flows, and potential flows deriving from long-term implementation of the Phase 8 Settlement of the State Water Resources Control Board’s Bay-Delta Proceedings on the 1995 Water Quality Control Plan.

III. OTHER PERTINENT TOOLS FOR COMPREHENSIVE SOLUTIONS THAT AVOID DISPROPORTIONATE IMPACTS:

A. NEW SURFACE WATER STORAGE:

New Surface Water Storage: In addition to groundwater banking, conjunctive use, water efficiency, and water recycling, all of which should continue and expand in direct support of any long-term solution for the Bay-Delta, new surface storage will be necessary to prepare for future impacts of climate change and increase flexibility to achieve various environmental objectives. In particular, new South-of-Delta facilities will be needed to optimize future conveyance, improve the timing of water exports, and reduce hydrologic impacts on listed species and the Delta in drier years. Similarly, increased surface water storage capacity in both the Sacramento and San Joaquin River watersheds would enhance the State’s ability to achieve multiple objectives, including protection of environment, water supply, and salinity control. Thus, while new surface water storage facilities go significantly beyond the scope of the BDCP, Delta conveyance and the BDCP exist within
a larger statewide context. In recognition of this fact, BDCP strategies should expressly consider potential synergies relating to future investment in new surface water storage.

B. WATER EFFICIENCY / DEMAND REDUCTION:

Water Efficiency / Demand Reduction: Water efficiency, demand reduction, and “regional self-sufficiency,” as it has been called, provide means of indirectly reducing ecological pressures on the Delta over time. Conserved water, beyond the mere movement of existing supplies around the state, is in effect “new water.” Within the context of the BDCP, water efficiency in export-dependent areas south of the Delta could be encouraged and incentivized through linkages to the ESA’s incidental take provisions. Measurable progress toward meeting economically and technically achievable efficiency goals could be tied to greater flexibility under a future Section 10 permit or set of permits, or for certain covered activities, including Delta exports and water transfers.

C. URBAN WATER USE EFFICIENCY, RECYCLING, AND DESALINATION:

Urban Water Use Efficiency, Recycling, and Desalination: The California Water Update projects a potential yield from urban water use efficiency of between 1.2 and 3.1 million acre feet by 2030, and up to 1.4 million acre-feet from recycled municipal water.\(^{34}\) Similarly, in addition to 587,200 acre-feet from desalination plants assumed to be operational by 2030, the Water Plan projects high and low annual yields of between 300,000 and 500,000 acre-feet within the same period.\(^{35}\) Future urban water use efficiency and recycling and desalination represent large blocks of potential “new water,” with few environmental impacts. New water supplies from desalination projects, urban water use efficiency, and water recycling could significantly offset the need for imported supplies from the Sacramento-San Joaquin River Delta well within the 50-year life of the BDCP. Such options should be aggressively pursued, if not as an expressly linked component of the BDCP, then certainly in parallel regional planning efforts to supplement the BDCP itself.

D. UPSTREAM SALINITY MANAGEMENT / AG DRAINAGE:

Upstream Salinity Management / Ag Drainage: Present and future efforts to address drainage issues and salinity impacts on the west side of the San Joaquin Valley have long-term relevance to the question of in-Delta water quality, particularly under potential future dual or isolated conveyance. Fully isolated or dual conveyance could help, significantly, to reduce the amount of salt currently exported to the San Joaquin Valley. While reducing contaminant loads, however, long-term efforts to reduce the amount of salt, boron, and

\(^{34}\) See 2005 California Water Plan Update, Volume 2, Figure 1-1. NOTE: In contrast to the large potential for dramatic gains from urban water efficiency, the range of potential gains from agricultural water efficiency during the same period is just 200,000 to 800,000 acre-feet per year.

\(^{35}\) Whereas estimates in 2005 Water Plan Update derive from a set of pre-POD and pre-Wagner assumptions, Governor Schwarzenegger’s recent call for a 20 percent statewide per capita reduction in water use through urban water use efficiency may provide impetus for ever higher gains.
selenium that enters the San Joaquin River and Delta must ensure continued water service and agricultural productivity on the west side. Future conveyance must strike a balance between in-Delta water quality and the quality of exported water. At the same time, workable west-side drainage options could build toward achieving express objectives of the BDCP. Given such interrelationships, in addition to the long-term need for west-side drainage improvements in any case, it seems entirely appropriate to consider potential, future west-side drainage and salinity management actions as possible, long-term conservation or mitigation measures for the 50-year BDCP.

E. RESERVOIR REOPERATION:

Reservoir Reoperation: In addition to the other options identified above, there may be opportunities to realize multiple benefits for the ecosystem, water supply and water quality through reoperation of upstream reservoirs. Reoperation would modify existing operational rules and priorities, opportunistically, to accomplish a new set of benefits, while still meeting increasing water demands of the State. By releasing more water under certain conditions, it may be possible to reestablish greater functionality and productivity in downstream floodplains, wetlands, and open-water embayments. Reoperation could provide more frequent peak flows, greater stochasticity and variability than exists currently, which could in turn more closely approximate a more natural hydrograph and, thus, favor native, as opposed to non-native organisms. On the supply side, as well, reoperation in combination with aggressive groundwater banking, recharge, conjunctive use, and water transfers could offset associated water supply losses and potentially even increase yield. In particular, with improved conveyance through and across the Delta, large volumes of vacated aquifer space in the San Joaquin Valley could be used to store surplus flows in wet years. Available reservoir space from one year (or from earlier in the same year) would become increased supply at a subsequent time—which is to say, new yield as opposed to water currently lost to flood control with little or no opportunity for recovery. While local and regional groundwater recharge, groundwater banking, and flood bypass solutions would need to overcome significant legal, political, institutional complexities, improved groundwater conditions to the south could ultimately provide a greater margin of local supply with which to weather dry years and prolonged drought periods. Furthermore, smarter, more integrated operation of the state’s existing reservoirs,

in combination with more aggressive groundwater banking, water transfers, and multi-use floodplain management, flood easements, new or expanded bypasses, and temporary retention basins, could help to offset adverse supply impacts of future climate change, including altered runoff patterns and declining snowpack.

IV. CONCLUSION:

The “Menu” of mitigation concepts above is hardly an exhaustive one and, yet, it does cover a broad range of potential options to address potential adverse flow and water quality mitigation impacts from dual or isolated conveyance. As stated previously, operational measures and amended water quality standards alone are not likely sufficient to reduce the probable significant adverse impacts of a dual or isolated conveyance system on existing beneficial uses both within and upstream of the Delta. For the BDCP to continue to develop measures to achieve the biological and water supply objectives of the BDCP in isolation from the obvious water rights, water quality, and upstream implications of such actions avoids dealing head-on with a set of very significant obstacles to the ultimate success of the program and is, thus, a gamble neither the State of California, nor any of the parties at the BDCP table cannot afford. To anticipate and address such concerns in a proactive fashion, the BDCP process should move, agilely and decisively, to broaden the range of potential actions and facilities a comprehensive Delta solution may require. Many essential elements of such a solution are beyond the capacity and responsibility of the BDCP, the SWP or the CVP, or the export contractors. This, however, may be where the BDCP might seek to complement a broader, statewide program, and vice versa. Thus, BDCP activities and conservation measures would contribute to broad, statewide objectives in proportion to the impacts of their activities and any non-public benefits obtained—but without assuming the entire burden of a comprehensive Delta solution, or precluding other necessary efforts related thereto. Indeed, where essential elements of a comprehensive Delta solution lie outside the immediate scope of the BDCP, it seems there will be a strong need for coordinated milestones and direct linkages to things within the narrower purview of the BDCP and from the BDCP to the broader statewide program. At a minimum, it is hoped, the foregoing list of potential mitigation concepts, water supply, water quality, and ecosystem improvements may serve to stimulate consideration of some of the broader needs of a comprehensive Delta solution and some potential ways the BDCP can pursue its express objectives, while at the same time contributing constructively to a larger statewide plan of action.
From: JLucas1099@aol.com [mailto:JLucas1099@aol.com]
Sent: Wed 5/14/2008 10:28 PM
To: bdcpccomments
Cc:
Subject: Bay Delta Conservation Plan EIR/EIS scoping comments

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836, Sacramento, CA 94236

Dear Ms. Delores Brown,

In regards comments on scope of the Bay Delta Conservation Plan EIR/EIS please consider the following:

~ Are the six chosen environmental organizations representative of California citizenry and user groups, or are they more backroom negotiators and lawyers. Ducks Unlimited and California Assn. of Fly Fishermen are two user groups who should definitely be at the table, and also Audubon and a representative of boaters. California Native Plant Society could contribute to considerations of habitat and water conservation criteria. The steering committee appears to be front loaded with water supply agencies and agribusiness which will likely politicize discussions and make it difficult to achieve resource protection and conservative water use.

~ Water Districts are considering how best to get Delta water delivery of 15,000 cfs when present 10,000 cfs at Clifton Court Forebay has already stressed historic fisheries into a state of collapse. How can a BDCP EIR/EIS process start off with a sound reality check before wasting millions of tax dollars on pipedreams? Can this EIR/EIS review projected consumer use data provided by water retailers and districts in sufficient detail as to be credible? ie SF PUC upgrade EIS/EIR had some inflated data from retailers rather than cities.

~ In regards agribusiness, for water allocation, can a priority point system be established whereby a crop, such as rice, that will provide food and refugia for migratory waterfowl after the crop has been harvested will rank higher, than say a crop that can not provide secondary or tertiary benefits from considerable amounts of water used? Orchards, when flooded, can return water to rivers and underground aquifers without contributing to buildup of toxins so should receive a higher propriety than a crop so heavily fertilized that drainage creates another Kesterson (still to be cleaned up after 25 years). By California water law sufficient base flows need to be guaranteed in streams and rivers to support beneficial instream uses, to convey sediment and to support a continuous riparian canopy. The State fishery has stronger historic priority than agribusiness and this EIR/EIS needs to establish estuary standards that will return salmon and steelhead runs to all tributaries. (Water Districts that can prove they are restoring local coldwater fisheries by management of seasonal releases needed by anadromous fish and not diverting critical flows or causing drybacks as fish are spawning, should rank higher for water allocations, especially in drought years, than Districts that cannot.)

~ Please establish uplands habitat goals, as well as wetlands habitat goals usable for Estuary watersheds that can be easily adhered to at every stage and level of this Bay Delta Conservation Plan. HCPs can be streamlined in manner that only one or two species in development acreage are addressed which may not be indicator species for full spectrum of biodiversity found at site. It is essential that full CEQA review is routine, and that mitigation for impacts to one species does not compound habitat loss at expense of other species. Appropriate public hearings and review can identify data discrepancies that a resource scientist may miss.

~ It would be highly beneficial, in light of the Migratory Bird Act and State compliance with international law, that this EIR/EIS establish baseline for volume of forage that each resident species and migratory waterfowl needs to sustain a healthy life cycle and/or complete its commute from Latin America to Alaska. That would be the amount of forage for necessary weight gain during time of layover in San Francisco Estuary, times the approximate numbers of birds of each species, be it thousands or tens of thousands, and what acreage and calibre of crop or wetlands is necessary to accomplish this. (Would recommend Suisun Marsh RCD data.)

There are other concerns but this selection will have to do for present. Thank you for the opportunity to comment on the Bay Delta Conservation Plan EIR/EIS undertaking.

Libby Lucas, Conservation
CNPS, Santa Clara Valley Chapter
174 Yerba Santa Ave.
Los Altos, CA 94022
-----Original Message-----

From: JLucas1099@aol.com [mailto:JLucas1099@aol.com]
Sent: Thu 5/15/2008 6:18 PM
To: bdcpcomments
Cc:
Subject: Bay Delta Conservation Plan EIR/EIS scoping comments

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P>0> Box 942836, Sacramento, CA 94236

Dear Ms. Delores Brown,

As a postscript to my submittal yesterday, May 14, in regards the scope of the Bay Delta Conservation Plan EIR/EIS I would like to add a couple of concerns.

~ If a Bay Delta bypass conduit is designed to accomodate the requested 15,000 cfs by water user agencies a modeling of estuary needs to be done in order to assess extent of impacts on historic estuary functions. ie An analysis of capability of diminished winter flows to carry Delta sediment through Bay and out Golden Gate would be an essential study, and please use research by U.C. Davis's Professor Krone, as South Bay Salt Pond Restoration scientific sediment transfer studies do not seem to be holding up under actual conditions. To what degree will sedimentation of Bay be accelerated? Will loss of underflow increase island subsidence?
(It might be of interest to note that Venice had its rivers diverted away from the delta on which it is built and now that lack of underflow is contributing to its subsidence into the Adriatic.)

~ Secondly, seek technical assessment of where mixing zone will reestablish as saltwater intrusion extends further up into Delta and review wetlands habitat impacts as well as hydrology impacts that can be expected. As pumps at Clifton Court Forebay will be pulling in brackish water, simultaneous operation is not feasible?

~ Studies of Delta water transfers and resource management should include ways to manage water loss due to evaporation. - If San Francisco Water Department could transport Hetch Hetchy water in underground pipes a hundred years ago, why cannot Delta supplies receive the same conservative treatment? Also, some capability of gravity flow needs to be a consideration for this renovated system as power costs escalate.

Thank you again for your kind review of these concerns.

Libby Lucas
174 Yerba Santa Ave.,
Los Altos, CA 94022

Wondering what's for Dinner Tonight? Get new twists on family favorites at AOL Food.
30 May 2008

Ms. Barbara McDonnell
Chief, Division of Environmental Services
Department of Water Resources

delores@water.ca.gov

RE: Scoping Comments for the EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan

Dear Ms. McDonnell;

The California Sportfishing Protection Alliance (CSPA) appreciates the opportunity to provide scoping comment on the proposed EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP).

Generally speaking: the proposed Habitat Conservation Plan is the most ambitious and far-reaching Habitat Conversation Plan (HCP) ever envisioned coupled with a massive scheme to change the hydrology of the Central Valley. The proposed time schedule is absurdly truncated. No significantly scaled HCP has ever been completed within the proposed timeframe, let alone one coupled with a proposed massive hydrologic modification of an estuary. CSPA believes this scheme is not only internally inconsistent but also fundamentally inconsistent with the Governor’s Delta Vision Plan, basic federal clean water and endangered species laws and common sense.

a. There is a fundamental inconsistency between an HCP with a goal of protecting and restoring listed species and a conveyance plan involving a massive public works project that will change the hydrology of the estuary and tributary waterways. Indeed, the plan is little more than a Bay-Delta Conveyance Plan masquerading as an HCP.

b. As a general principle, CSPA does not believe that any HCP should include guaranteed water delivery and/or changes in infrastructure as solutions. An HCP should focus on needed habitat improvement sufficient to enhance listed species to a point where they can be removed from endangered species lists.

c. We note that consideration of increased or guaranteed water delivery or new diversions of fresh water from the delta that would result in increased degradation of water quality are impermissible under the federal Clean Water Act. Economic considerations have been found by the courts to be illegal pursuant to Section 10 of the federal Endangered Species Act.
d. Long-term assurances or guarantees are fundamentally inconsistent with any defensible adaptive management program. One of the reasons the recent federal BioOp was overruled was that scientific staff decisions and science-based recommendations were routinely ignored or overridden by the Water Operations Management Team (WOMT).

e. The envisioned HCP is fundamentally inconsistent with the governor’s Delta Vision statement. For example, Principle No. 7 states that a revitalized Delta ecosystem will require reduced diversions or changes in patterns and timing of diversions and exports.

f. We note that the California Department of Water Resources, in Bulletin No. 76, estimated that, while full demands on the State Water Project system could be met with surplus water until 1981, any future increases would have to be met through additional diversions of water from the Eel, Trinity, Mad-Van Duzen and Klamath Rivers. However, those anticipated diversion projects have never implemented and the increased level of exports has deprived the estuary of water crucial to the continued existence of pelagic and salmonid species.

g. We also note that Congress specified that construction of the San Luis Unit of the Central Valley Project not proceed until satisfactory provision was made for adequate drainage from selenium-impaired acreage in the San Luis Unit. Many decades later, satisfactory drainage has still not been provided and, as a result, the San Joaquin River is legally defined, under the federal Clean Water Act, as impaired because of selenium and boron.

Specifically: at a minimum, the EIR/EIS must:

a. Incorporate a comprehensive ecological analysis. No HCP plan should have goals beyond protecting and enhancing targeted species. The plan must protect the Delta and tributary waters “no matter what,” regardless of costs or consequences.

b. Identify the area and species the HCP is attempting to cover and evaluate the impacts of meeting existing and proposed water demand to each species covered by the HCP.

c. Identify and evaluate alternative water supplies and delivery systems and prioritize those evaluations on a) ecosystem water needs, b) urban water needs and c) agricultural water needs. Clearly, an HCP’s first priority must be on ecosystem needs followed by urban and agricultural needs.

d. Analyze and quantify the Delta needs. For over a decade, DWR/Bureau and he Bureau have refused to undertake a quantification of how much water the
ecosystem actually requires. Clearly, the 4.05 and 3.5 maf that DWR exported in 05 and 06 are excessive. Significant reductions are essential. The EIR/EIS must discuss how much water is required for a healthy Delta and how various scenarios of export levels and patterns and timing of upstream diversions will affect targeted species. It must discuss and analyze the impacts to biological resources caused by the documented shortfall of water deliveries that were anticipated from North-coast Rivers. We reiterate; an EIR/EIS that fails to evaluate several reduced export alternatives will fail to comply with minimum CEQA/NEPA requirements.

e. Explain how levy improvements, flood plain management and changes in water circulation and water quality will affect each of the targeted species and proposed structural modifications.

f. Provide a detailed analysis of how expansion of wetland habitat and changes in hydrology will affect mercury methylation and the bioavailability and/or bioconcentration of mercury, selenium and other toxic pollutants to the food web.

The transfer of relatively good quality Sacramento River water around or through the Delta via an isolated or dual facility will inevitably reduce assimilative capacity throughout the Delta and increase residence time of water in the eastern Delta. The DWR/Bureau have failed to analyze and evaluate these changes in assimilative capacity and residence time on the full suite of chemicals and chemical processes and the potential adverse effects on numerous species in numerous previous environmental documents. They must not fail to do so in this critical EIR/EIS. We note that a conservative constituent like salt cannot be used as a surrogate to evaluate volatile, highly toxic or bioaccumulative pollutants or impacts on dissolved oxygen.

g. Describe in detail how the reductions in Delta exports identified in the Delta Vision document will be accomplished within the California water rights process and the effects on a) senior water rights holders, b) junior holders, c) riparian diverters and d) the public trust.

h. Propose full mitigation for “take” of species protected pursuant to the California Endangered Species Act. We note that California State Water Board Decision 1485 found that “full mitigation of project impacts on all fishery species now would require the virtual shutting down of the project export pump.” The project must not be viewed simply as a “rabbit hole” enabling exporters to escape existing, but long ignored, obligations under current endangered species laws.

i. Reveal, analyze and discuss how the new facilities and changes in points of diversion for conveyance and storage are likely to affect all of the species and
habitat the HCP is supposed to protect; i.e., how will the changes in hydrology and diversion affect listed species.

j. Establish and evaluate recovery goals, yardsticks, mileposts and consequences of failure within the HCP/NCCP that will assure policy makers and the general public that progress is occurring and species recovery is on track.

k. Explain how the HCP will protect species from increased temperatures, salinity and sea level rises caused by global warming over the existence of the BDCP spanning the next fifty years.

The enormous and unprecedented scope of the proposed scheme will require the most ambitious and detailed environmental document ever assembled.

Thank you for considering these comments. We request a receipt of timely submission and that we be placed on the list to receive both electronic and hard copies the draft EIR/EIS. If you have questions or require clarification, please don’t hesitate to contact us.

Sincerely,

Bill Jennings, Executive Director
California Sportfishing Protection Alliance
BDCP
BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Date: May 6, 2008

PLEASE PRINT

Name: Jay R. Sorensen Organization: Calif. Striped Bass Assoc.

Telephone: (209) 478-6645 e-mail:

Address: 766 Elaine Drive

City: Stockton State: Ca. Zip: 95207-4841

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

Massive diversions of water through the state and federal pumping facilities continued to be the main cause of the problems facing the Sacramento-San Joaquin Delta Region, and the idea of funneling water around the Delta is not the way to restore its ecosystem. What the it needs is more water to flush and cleanse it of harmful chemicals and other pollutants. We have witnessed the decline of many species of fish and wildlife plus many non-native exotic species that are consuming about 50 percent of the food chain our native species require. The troubles on the Delta began when they completed the construction of Friant Dam on the San Joaquin River and the entire river was diverted to provide water for Southern California. Today, sub-standard water quality exists in the South Delta. Taking Sacramento River water with one of four options will further threaten our fisheries which primarily use the river for propagating (spawning) where approximately 60 percent of the remaining Chinook salmon, American shad, striped bass, sturgeon and steelhead spend time each spring in the Sacramento River between Verona and Colusa. A Peripheral Canal is not the answer. The best bet is to begin building plants to desalt an untapped resource and that the Pacific Ocean to fulfill the needs of the 38 million people that reside in California. The will of the people was evident in 1982 when this proposal was defeated and if placed on the ballot, it will be defeated again. Eliminating the need to pump water from the Delta is the only way that the restoration efforts will begin. If our water resources were used properly this would cause less water to be pumped out of the Delta. Water conservation is a necessity that should be mandated. Federally subsidized water contracts should be reviewed, where in some cases farmers are selling their water for a profit rather than growing crops. There are many avenues that need to be studied along with changes for correcting the serious problems we are faced with today. Cal-Fed was formed to come up with a plan to restore the Delta, and after spending over $4 billion what did we get for our money? The answer: Nothing. Upon reviewing all of the four proposals I find myself in the position of rejecting this method of water conveyance. There has to be another way to fulfill California’s water needs.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.
June 9 2008

Ms. Delores Brown,
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Also sent via email to delores@water.ca.gov.

Patti Idlof
Bureau of Reclamation
2800 Cottage Way, MP-150
Sacramento, CA 95825

Also via e-mail to pidlof@mp.usbr.gov

RE: Scoping Comments for the EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan

Dear Ms. Brown and Ms. Idlof:

The California Water Impact Network (C-WIN) appreciates the opportunity to provide scoping comment on the proposed EIR/EIS for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP). We would like to add these to those submitted on May 30, 2008 on our behalf by C-WIN President, Carolee Krieger.

The BDCP, as presently constituted is fatally flawed, starting with the extremely limited delineation of the delta. By restricting the area to be considered so severely, any opportunity to increase water supply to the delta is foreclosed. For any serious habitat restoration to take place, the three causes of decline must be addressed: water exports, water quality and exotic species. And having sufficient water supply in the delta is by far the most important.

Water exports are most important because it impacts both water quality and the proliferation of exotic species. Recognizing that all of our water resources are over committed, (the State Water Board now admits that it has issues water rights permits that equal five to seven times the amount available in the state) and there is no more water to draw from, demand management is a must and holds great potential at far cheaper cost than any other solution under consideration. And it can
be accomplished in a much quicker time frame. It has the added advantage of being distributed widely all over the state.

The biggest saving in the urban sector can come from changing the plant materials used around our homes and businesses. Forty to Seventy per cent of urban water is used outside. The history of gardening is to see how many plants can be brought to California from the farthest corners of the world and grown here. And almost anything can be. It is time to promote interest in our own native plants and others from Mediterranean areas that can flourish in our climate with very little if any added water. Half to two thirds of water used for outdoor irrigation can be saved in this way.

The second biggest source of urban water savings can come from all the conservation methodologies that have been outlined by the California Urban Water Conservation Council (CWUCC). Both the Pacific Institute and DWR;s own B160-95 conclude that 30% can be saved, cost effectively and with existing technology right now.

Water reuse is finally beginning to be taken seriously. We clean up our wastewater until it is almost potable and then throw it away. The Los Angeles Hyperion Sewage Treatment Plant is the seventh largest river in the state, discharging fresh water year round to the ocean. It makes much more sense to apply desal technology to our wastewater stream rather than to the ocean since it would need only one tenth the amount of energy to apply reverse osmosis to wastewater. Spreading this water to go through the soil until it reaches the aquifer is a good way to remove any remaining contaminants. A major public education campaign and a little money is all that stands in the way of reusing as much as 90% of our wastewater stream.

Groundwater management clearly also holds great potential. Many of our groundwater basins have been over drafted and therefore hold great potential to store wet year surpluses against dry year need. And there is growing interest in Southern California to capture rain water where it falls, and get it into the ground to augment our local water supply and reduce our need to import as much from the north. On average, about 500,000 acre feet of runoff flows to the ocean annually from the LA Basin. One tributary of the LA River, the Tujunga Wash, averages over 58,000 AFY of runoff annually.

The agricultural sector promises even more water riches. It is by far the biggest source of water quality problems to the delta especially from drainage impaired lands – land that should never have been irrigated. This land must be taken out of production, and the water rights retired as an immediate source of water to help with the delta’s endangered species problems. It is the State Water Board’s obligation to both allocate water in the public interest, to enforce the public trust doctrine, and to enforce water quality regulations. It has done none of them. This
must be corrected first before any serious discussion of a bay delta conservation plan can be considered.

In conclusion: To develop a real conservation plan, the delta and its watersheds must be the subject of the study so that real demand management can be implemented. Only with additional water in the delta can we begin to restore habitat and provide for a more reliable water supply.

Thank you for the opportunity to comment on this very flawed planning document.

Yours truly,

Dorothy Green, Secretary
California Water Impact Network
May 30, 2008

Ms. Delores Brown,
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Also sent via email to delores@water.ca.gov.

Patti Idlof
Bureau of Reclamation
2800 Cottage Way, MP-150
Sacramento, CA 95825

Also via e-mail to pidlof@mp.usbr.gov

Re: Scoping Comments on Bay-Delta Conservation Plan EIS/EIR (Federal NOI and State NOP)

Dear Ms. Brown and Ms. Idlof:

These comments are submitted on behalf of the California Water Impact Network (C-WIN). CWIN requests that the scoping period on the EIS/EIR be extended or reopened until an actual “plan” is available to comment upon. To date, there is little specifically to comment on in terms of specific plans and alternatives. We fully intend to submit additional scoping comments as new scoping information becomes available prior to release of the Draft EIS/EIR.

CWIN hereby incorporates by reference the scoping comment letters by the California Sportfishing Protection Alliance (CSPA) and the Planning and Conservation League (PCL).

**General Comments**

The BDCP has mutually exclusive goals of providing water supply reliability and “safe harbor” guarantees to Potentially Regulated Entities (PRE), while also protecting and restoring ecosystem health and populations of listed species. CALFED proved that this cannot be accomplished, but this plan appears to be a reinitiation of that failed attempt. The BDCP is clearly a shallow attempt to obtain authorization for a Peripheral Canal under the auspices of the federal and State Endangered Species Acts. The BDCP should make recovery of listed species
and ecosystem health its primary purpose, not increased Delta exports, regulatory assurances to the PRE’s, and a Peripheral Canal.

**Alternatives**

The four alternatives presented are inadequate from a CEQA and NEPA perspective. The California Third District Court of Appeals set aside the CALFED ROD because, among other things, the PEIS for CALFED did not consider an alternative which reduces exports from the Delta. Similar to the CALFED PEIS, the proposed BDCP EIS/EIR does not contain an alternative which reduces Delta exports. This is a serious deficiency in the BDCP analysis and must be remedied by development of an alternative which reduces Delta exports below current levels.

Specifically, an alternative should be developed which examines a reduction in Delta exports to drainage-impaired lands in the Western San Joaquin Valley within both CVP and SWP service areas. A minimum of 2 million acre-feet of contract water has been identified as being available from those lands, as restated below from a January 2005 comment letter on the South Delta Improvement Project DEIS/EIR by the Trinity County Board of Supervisors. For the Tulare Basin, the numbers that Trinity County came up with are identical to those found in DWR Bulletin 160-05, the California Water Plan- 1.2 million AF as being available for other uses. See Tables 1 and 2 below.

Table 2

<table>
<thead>
<tr>
<th></th>
<th>Total Irrigated croplands in 2002( acres)</th>
<th>Drainage Impaired acreage in 2000 ( acres)</th>
<th>% of County Requiring Drainage Service</th>
<th>Estimated Contract Amounts (AF)</th>
<th>Estimated Water Savings (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tulare County</td>
<td>652,385</td>
<td>291,000</td>
<td>44.60%</td>
<td>1,304,770</td>
<td>581,927</td>
</tr>
<tr>
<td>Kern County</td>
<td>811,672</td>
<td>313,000</td>
<td>38.56%</td>
<td>1,623,344</td>
<td>625,961</td>
</tr>
<tr>
<td>Total</td>
<td>1,464,057</td>
<td>604,000</td>
<td>N/A</td>
<td>2,928,114</td>
<td>1,207,888</td>
</tr>
</tbody>
</table>

Table 2 above portrays a very preliminary estimate of water savings in Tulare and Kern County within the SWP service area. The acres of irrigated croplands were taken from the USDA farm census statistics report in 2002. The acreage of drainage impaired acres is derived from a report by CA Dept of Water Resources, the 2000 San Joaquin Valley Drainage Monitoring Program. The acreages identified are for lands with high groundwater within 20 feet of the surface. The contract amounts were figured by estimating 2 acre-feet per acre irrigated, most likely an underestimated amount. Further investigation is needed
to verify and refine these numbers, but clearly there is adequate justification to remove these lands from irrigation due to continuing drainage problems and salinization of land, in violation of Water Code Section 100- Wasteful and Unreasonable Use of Water.

Table 1 from the Draft Trinity River Fishery Restoration Supplemental Environmental Impact Report (Trinity County 2004, as amended 1/24/05 and 2/16/05)

<table>
<thead>
<tr>
<th>District</th>
<th>Acres</th>
<th>Acres Requiring Drainage Service</th>
<th>% of District Requiring Drainage Service</th>
<th>Max CVP Contract Amount (AF)</th>
<th>Max CVP Contract Water Savings (AF)</th>
<th>2002 CVP Contract Deliveries (AF)</th>
<th>2002 CVP Water Savings (AF)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Broadview Water District</td>
<td>9,515</td>
<td>9,515</td>
<td>100.00%</td>
<td>27,000</td>
<td>27,000</td>
<td>18,588</td>
<td>18,588</td>
</tr>
<tr>
<td>Panoche Water District</td>
<td>39,292</td>
<td>27,000</td>
<td>68.72%</td>
<td>94,000</td>
<td>64,593</td>
<td>66,743</td>
<td>45,863</td>
</tr>
<tr>
<td>Westlands Water District</td>
<td>604,000</td>
<td>298,000</td>
<td>49.34%</td>
<td>1,154,198</td>
<td>569,455</td>
<td>776,631</td>
<td>383,172</td>
</tr>
<tr>
<td>Eagle Field</td>
<td>1,438</td>
<td>1,435</td>
<td>99.82%</td>
<td>4,550</td>
<td>4,542</td>
<td>2,869</td>
<td>2,864</td>
</tr>
<tr>
<td>Mercy Springs</td>
<td>3,589</td>
<td>2,417</td>
<td>67.35%</td>
<td>2,842</td>
<td>1,914</td>
<td>4,679</td>
<td>3,151</td>
</tr>
<tr>
<td>Oro Loma</td>
<td>1,095</td>
<td>1,095</td>
<td>100%</td>
<td>4,600</td>
<td>4,600</td>
<td>3,173</td>
<td>3,173</td>
</tr>
<tr>
<td>Widren</td>
<td>881</td>
<td>881</td>
<td>100%</td>
<td>2,990</td>
<td>2,990</td>
<td>2,094</td>
<td>2,094</td>
</tr>
<tr>
<td>Firebaugh</td>
<td>23,457</td>
<td>23,457</td>
<td>100%</td>
<td>85,000</td>
<td>85,000</td>
<td>85,000</td>
<td>85,000</td>
</tr>
<tr>
<td>Cent. Cal ID</td>
<td>149,825</td>
<td>4,951</td>
<td>3.30%</td>
<td>532,400</td>
<td>17,569</td>
<td>532,400</td>
<td>17,569</td>
</tr>
<tr>
<td>Charleston Drainage District (portion of San Luis WD with drainage problems)</td>
<td>4,314</td>
<td>3,000</td>
<td>69.54%</td>
<td>8,130</td>
<td>5,654</td>
<td>Not avail</td>
<td>Not avail</td>
</tr>
<tr>
<td>Pacheco Water District</td>
<td>5,175</td>
<td>5,000</td>
<td>96.62%</td>
<td>10,080</td>
<td>9,739</td>
<td>7,137</td>
<td>6,896</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>842,581</strong></td>
<td><strong>376,751</strong></td>
<td><strong>NA</strong></td>
<td><strong>1,925,790</strong></td>
<td><strong>793,056</strong></td>
<td><strong>1,499,314</strong></td>
<td><strong>568,370</strong></td>
</tr>
</tbody>
</table>

Table 1 above was derived by obtaining acreage information for each district through Chris Eacock at the Bureau of Reclamation (USBR) in Fresno. The number of acres requiring drainage by 2050 was taken from estimates in the San Luis Drainage Feature Evaluation, Plan Formulation Report, USBR, December 2002 (pages 2-5 and 2-6). The maximum water savings associated with the retirement of these lands was calculated by multiplying the maximum contract amounts for each district by the
percent of that district requiring drainage. Contract amounts were taken from a list of CVP contracts provided by Reclamation. Each district’s total contract amount was calculated by adding all of its water contracts if more than one contract exists.

According to information we have received from the Environmental Working Group, water, power and crop subsidies to Westlands in 2002 amounted to well over $100 million. If approximately half of Westlands, as well as those impacted lands in other drainage-problem districts such as Broadview, Widren, Mercy Springs, Panoche, Pacheco and others were retired, it would free up hundreds of thousands of acre-feet of water, as well as significantly reduce water and crop subsidies by tens of millions of dollars a year. Full analysis of such an alternative would provide meaningful disclosure to decision makers and the public about the true costs of delivering water to these problem lands.

**Upstream and Downstream Impacts of BDCP Must Be Evaluated**

The proposed BDCP only includes areas within the Delta itself, although the Delta takes water from as far away as the Trinity River, and has impacts all the way to Southern California from development and growth. Therefore, the EIS/EIR should identify growth-inducing impacts from continued and ever-increasing Delta exports to central and southern California, including the possibility of agriculture to urban water transfers, especially from drainage impaired lands in the western San Joaquin Valley.

The impacts on upstream ecosystems and species, such as the Trinity River and its listed coho salmon must be examined in detail. Since the Trinity River has both federal and state area of origin protections, annual and decadal limitations on exports of Trinity River water must be established to ensure “preservation and propagation” of the Trinity River’s fisheries, including with a minimum pool of cold water carryover storage which will meet downstream State and Tribal temperature objectives. Failure to establish specific protections for the Trinity River would violate the federal and State protections inherent to the unique status of the Trinity River Division of the CVP, and would also impact listed coho salmon and the Interior Department’s Tribal Trust obligations to the Hoopa Valley and Yurok tribes.

The EIS/EIR should specifically identify how well each of the alternatives meets water quality and quantity objectives for all affected water bodies that are contained in the various Basin Plans for the Sacramento River, Delta and Trinity River. For instance, the alternatives must examine how well each alternative meets temperature objectives for the Sacramento and Trinity Rivers. Cold water carryover storage at Shasta Reservoir should be examined in great detail, and any water savings from reduced Delta exports should be considered for storage to protect salmon fisheries from extended drought. The alternatives must also identify how well the various alternatives would meet water quality objectives in the Delta for all of the various water quality parameters.
alternatives analysis must identify what the water quality impacts will be in terms of meeting TMDL requirements for all affected rivers and waterbodies from the Trinity River to the southern Tulare basin. This would include sediment, temperature, salinity, selenium, mercury, boron and any other water quality constituents which impair beneficial uses of water in areas upstream, within or downstream of the Delta and its pumps.

Thank you for considering these comments. We reserve the right to submit additional scoping comments as more information becomes available.

Sincerely,

Carolee Krieger, President
May 30, 2008

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
California Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236  
(delores@water.ca.gov)

Dear Ms. Brown:

This letter provides the Conaway Preservation Group’s comments on the Notice of Preparation (“NOP”) for the Bay Delta Conservation Plan (“BDCP”) – Joint Environmental Impact Statement / Environmental Impact Report (“EIS/EIR”).

Introduction

The Conaway Preservation Group, LLC (“Conaway”) owns the Conaway Ranch in Yolo County. The Conaway Ranch property covers over 17,000 acres on the west side of the Sacramento River between the cities of Davis and Woodland (See Figure 1). Conaway Ranch has been operated for many years to meet goals of agricultural production and waterfowl/wildlife habitat. Approximately 40 percent of the Ranch is located within the Yolo Bypass and the remainder lies west of the bypass. Over the past few years Conaway has sought to engage local and state agencies in an effort to develop and implement a multi-benefit project on the Ranch. Conaway has developed several proposals that could be funded in part through Propositions 1E, 84, and others1 for projects to improve flood protection, improve water quality, preserve open space, and provide fish and wildlife habitat. The Conaway Ranch occupies a strategic location that makes it ideal for a wide variety of projects and programs that the EIR/EIS should evaluate and consider.

The EIR/EIS And The BDCP Should Include An Analysis And Consideration Of Conservation Opportunities And Mitigation Measures Upstream Of The Delta

The NOP states that the planning area for the BDCP will consist of the aquatic ecosystems and natural communities, and potentially adjacent riparian and floodplain natural communities, within the statutory Delta. The NOP emphasizes the necessity for the BDCP to include conservation actions outside of the statutory Delta that advance the

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1 The two propositions are also known as the Safe Drinking Water, Water Quality and Supply, Flood Control and Coastal Protection Bond Act of 2006, and the Disaster Preparedness and Flood Prevention Bond Act of 2006.
goals and objectives of the BDCP within the Delta, including as appropriate conservation actions in the Suisun Marsh, Suisun Bay, and areas upstream of the Delta. (NOP at 8) Conaway urges the BDCP to broadly consider upstream actions that could benefit the Delta and the species and ecosystems at the heart of the BDCP as well as many others. The comprehensive approach we recommend is consistent with numerous other findings made by scientists and resource managers.

For instance, in November 2007 the Independent Science Advisors Report ("ISA Report") developed numerous recommendations and guidelines that it believed the BDCP must follow in order to successfully achieve its goals. One of only three over-arching principles listed in the ISA Report is that, "[t]he Delta is part of a larger river-estuarine system that is affected by both rivers and tides. The Delta is also influenced by long-distance connections, extending from the headwaters of the Sacramento and San Joaquin Rivers into the Pacific Ocean." (ISA Report at iv) Therefore, the advisors emphasized "that the Delta is embedded within a larger environmental context and cannot be managed as an isolated system." (ISA Report at 10) They recommended examining possible bottlenecks at other life stages of "Covered Species" of fish and wildlife, including those that occur outside the planning area, rather than only those at the life stage immediately affected by "Covered Activities". (ISA Report at vii-viii) Conaway concurs in these recommendations and urges the BDCP and EIS/EIR to explore them.

The BDCP Should Specifically Consider Opportunities In The Yolo Bypass

Conaway believes that the Yolo Bypass should be a major component of any upstream conservation measures in the BDCP, or mitigation for impacts created by various BDCP covered activities, and that the EIS/EIS should address this issue. The unique value and importance of the Yolo Bypass has been recognized by countless investigations, and the BDCP must seriously consider implementing the long-discussed restoration and enhancement opportunities that have been characterized by many as "no-regrets" actions.

For instance, the Public Policy Institute of California’s 2007 report, "Envisioning Futures for The Sacramento-San Joaquin Delta ("PPIC Report")." included the following discussion regarding the Yolo Bypass:

The Delta doubles in size when the Yolo Bypass is flooded. The problem is that the bypass floods only erratically and not always at times optimal for fish and birds. The bypass presents some major opportunities for ecosystem manipulation (e.g., by gating the Fremont Weir), which are currently under discussion (Department of Fish and Game, 2006). It is also a major spawning and rearing area for splittail and other native fish, a rearing area for juvenile salmon, and a potential source of nutrients for Delta food webs (Sommer et al., 2001a and 2001b). This region could act as a major interface with the Delta ecosystem, especially in the Cache Slough region, a role that will likely grow in importance, both through deliberate manipulations and through the increased frequency of flooding as a result of climate change. (PPIC Report at 79)
Similarly, the Pelagic Fish Action Plan, developed by the Resources Agency, DWR, and DFG also discussed providing flows through the Yolo Bypass to improve conditions for several life stages of Delta smelt, among others. (See pages 6, 49-50)

Conaway has continually pressed for such restoration actions within the Yolo Bypass because it believes, like most other scientists and resource managers, that such efforts will aid endangered and threatened fish species, and also provide multiple benefits including additional flood protection, preserved open space, better water quality, and improved habitat for other terrestrial and aquatic species. Conaway is willing to discuss ways it can participate and assist in providing increased flows through the Yolo Bypass and in implementing other measures to provide essential habitat elements within the reaches of the Yolo Bypass it owns and other areas downstream. We also recognize that some of the comprehensive multi-benefit actions may require coordination among many landowners and managers in the Yolo Bypass, and forums exist to address this need.

The BDCP Should Consider Additional Species

The NOP explains that the EIR/EIS will include an analysis of the effects of the proposed plan and other alternatives, including potential impacts to terrestrial resources that may or may not be addressed as covered species by the BDCP. (NOP at 9) Conaway agrees that the BDCP and the EIS/EIR should consider a wide range of species, habitats, and ecosystems to properly achieve its goals. As explained above, the Delta is not an isolated component, but rather one part of a highly complex and integrated system that begins in the headwaters of the Delta’s major tributaries and ends in the Pacific Ocean. Therefore, in addition to the currently listed species, the BDCP and the EIS/EIR should consider the additional terrestrial species mentioned in the NOP (i.e., Giant Garter Snake, Valley Elderberry Longhorn Beetle, Swainson’s Hawk, and Bank Swallow), as well as other species of plants and animals that may be affected by activities proposed in the EIS/EIR or later activities.

The BDCP EIR/EIS will, in many instances, likely be at a programmatic level, but it is at this level that comprehensive thought should be given to landscape-level and ecosystem-level processes. Within the planning horizon of 50 years, the larger Delta ecosystem will surely be affected by changes in climate, urbanization and demographics. Thus, while the BDCP should be focused on the species of most legal and biological concern, it should not be so narrowly focused that the comprehensive vision and planning necessary to achieve a Delta solution for multiple species and all stakeholders is excluded. Such an approach is consistent with the ISA Report, which explained that:

Given that regulatory assurance is a priority for the Potentially Regulated Entities (PREs), it is prudent to examine the potential effects of Covered Activities on the full range of species that are listed under federal and state endangered species acts, or are likely to be listed during the permit period. For example, plant and animal species associated with tidal marsh and riparian vegetation may be candidates for coverage by the Plan depending on the final array of Covered Activities. (ISA Report at 14)
Conaway believes that there are valuable opportunities within and adjacent to the Yolo Bypass to take actions benefitting this broader suite of species.

**The BDCP Should Consider Improving The Water Quality Of Flows From Yolo County**

In the Governor’s February 28, 2008 letter to Senators Perata, Machado, and Steinberg, he explained the major focus of his administration’s Delta Vision Blue Ribbon Task Force. Water quality was among the seven major issues highlighted. The ISA Report also explained that changes in water quality have important direct and indirect effects throughout the estuarine ecosystem. (ISA Report at v) Numerous other reports have identified water quality as a factor currently placing stress on the Delta ecosystem and the listed fish species that are the focus of the BDCP.

It is well known that major sources of pollution and contaminants to the Delta originate upstream in wastewater and stormwater discharges. Therefore, the BDCP and the EIS/EIR should particularly consider ways to address the quality of water flowing through the Delta from Woodland, Davis, and other parts of Yolo County, especially as they may relate to restoration efforts in the Yolo Bypass. Not only will this aid aquatic and terrestrial species, it will also improve the water quality of the Delta, which serves as a source of drinking water for millions of Californians. There may be similar concerns regarding discharges to the Sacramento River, although that goes beyond the scope of our concerns.

Conaway believes that there is an opportunity to implement the above-mentioned habitat and floodplain restoration efforts in the Yolo Bypass in a way that also addresses water quality. These water quality issues should be addressed now because they are and will continue to affect Delta water quality as Yolo County’s population grows over the next 50 years. This is especially true in light of the unmatched potential of the Yolo Bypass to aid the BDCP effort. Thus, Conaway urges the EIS/EIR and the BDCP to integrate water quality investigations into the potential Yolo Bypass conservation and mitigation measures previously discussed.

**Conclusion**

The NOP explains that, “[w]here appropriate, conservation actions outside the Statutory Delta would be implemented pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others as appropriate.” (NOP at 8) As an area directly upstream of the Delta, and partly within the Yolo Bypass, Conaway Ranch provides many options for a wide array of those conservation actions.

Conaway has several unique attributes that will allow rapid implementation of any conservation or mitigation projects. Of major importance for implementation is the fact that Conaway owns 17,000 contiguous acres. In addition, Conaway owns 85 percent of the land within Reclamation District 2035, a local agency that could partner with the
BDCP efforts. Both Reclamation District 2035 and Conaway can be cooperating partners with the BDCP agencies and entities. These circumstances greatly reduce transactional costs and delays because necessary project components such as potential flood easements, rights of way, and other permits can be obtained through negotiations with one party instead of many. Additionally, because Conaway has preserved the agricultural heritage of the Conaway Ranch, there are few infrastructure and other hurdles to delay implementation of a wide variety of conservation or mitigation measures.

In sum, this letter provides general comments regarding the necessity of the EIS/EIR to focus on upstream conservation and mitigation actions, additional terrestrial and aquatic species, and water quality improvement opportunities. However, Conaway intends this letter to be a catalyst for further discussions and detailed analysis of the specific opportunities available in the Yolo Bypass and on the Conaway Ranch property. Conaway will continue to be engaged in the BDCP process, and will gladly offer additional data, information, or insight regarding these opportunities. Please do not hesitate to contact me to discuss this letter.

Sincerely,

[Signature]

TOVEY GIEZENTANNER
President
May 30, 2008

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236

Re: Notice of Preparation of Bay Delta Conservation Plan EIR/EIS

Dear Ms. Brown:

Delta Wetlands Properties owns 20,000 acres on four Delta islands: Webb, Bouldin, Holland and Bacon. It is responsible for the maintenance of 56 miles of levees. The largest private landowner in the Delta, Delta Wetlands Properties has initiated an in-Delta storage project known as the Delta Wetlands Project (Project). The Project will divert and store water on Webb Tract and Bacon Island and create and enhance wetlands to manage wildlife habitat on Bouldin Island and most of Holland Tract. The stored water will be provided to municipal, industrial and agricultural users within the Central Valley Water Project and State Water Project service areas. The stored water may also be released to enhance Delta outflow and water quality.

The habitat islands, designed under the direction of the California Department of Fish and Game, will be set aside permanently as wetland and wildlife habitat, providing both seasonal and permanent wetlands, riparian woodland zones, ponds and lakes, and grasslands. In addition, a significant level of farming activity will be integrated into the habitat plan, preserving much of the history and character of the area. The habitat islands will provide extremely valuable wetland and wildlife benefits to the Delta, supporting a wide variety of species, including listed and endangered plants and animals and migratory waterfowl.

The Project will directly further the goals of the Bay Delta Conservation Plan (BDCP) of providing for the conservation and management of covered species within the planning area; and restoring and protecting water supply, water quality, ecosystem, and ecosystem health. The 9,000 acres of habitat provided by the Project will be one of the

Anson B. Moran, General Manager  
1660 Olympic Blvd., Suite 350  
Walnut Creek, CA 94596  
Telephone (415) 730-5637
largest new conservation efforts in the region and will provide numerous fish and wildlife benefits. Delta Vision and the BDCP have also long espoused the notions that surface and groundwater storage are important tools needed to capture runoff for future water supply, provide flexibility for flood management and help maintain Delta water quality and fish habitats through timed releases. Additional in-Delta storage will provide additional flexibility in the timing of pumping from the Delta, thus protecting at-risk fish species. The Project is a definitive step in the direction of achieving the BDCP's goals. As such, the BDCP should consider including the Project as a key element of the conservation plan.

Delta Wetlands Properties intends to submit further comments throughout the development of the BDCP.

Sincerely,

Anson B. Moran
General Manager
Friends of the Clarksburg Library

May 30, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

RE: Pending Clarksburg Proposals

Dear Ms. Brown:

On behalf of the Friends of the Clarksburg Library (FOCL), we would like to submit this letter to you as part of the scoping comments pertaining to the proposals being contemplated for the Clarksburg area.

FOCL is very concerned with the proposals that would either convert certain areas of the Clarksburg area into “tidal marsh wetlands” or a “Primary Habitat Restoration Zone”. As presented to the community the Bay Delta Conservation Plan proposes the creation of tidal marsh wetlands where none have existed before, and the restoration of aquatic habitat that may have a negative effect on existing habitat. Our community has a rich agricultural background and many of the land use practices provide valuable habitat for wildlife, the proposal envisioned in the BDCP Scoping Plan endanger both the agricultural and habitat values that currently exist.

We believe any of the 4 proposals currently being discussed would have do irreparable damage to the Clarksburg community and we would strongly discourage any movement forward with these proposals.

Respectfully,

Rina Venturini DiMare, Board President
Friends of the Clarksburg Library

CC: North Delta Community Area Residents for Environmental Stability
Senator Mike Machado
Assemblymember Lois Wolk
Congressman Mike Thompson
May 5, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
P.O. 942836  
Sacramento, CA  94236  
Via Email: bdcp@water.ca.gov

Dear Ms. Brown,

The Fullerton Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents as well as for half of the nation’s produce.

The Fullerton Chamber of Commerce is dedicated to the economic vitality and prosperity of our members and the community. Through our membership, we represent nearly 700 employers in the North Orange County area and their more than 30,000 employees. These businesses rely on water from the California Delta for their manufacturing needs as well as that of the consumption of their employees and their families.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, and state and federal agencies. The Plan is instrumental to mapping out a comprehensive conservation plan, and a solution for the Delta. Additionally, the means to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

Fullerton Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Theresa Harvey  
Executive Director & CEO  
Fullerton Chamber of Commerce
— Comment Card —

Date: 5/30/2008

Name: Matthew Hemly
Organization: Greene and Hemly
Telephone: 916 775 1379 e-mail: Matt@GreeneandHemly.com
Address: 11275 S. Hwy 160
City: Courthand State: CA zip: 95615

[Yes, I would like to be added to your e-mail list.]

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

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Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to: Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236. You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.
Greene and Hemly grows pears apples cherries and kiwis in the proposed Bay Delta Conservation Plan area. We have some concerns about the effect of the proposed BDCP. It is difficult to formulate these concerns because the people who spoke at the April 30, 2008 scoping meeting like Barbra McDonald, Carl Wilcox, Sue Fry, Monica Gutierrez and Rick Sanchez insisted that there are no actual plans drawn up. All we can comment on are rumors and speculation on what might be included in this plan. Our understanding is that there is a vague idea to seize property and turn it into a wildlife habitat. Also we understand a peripheral canal is to be built to move water to Southern California from the northern part of the Delta. Our concerns are generally economic and focused on what would be included in the BDCP Cost Benefit Analysis.

Was the April 30th meeting used to comply with NEPA requirements?

We wonder what species in the increased habitat area are to be benefited? Why are these species deemed valuable? What is their value and to whom? Have there been pilot projects demonstrating that the species intended to be benefited by the project have indeed benefited from similar projects on a smaller scale? Will the uncertainty of the projects anticipated benefits be included in the project's Cost Benefit Analysis?

How will construction of the project affect traffic immediately adjacent to the project and to surrounding areas? What will be the County and State costs for the additional wear and tear on the roads? Who will bear the costs for these additional repairs? Increased traffic will make the roads more dangerous thereby increasing the numbers of accidents on these roads. How will the value of public safety and the value of local citizen’s lives be calculated?

How will traffic flows in the projects area be affected? What will be the impact of altered accessibility in the region, (for example: at projects completion if a farmer has to haul his crop additional miles to market, his profitability decreases) how will that cost be calculated? How will the costs of increased driving upon local citizens be calculated?

When areas are removed from agricultural production many people are affected. Service providers such as fertilizer suppliers, farm equipment mechanics, and local food markets will all lose customers. How will the BDCP Costs Benefit Analysis calculate how many businesses will lose customers and what the financial impact on these service providers will be? Obviously local service companies will lose efficiencies of scale from the smaller market size thereby becoming more expensive to operate. How will this be calculated? These higher costs will be passed onto remaining customers, how will it affect them?

Many of the people working within the proposed site for habitat restoration are farm workers. Farm work requires site specific skills. The interaction between soil climate and equipment is very different in a place like Grand Island than even in a nearby place like Davis. When farm workers are displaced from the project areas they will not be able to find other positions without losing seniority. What is the economic impact on these workers and how will it be measured?
There is an intangible value to living and working in an area beyond the value of house and land which will be permanently destroyed by the project. People will need to relocate. How will that be measured?

Changing the ecology of the area will alter the pest species mix in farms adjacent to the project. Are the increased pest control and mitigation costs for pest such as Stink Bug, Box Elder Bugs, and Coyotes to be included as costs of the project? How would these estimated costs be figured?

The Peripheral Canal portion of the BDCP will require lots of rock, cement trucks and labor. Increased demand for these people and goods will affect their availability. What will that do to their market price? How will it affect companies using these goods not directly affiliated with the project? Will the inflationary price for these goods be considered as a cost of the project in the Cost Benefit Analysis? What would the inflationary pressure of the project be to the local economy?

Matthew Hemly, Greene and Hemly
May 19, 2008

Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. 942836
Sacramento, CA  94236

Dear Ms. Brown,

The Irvine Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents as well as for half of the nation’s produce.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan—and, a solution—for the Delta. And, the key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

The Irvine Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Jacquie Ellis
President/CEO

JE: jw
May 14, 2008

Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. 942836, Sacramento, CA 94236

Dear Ms. Brown,

The Irwindale Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all California’s residents as well as for half of the nation’s produce.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is essential to mapping out a comprehensive conservation plan and a solution for the Delta. The key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

Irwindale Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable and sufficient water supply. We need to restore the Delta ecosystem and to rebuild the conveyance system. The success of the BDCP is essential to the continued economic health of California.

Sincerely,

Lisa Bailey
President and CEO
May 7, 2008

Ms. Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. 942836
Sacramento, CA 94236

Dear Ms. Brown:

As the largest homebuilding firm headquartered in California, KB Home promotes homeownership for all Californians. We have grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents, as well as for half of the nation’s produce.

Despite the current market conditions for home sales, California still faces a housing crisis in terms of availability and affordability, particularly when you consider the projections for California’s population growth over the next decade. Without a reliable and healthy water system, new home supply will be severely restricted. In addition to the human toll from inadequate housing, home prices will again soar out of the reach of California’s families. California’s economic future and environmental health will be compromised without a long-term and comprehensive solution to water storage and delivery.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, and state and federal agencies. The Plan is vital to mapping out a comprehensive conservation plan and a solution. The key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

KB Home supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and Colorado River water. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the health of California.

Sincerely,

Kate Klimow
Regional Director
Government and Public Affairs
May 14, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
P.O. 942836, Sacramento, CA 94236

Dear Ms. Brown,

The La Verne Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all California’s residents as well as for half of the nation’s produce.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan and a solution for the Delta. The key to a reliable water system is a restored Delta ecosystem and a rebuild water conveyance system.

La Verne Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quality in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability is a key concern.

The success of the BDCP is essential to the continued economic health of California.

Sincerely,

Gary Howarth  
Chairman
May 6, 2008

Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. 942836,
Sacramento, CA 94236

RE: Bay Delta Conservation Plan

Dear Ms. Brown:

On behalf of the Los Angeles Area Chamber of Commerce, thank you for the opportunity to participate in this historic process to create a better future for the Sacramento-San Joaquin Delta.

The Bay Delta Conservation Plan is at a critical initial “scoping” stage that shapes the breadth of issues and alternatives that will undergo the exhaustive analysis that is required under state and federal environmental laws. This meeting marks an opportunity for interested parties in the Southern California to provide input into the scoping process.

The Chamber represents more than 1,600 members with more than 722,000 employees. Our continued economic vitality is linked to a reliable, high-quality water supply. That will require a successful plan in the Delta that results in restoration of ecosystem and improvements to the water system.

With that in mind, the Chamber wishes to reinforce some specific needs and objectives of this BDCP process:

- The BDCP must stick to its stated goal of placing the needs of the future Delta ecosystem and that of the water systems on equal footing. A balanced approach is the only reasonable framework for a successful solution.

- Both quantity and quality are important needs of the future water system. Urban Southern California’s stated goal is to maintain, and not to increase, State Water Project
supplies passing through the Delta. A source that is low in bromides and organic compounds will remain necessary in order to successfully blend State Water Project water with other Southern California supplies.

- Reliability cannot be achieved without the BDCP addressing rising sea levels in the Delta and the rising risk of catastrophic levee failures due to flooding or seismic events. The BDCP must address all of the major challenges to both the water system and the ecosystem.

- The strategy to restore the estuary should study ways to separate the natural tidal fluctuations of the ecosystem from the movements of the water system. The state economy and the Delta environment do not share the same clock. A full analysis of conveyance alternatives is absolutely necessary in order to provide a foundation of fact necessary for historic change in the Delta.

There is heightened acknowledgement throughout Southern California about the need to conserve and to the challenges of maintaining a reliable water system in the face of historic environmental problems in the Delta. Time is of the essence.

The Bay Delta Conservation Plan must stick to its schedule so that a comprehensive plan is in place by the end of 2010. Thank you again for holding this important meeting in Los Angeles today.

Gary Toebben
President & CEO
May 1, 2008

Delores Brown
Chief Office of Environmental Compliance
California Department of Water Resources
P.O. 942836, Sacramento, CA 94236
Via Email: bdcp@water.ca.gov

Dear Ms. Brown,

The Montebello Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents as well as for half of the nation’s produce.

The Montebello Chamber of Commerce is an association of business people dedicated to promoting and serving the economic, civic and cultural welfare of the City of Montebello.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan—and, a solution—for the Delta. And, the key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

The Montebello Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Andrea Wagg
President
Montebello Chamber of Commerce

877 W. Whittier Boulevard • Suite 200 • Montebello, CA 90640 • Phone: 323.721.1153 • Fax: 323.721.7946
www.montebellochamber.org
Comment Card

Date: May 5, 2008

Name: William Van Amber Fields  Organization: Morada Area Assoc.
Telephone: 209-931-3586  e-mail: meleyco@inreach.com
Address: 6406 Mulberry Ln.
City: Morada, CA  State: CA  Zip: 95212-9417

[Yes, I would like to be added to your e-mail list. meleyco@inreach.com]

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

Morada is a 150 year old farming community on the eastside of Stockton bounded by Hwy 99 on the west, Alpine Rd on the east, Bear Creek on the north, and the Calaveras River on the south. Morada is represented by the Morada Area Assoc. (M.A.A) through the Morada Municipal Advisory Council to the S.J. County Board of Supervisors. Morada is also part of a larger coalition of Linden, Waverly and Waterloo communities called the Eastside Coalition.

Our area overlaps a large zone of depression under the Northeastern San Joaquin Groundwater Basin. We all rely on wells...ag, domestic, and community for our water. Our aquifer is critically overdrafted and threatened by saline intrusion moving easterly from...
Comment Card

Date: May 5, 2008

Name: ______________________________ Organization: ____________________________

Telephone: ___________________________ e-mail: _______________________________

Address: ________________________________

City: ___________________________ State: __________________ Zip: ____________

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

under our San Joaquin Delta at the rate of 250 ft per year. Our aquifer is also threatened by arsenic contamination from under the City of Stockton. We are already in a precarious position.

Morada stands with our San Joaquin County Board of Supervisors and related water agencies in opposition to any plan that calls for more water being removed from the natural flush of our Delta and the construction of a "dual conveyance, remote facility or anything that equates to a 'peripheral canal' that will take more water from our watershed and send it to Southstate. Such a plan will facilitate
The eventual destruction of our groundwater basin by salt and heavy metal/arsenic contamination.

We are all mandated to protect, preserve, and restore our God-given water resources, public trust.

Thank you for the opportunity to comment.

Sincerely,

[Signature]

M.M.A.C. Chair

[Signature]

M.A.A. Board
Your input on the BDCF EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

Since this environmental review study is under the auspices of the Bay Delta Conservation Plan (BDCF) and your preferred alternative calls for a peripheral canal, dual conveyance, remote facility or whatever else you desire to call a Sacramento River water diversion to South State Ag interests (i.e., the San Joaquin Delta), and since an isolated conveyance would have unmitigatable detrimental environmental impacts on our San Joaquin Delta, you must not limit the scope of this EIR/EIS.

It doesn’t take a lawyer or a hydrologist to see that your plans are solely about increasing exports at all costs and, in the long run, are detrimental to the entire state for many reasons at many levels.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.
Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

But, the first glaringly obvious reason is the cost of a peripheral canal estimated in some studies to be between 5-10 billion dollars.

There is a plan by Dr. Russ T. Brown, Jones and Stoker dated March 23, 2007 titled "Proposal to Reconnect the San Joaquin River to the Estuary - Delta Corridors Project" which deserves your consideration before you simply commit to a politically expedient solution. Dr. Brown's plan estimates costs for the Delta Corridors Project at less than 500 million dollars... considerably more reasonable and certainly more environmentally logical than a peripheral canal.

While not perfect, Brown's plan has merit; it is flexible and could be modified and fine tuned to accomplish...
Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.
May 30, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

VIA U.S. MAIL AND EMAIL TO delores@water.ca.gov

RE: Scoping Comments on the BDCP EIS/EIR

Dear Ms. Brown:

We are writing on behalf of the Natural Resources Defense Council, Defenders of Wildlife, Environmental Defense Fund, and The Bay Institute, and our hundreds of thousands of collective members and activists in California, to submit the following comments on the scope of the Environmental Impact Statement / Environmental Impact Report (“EIS/EIR”) that is being prepared for the Bay Delta Conservation Plan (“BDCP”). We expect that analysis of these issues in the environmental review process for the BDCP will help lead the State and federal agencies to sustainably manage the CVP and SWP in the Delta, consistent with the co-equal goals of ecosystem health and reliable water supplies established by the Delta Vision Blue Ribbon Task Force. These comments are supplementary to our joint comments to the National Marine Fisheries Service and U.S. Fish and Wildlife Service dated March 24, 2008, which are attached hereto as Exhibit A and incorporated by this reference.

We present the following recommendations for the environmental review process of the BDCP:

- The BDCP should utilize an ecosystem approach under the Natural Community Conservation Planning Act, Cal. Fish and Game Code §§ 2800 et seq. (“NCCPA”);
- The BDCP should adopt measurable goals and objectives for the species (e.g., population abundance targets where possible) and habitats covered by the Plan, should include effective monitoring to determine progress towards these goals, and should adapt management of the CVP and SWP over time to meet these goals;
- The BDCP should include operational criteria to respond to a broad range of water years and other foreseeable circumstances, such as poor ocean conditions, in order to operate the CVP and SWP to meet conservation goals and ensure that the regulatory assurances provided in the Habitat Conservation Plan / Natural Community Conservation Plan (“HCP/NCCP”) do not adversely affect the Delta environment;
- Consistent with the requirements of the federal Endangered Species Act, 16 U.S.C. §§ 1531 et seq. (“ESA”), California Endangered Species Act, Cal. Fish and Game Code §§ 2080 et
Joint Comments RE: Scoping for the BDCP EIS/EIR  
May 30, 2008  
Page 2

seq. ("CESA"), and NCCPA, the HCP/NCCP must minimize the take of covered species, must provide guaranteed funding for implementation over the life of the permits, must not jeopardize either the survival or recovery of listed species, and must be consistent with existing legal requirements applicable to the CVP and SWP;

• The EIS/EIR should analyze alternatives that would increase outflow and reduce exports as compared to current conditions, and analyze water conservation, efficiency, and additional demand reduction measures, as well as water recycling, groundwater and conjunctive use programs, urban stormwater capture and other tools to achieve the BDCP’s water supply reliability goal;

• The baseline for analysis in the EIS/EIR must be based on the existing operational and legal constraints for the CVP and SWP;

• The EIS/EIR must analyze the BDCP’s impacts, with particular focus on: (1) global climate change; (2) water quality, including salinity, toxic hot spots, pesticides, mercury, and other pollutants; (3) biological resources, including all species that may be impacted by the CVP and SWP, as well as upland habitats that may be affected; and (4) cumulative impacts; and the approved HCP/NCCP must minimize the Projects’ environmental impacts to a less than significant level if feasible mitigation measures exist;

• The EIS/EIR must adequately analyze the effectiveness of proposed mitigation and conservation measures over the term of the BDCP;

• The EIS/EIR must analyze consistency with and potential impacts on the Delta Vision “vision” document and strategic plan;

• The EIS/EIR should consider broadening the Project Area and scope to include all parts of the CVP and SWP, including reservoirs upstream of the Delta, as well as other activities that impact covered species;

• The EIS/EIR should analyze the economic costs and benefits of water conservation and efficiency improvements to meet water supply needs, as well as identifying reasonable sources of funding to implement the BDCP; and

• The scoping and comment period for the EIS/EIR should be reopened upon completion of the BDCP conservation strategy and adoption of the Delta Vision Strategic Plan.

On the pages that follow, we address these issues in greater depth.

I. The BDCP Must Utilize the NCCPA, Rather Than an Incidental Take Permit under CESA, to Ensure Long-Term Conservation.

The BDCP must utilize the ecosystem approach of the NCCPA, rather than relying on an incidental take permit under CESA, to ensure that the plan will provide long-term conservation in the Delta. The March 17, 2008 Notice of Preparation for the BDCP EIS/EIR ("NOP") reflects uncertainty as to whether a Natural Community Conservation Plan under the NCCPA, or an incidental take permit under CESA, will be utilized to comply with State law requirements. The NCCPA was designed for multi-species conservation planning, with an emphasis on habitat protection and restoration, as well as adaptive management, to meet the Act’s goals. As discussed further below in part IV(C) of this letter, restoration of species and habitats is a key goal of the NCCPA, Fish & Game Code § 2801(i), and the Act requires that implementation of the approved plan will help bring about the recovery of listed species and prevent additional
listings. See Cal. Fish & Game Code § 2805 (definition of “conserve”). Therefore, we strongly urge that the BDCP utilize the NCCPA because it will provide a more holistic and ecosystem-based approach to conserving and managing the Delta than a species-centric approach under CESA.

II. The BDCP Must Include Clear, Measureable Conservation Goals and Objectives, Monitor Progress towards those Goals, and Adapt Management to Meet these Goals.

The BDCP Points of Agreement and the NOP both emphasize the use of adaptive management to meet the BDCP’s goals. We support the use of adaptive management in the BDCP, and we note that both the NCCPA and ESA require the use of adaptive management in an HCP/NCCP. Cal. Fish & Game Code § 2820(a)(2), (8), (b)(5), (f)(1)(G); see U.S. Fish and Wildlife Service, Habitat Conservation Plan Handbook (1996 and 2000 Addendum) (“HCP Handbook”) at 3-24. The BDCP should include a robust adaptive management program, as well as effective monitoring to determine whether program goals are being achieved and how to adapt management to better achieve those goals. The BDCP must include an effective monitoring program, see Fish and Game Code § 2820(a)(7); 50 C.F.R. § 17.22(b)(1)(iii)(B), (b)(3), and the EIS/EIR should include some analysis of monitoring programs, including the levels of anticipated take of covered species required for effective monitoring.

However, in order for adaptive management to be effective, the HCP/NCCP must have clear, measurable biological goals and objectives. The BDCP’s goals must be consistent with the coequal goals of ecosystem health and water supplies established by the Delta Vision Blue Ribbon Task Force, but they must be far more specific than the general goals established in the NOP. The BDCP Points of Agreement recognizes that biological goals and objectives for each covered species should be adopted as part of the BDCP, but those goals have not yet been developed.

The BDCP should use measureable goals and objectives with respect to species and habitats, including all species covered by the plan and numerous species and habitat types affected by the plan, to ensure that the BDCP is achieving its conservation purpose. In particular, given the Delta species and habitat information available to the agencies, we believe that many species and habitat goals can be quantified, providing the best possible method of measurability. The Bay Institute, EDF, NRDC, Defenders of Wildlife, and Sierra Club California recently submitted joint comments to the Delta Vision Blue Ribbon Task Force which include ecosystem goals and targets that should be analyzed as potential goals for the BDCP. A copy of those comments are attached as Exhibit B and incorporated by this reference. Likewise, the ecosystem goals and objectives being developed by the CalFed Ecosystem Restoration Program and the Delta Vision Ecosystem Working Group may provide useful models in this regard. Lastly, the BDCP’s biological goals and objectives should be consistent with the numeric recovery plan goals for salmon, smelt and other listed species that have been or are being prepared by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.
III. The BDCP Should Include Operational Criteria and Other Adaptive Management Measures to Respond to a Broad Range of Foreseeable Circumstances.

As noted above, we are encouraged that the BDCP will include adaptive management as part of the actions covered under the HCP. NOP at 5-6. As both the ESA and NCCPA recognize, adaptive management is a necessary element of an ecologically sustainable HCP/NCCP. Fish & Game Code § 2820(a)(2), (8), (b)(5), (f)(1)(G); HCP Handbook at 3-24; see 50 C.F.R. § 17.22(b)(2)(C), (b)(5). This is particularly true in the Delta, where water supplies and river flows vary on daily, seasonal, annual, and decadal timelines, where global climate change will change the Delta over time, and where ocean conditions and other causes outside the control of the BDCP can significantly affect covered species. As the CALFED science program has found, because of the inherent variability in the Delta ecosystem, “any management plan for the Delta must retain or restore flexibility and variability if key species, processes, and services are to be maintained.” CALFED Science Program, The State of Bay-Delta Science 2008, Summary for Policymakers and the Public (2008) at 8. For instance, with respect to salmon, when ocean conditions are unfavorable, it is even more critical that we conserve the existing population by managing the CVP and SWP to maximize protection of salmon.

The NCCPA requires that the level of assurances provided by a NCCP be “commensurate with long-term conservation assurances and associated implementation measures pursuant to the approved plan.” Fish & Game Code § 2820(f). A critical component in determining the level of assurances is “[t]he degree to which a thorough range of foreseeable circumstances are considered and provided for under the adaptive management program.” Id. § 2820(f)(1)(B); see also 50 C.F.R. §§ 17.22(b)(5), 222.307(g) (regulatory assurances with respect to changed and unforeseen circumstances under the ESA). In addition, we note that California law requires suspension or revocation of the NCCP if take of the species under the plan will jeopardize the continued existence of the species. See Fish & Game Code § 2823. Thus all parties have an incentive in ensuring that the HCP/NCCP achieves its goals and avoids jeopardy to any listed species.

Therefore, we recommend that the EIS/EIR analyze operational criteria to respond to a range of water years and other foreseeable circumstances that will affect covered species, including: (1) poor ocean conditions that affect ocean-going covered species including salmon; (2) continuing toxic pollutants in the Delta, which affect numerous covered species; (3) increased levels of take from non-covered activities; (4) failure of one or more levees in the Delta; (5) changes to hatchery policies; (6) increased upstream diversions (7) further declines in the populations of listed species, (8) impacts from ongoing development in the Delta, and (9) the arrival or spread of invasive species. The operational criteria must alter the timing and/or amount of water exports through the CVP and SWP as necessary to protect covered species and the Delta ecosystem due to such foreseeable circumstances.

Defining operational criteria to respond to different water years and other foreseeable circumstances may be among the most important and difficult parts of the BDCP process. The criteria must be flexible enough to respond to such changed conditions, but also provide sufficient assurances that they will be implemented in a way that protects the Delta ecosystem. And there must be clear criteria for triggering and guiding the adaptive operating criteria.
As such, the flexibility required for the BDCP to succeed precludes any inflexible guarantees or complete regulatory assurances regarding water supplies and exports. As a matter of policy, California should not provide regulatory assurances for reliable water supplies that fail to contribute to the recovery of these species and of the entire ecosystem. Instead, the BDCP must retain sufficient flexibility to respond to changed conditions and continue to conserve and restore listed species and the health of the Delta ecosystem.

IV. Compliance with the Legal Requirements for an HCP/NCCP under the ESA, CESA, and NCCPA

The ESA, CESA, and NCCPA impose several legal requirements for the adoption of an HCP/NCCP. Four of these requirements are of particular importance here.

A. The HCP/NCCP Must Minimize and Fully Mitigate Take of Covered Species

First, under the ESA the HCP must minimize the take of covered species to the “maximum extent practicable.” 16 U.S.C. § 1539(a)(2)(B)(ii). However, State law provides more protection to species listed under CESA. Under CESA, the take must be “minimized and fully mitigated,” and under both CESA and the NCCPA, the measures required to minimize take must be roughly proportional to the amount of take. Fish & Game Code §§ 2081(b)(2), 2820(b)(3)(b), (b)(9). There is no question that the CVP and SWP are significant sources of mortality for most of the fish species proposed to be covered by the BDCP HCP/NCCP. See, e.g., NRDC v. Kempthorne, 506 F.Supp.2d 322 (E.D. Cal., 2007). Significantly reducing the Projects’ take of these species below existing levels is critical to the survival and recovery of these species. Changes to the operations of the water projects that significantly reduce take of these species over the term of the permit must be implemented as part of the final approved HCP/NCCP.

B. The HCP/NCCP Must Provide Guaranteed Funding for Implementation Over the Life of the Permit.

Second, the HCP/NCCP must provide guaranteed funding for its implementation over the life of the permits. 16 U.S.C. § 1539(a)(2)(B)(iii); National Wildlife Federation v. Babbitt, 128 F.Supp.2d 1274 (E.D. Cal. 2000); Fish & Game Code § 2820(a)(10), (b)(3)(A), (b)(8); id. § 2081(b)(4). Reliance on general governmental revenues is not adequate, nor is it consistent with the “beneficiary pays” principle of the CALFED Record of Decision. Rather, in exchange for the regulatory assurances that the HCP/NCCP provides, the beneficiaries of the permit should fund the majority of the implementation of the plan. Elements of the program, such as conveyance facility, which are designed solely to provide water supply benefits and mitigation for water project operations, should be paid for entirely by water users. To the extent that market mechanisms similar to the Environmental Water Account are relied on as conservation measures in the BDCP, the plan must likewise identify and ensure adequate funding to implement such market mechanisms. The NCCP/HCP must identify the user fees or other funding mechanisms that will provide the funding required over the life of the permit.
C. The HCP/NCCP Must Ensure that the Projects do not Jeopardize the Existence or the Recovery of the Covered Species.

Third, the HCP/NCCP must not jeopardize either the survival or recovery of listed species. See 16 U.S.C. § 1539(a)(2)(B)(iv); Fish and Game Code §§ 2081(c), 2801(i), 2805, 2823; *NWF v. NMFS*, 481 F.3d 1224, 1235-36 (9th Cir. 2005), as modified, -- F.3d. --, 2008 WL 1821470 (April 24, 2008) (jeopardy analysis must consider the effects of the proposed action “within the context of other human activities that impact the listed species,” and “where existing conditions already jeopardize a species, an agency may not take action that deepens the jeopardy by causing additional harm.”). Therefore, to be consistent with the ESA and CESA, the activities authorized under the HCP/NCCP cannot jeopardize the recovery of any listed species, and they should be consistent with the recovery plans for listed species, including the recovery plan for Chinook salmon that is currently being developed. See *NWF v. NMFS*, 481 F.3d at 1236-38, as modified, -- F.3d. --, 2008 WL 1821470 (April 24, 2008) (requiring determination that the project will not jeopardize recovery of the species in the section 7 consultation process).

Furthermore, in order to comply with the NCCPA, the approved plan must not only avoid jeopardy to the survival of the species, see Fish and Game Code § 2823, but it must also promote the recovery of covered species, and prevent the listing of other species. *Id.* §§ 2801(i), 2805 (definition of “conserve”). Therefore, in order to comply with both the ESA and the NCCPA, the approved HCP/NCCP must promote the recovery of these covered species.

Merely sustaining the existence of these species is insufficient as a matter of law under the ESA and the NCCPA, and it is fundamentally wrong from a public policy perspective. California must require the CVP and SWP to do their part to recover salmon, Delta smelt, and the other species that have been adversely affected by the State and federal water projects for so many years.

D. The Operations Authorized in the HCP/NCCP Must Comply with Other Legal Requirements Applicable to the SWP/CVP.

Finally, the actions authorized under the HCP/NCCP must be incidental to “the carrying out of an otherwise lawful activity.” 16 U.S.C. § 1539(a)(1)(B); Fish and Game Code § 2081(b)(1); Cal. Code Regs., tit. 14, § 783.4(a)(1). Although this statutory language does not require the federal government to ensure that the Projects comply with existing law under the ESA, *Center for Biological Diversity v. U.S. Fish & Wildlife Service*, 450 F.3d 930, 941-943 (9th Cir. 2006), compliance with the incidental take statement “does not immunize its holder for violations of any other law, be it state or federal,” *id.* at 942. If the activities authorized by the HCP/NCCP are inconsistent with the existing statutory framework applicable to the CVP and SWP, the

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1. See also 40 C.F.R. § 1502.16(c); CEQA Guidelines § 15125(d),(e) (requiring analysis of whether the project complies with existing plans).
2. In addition, the Ninth Circuit's analysis suggests that under CESA, the State must determine that the operations of the CVP and SWP are consistent with existing law. *Id.* at 941-43; *compare* Cal. Code Regs., tit. 14, § 783.4(a)(1) (requiring the DFG Director to determine that the taking is "incidental to an otherwise lawful activity") with 16 U.S.C. § 1539(a)(2)(B)(1) (requiring the Secretary to determine that "the taking will be incidental").
regulatory benefits of the BDCP will be illusive because the Projects’ operations will violate existing law.

Operation of the CVP and SWP must be consistent with numerous environmental laws, including, but not limited to: the Central Valley Project Improvement Act (106 Stat. 4600 §§ 3401-3412 ("CVPIA")); Fish and Game Code sections 5901, 5930-31, 5937, and 6901-3; the Clean Water Act, 33 U.S.C. §§ 1251 et seq., Porter-Cologne Water Quality Control Act, Cal. Water Code §§ 13000 et seq., Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (2006), and Decision 1641; the public trust doctrine; and article 10, section 2 of the California Constitution (the reasonable use doctrine). In particular, State and federal law require the CVP and SWP to be managed to comply with the goal of doubling natural salmon populations. CVPIA § 3406(b)(1); Cal. Fish and Game Code § 6902. Recent language from DWR suggests that the BDCP process may seek to revise some existing legal requirements, particularly with respect to water quality. We strongly recommend that the EIS/EIR specifically analyze whether and to what extent the alternatives analyzed in the environmental review are consistent with these existing requirements, in particular the statutory policy of doubling anadromous fish populations under the CVPIA and State law, and that the final BDCP include tools and flexibility to be consistent with all of these existing legal requirements, including the goal of doubling anadromous fish populations.

V. The EIS/EIR Must Analyze Increased Outflow / Reduced Export Alternatives Among the Reasonable Range of Alternatives, and Analyze Water Conservation, Efficiency, and Demand Reduction Measures, as well as Water Recycling and Conjunctive Use Programs, as Alternatives to Achieve (in part) the BDCP’s Water Supply Reliability Goal.

CEQA and NEPA both require that a reasonable range of alternatives to the proposed project be considered in the environmental review process, including a no project alternative. Cal. Pub. Res. Code §§ 21002, 21061, 21100; tit. 14, Cal. Code Regs. ("CEQA Guidelines") § 15126.6; 42 U.S.C. § 4332; 40 C.F.R. §§ 1502.14, 1508.25(b). The EIS/EIR should analyze the conveyance alternatives identified in the Notice of Preparation ("NOP"), however, alternative export regimes must also be analyzed.

In particular, the NOP identifies four alternative Delta conveyance strategies to be considered in the environmental review process, per the Governor’s direction. See NOP at 3. However, in order to meet CEQA’s requirements and to adequately inform decision-making, in addition to these alternative conveyance systems, the EIS/EIR must consider a reasonable range of outflow and export levels from the Delta, including several alternatives that increase the level of freshwater outflow and reduce the amount of water diverted and exported from the Delta, as compared with current conditions. See Citizens of Goleta Valley v. Board of Supervisors, 52 Cal.3d 553, 566 (1990) (EIR must consider a reasonable range of alternatives that offer substantial environmental benefits and may feasibly be accomplished).

3 See note 2, supra, at 22, 34.
4 The Supreme Court’s pending decision on review of the case of In Re Bay Delta Programmatic EIR, 133 Cal.App.4th 154 (2005), will provide additional guidance on this question. However, even assuming, arguendo, that
Increasing outflow and reducing exports from the Delta is likely to have significant environmental benefits, as increased exports over the past several years have coincided with significant declines in many fish species in the Delta, including Delta smelt, Sacramento Splitetail, fall run Chinook salmon, and the Pelagic Organism Decline ("POD"). Court-ordered reductions in exports to protect Delta smelt, as well as scientific evidence relating to POD, demonstrate that increased outflow and reduced diversions likely are necessary to protect the Delta ecosystem and covered species.

Increased outflow and reduced exports likely are necessary to meet the ESA/CESA requirements of reducing take to the maximum extent practicable, as demonstrated by Judge Wanger's order to protect Delta smelt from jeopardy in NRDC v. Kempthorne, 506 F.Supp.2d 322 (E.D. Cal., 2007). Increasing freshwater outflow by reducing water diversions is also likely to be required to recover longfin smelt, which is a candidate for listing under State and federal law. In addition, to the extent that the Project causes potentially significant environmental impacts, including impacts on unlisted species or water quality impacts, increased outflow may be necessary to minimize and mitigate those impacts to a less than significant level, as required by CEQA. Finally, increased outflow resulting from reduced diversions and exports may also be necessary to comply with other legal requirements applicable to the operation of the CVP and SWP, including the Central Valley Project Improvement Act and section 6902 of the Fish and Game Code.

Moreover, increased outflow alternatives not only are consistent with the goals of the program as stated in the NOP, but they may be necessary to achieve these goals. The NOP establishes several goals of the program, including: the conservation and management of covered species; preserving, restoring, and enhancing natural habitats and ecosystems that support covered species; and restoring and protecting water supply, water quality, and ecosystem health. See NOP at 7. The Delta Vision Blue Ribbon Task Force’s document, “Our Vision for the California Delta” released in December, 2007 also found that reduced diversions may be necessary to achieve the co-equal goals of ecosystem health and water supply.

With respect to increased outflow / reduced export alternatives analyzed in the EIS/EIR, demand reduction, water conservation, and water efficiency measures can be used to meet the water supply reliability goal of the BDCP. Likewise, water recycling, conjunctive use, urban stormwater capture, improved groundwater management, desalination, water transfers and similar programs can also provide additional water supply reliability. In addition, the BDCP should analyze land retirement, including land retirement on the west side of the San Joaquin Valley, as one measure to help achieve increased freshwater outflow and reduced exports/diversions. While land retirement must be carefully designed to avoid impacts to third parties, in the past Westlands Water District has advocated a land retirement program of up to 200,000 acres. Properly designed, land retirement can yield significant conservation benefits by making more water available for fish and wildlife. As more fully discussed in our March 24,
2008 letter, the EIS/EIR should include an analysis of such measures to achieve the BDCP goal of water supply reliability. Delta diversions and exports should not be the only method of achieving water supply reliability analyzed in the BDCP.

The document should also analyze the water supply reliability benefits of reduced diversions. Such reductions could reduce ongoing conflicts, unexpected pumping curtailments and judicial involvement. Reduced pumping alternatives with a “buffer” to protect the ecosystem could prevent additional listings and recover listed species more rapidly. All of these factors suggest that a lower level of average diversions could be more reliable than a higher level. In fact, experience in the past several years demonstrates this. Unsustainably high levels of diversions led a federal judge to order significant pumping reductions. In short, recent record levels of pumping have proven to be unreliable. The document must clearly distinguish between increased average diversions and increased reliability. The two terms are not identical.

Therefore, we strongly encourage the EIS/EIR to analyze a range of alternative outflow and export levels, which includes several alternatives that increase outflow and reduce exports compared to existing levels, and analyze alternative measures to achieve water supply reliability. In addition, as stated in the NOP, the environmental document should analyze a range of operational alternatives to meet the Projects’ goals. NOP at 2 (“The EIR/EIS will also analyze the impacts of alternative water operations and management actions to achieve conservation and water supply reliability goals.”).

VI. The Proper Environmental Baseline Is Existing Operations, Not the Maximum Exports that the System is Operationally Capable of or Permitted For.

Both NEPA and CEQA require that the Project be analyzed against the existing environmental conditions (the “environmental baseline”), so that the Project’s impacts can be meaningfully analyzed. 40 C.F.R. § 1502.15; CEQA Guidelines § 15125(a); see County of Amador v. El Dorado County Water Agency, 76 Cal.App.4th 931, 952 (1999). In order to meet CEQA and NEPA’s informational goals, the environmental baseline must be based on actual conditions on the ground, rather than the maximum exports that the CVP and SWP are operationally capable of or the full extent of the Projects’ paper water rights. Likewise, the ESA requires that the baseline for the section 7 jeopardy analysis include the effects of existing human activities, even if those activities are outside of the scope of the federal action currently contemplated. NWF v. NMFS, 481 F.3d at 1236-38, as modified, -- F.3d. --, 2008 WL 1821470 (April 24, 2008) (rejecting use of hypothetical reference case that ignored impacts from related, nondiscretionary activities).

The requirement of using a realistic baseline takes on additional significance because of our concern that DWR’s recent analysis of the potential benefits of a dual conveyance model rely on an inflated, hypothetical “reference case,” rather than actual export levels.5 Using an unrealistic baseline significantly skews the environmental analysis, and it likely will understate the actual environmental impacts of the Project and overstate its benefits.

Therefore, the environmental baseline analyzed in the EIS/EIR must be based on current levels of exports and withdrawals, including the restrictions to protect Delta smelt pursuant to the court’s order in *NRDC v. Kempthorne*, 506 F.Supp.2d 322 (E.D. Cal., 2007), limitations to comply with D-1641, and other current legal and operational constraints on the system. The impacts of the Project must be measured against this baseline, and those impacts must be minimized to a less than significant level if feasible mitigation measures exist.

**VII. Potentially Significant Impacts to be Analyzed in the EIS/EIR**

The NOP identifies a list of potential issues to be analyzed in the EIS/EIR. NOP at 9. We offer the following recommendations for the analysis.

**A. The EIR/EIS Must Analyze the Effects of Global Climate Change on the CVP/SWP, Minimize the Projects’ Environmental Impacts in Light of Global Climate Change, and Minimize the Projects’ Contributions to Global Climate Change**

As the NOP recognizes (NOP at 9), and as DWR and other stakeholders are aware, global climate change is likely to substantially affect the operation of the State and federal water projects. In terms of water supply, global climate change is likely to significantly alter the timing, amount, and form of precipitation. It is anticipated that due to global climate change, significantly less snowfall will occur, particularly in the Sierra Nevada range, and that precipitation will come in the form of more frequent, more intense storms. In addition, it is likely that earlier snowmelt and increased spring runoff will occur; indeed, the date when 50% of annual runoff has occurred is one to four weeks earlier than it was 50 years ago. The percentage of total flows on the Sacramento River that occur between April to July flows declined by nearly ten percent over the last century, and it is likely that global climate change will continue this trend, resulting in substantially reduced summer runoff and flows in the Delta.

At the same time, global climate change will continue the existing trend of sea levels rise, which threatens to inundate many low lying lands in the Delta, and it likely will increase risks of flooding in the Delta. These effects have significant implications for operation of the CVP and SWP, which rely on melting snowpack for a substantial amount of the water supply that the Projects export.

In addition to effects on water supply and flood control, global climate change will affect Delta ecosystems. Changes to the timing, magnitude and form of precipitation will affect ecosystems directly, as well as likely resulting in increased water temperatures, adversely affecting cold water species like salmon. Temperature control devices, like those installed at Shasta, may be needed in other dams to protect covered species and minimize the Projects’ take of these species. Increased carry-over storage to provide larger cold water pools may also be required to provide adequate protection for salmonids.

DWR’s analysis of climate change indicates that climate change is likely to increase water evaporation and could reduce total stream flows, and may make it difficult for the CVP and SWP to meet existing demands for water. See DWR, *Progress on Incorporating Climate Change into*
Management of California’s Water Resources (July 2006) at 2-6, 2-56, 4-14 to 4-17. Given the 50 year permit term under consideration in the BDCP, the EIS/EIR must anticipate reductions in the amount of stream flow available for export and delivery.

The operation of the State and federal water projects must adapt to the changes that global climate change will bring. In order to ensure that the Projects’ impacts are minimized and mitigated, and that take of covered species is minimized and fully mitigated, the EIS/EIR must analyze how the Projects will adapt to climate change and minimize the Projects’ impacts on the environment in light of these expected changes.

At the same time, CEQA requires that the Projects minimize their greenhouse gas emissions and contributions to global climate change. The water projects require significant amounts of energy to export water to destinations outside of the Delta; on average, pumping one acre-foot of SWP water to Southern California requires 3,000 kWh, and the SWP as a whole consumes an average of approximately 5 billion kWh/yr, accounting for 2 to 3 percent of all electricity used in California. Reducing exports from the Delta may significantly reduce the amount of energy used by the CVP and SWP, and thereby reduce the Projects’ greenhouse gas emissions. The BDCP should analyze other actions that can be included in the BDCP to reduce greenhouse gas emissions and/or sequester carbon, such as the planting of tules and wetlands restoration.

B. The EIS/EIR Must Analyze and Minimize the Full Range of Water Quality Impacts

The analysis of the Projects’ water quality impacts in the EIS/EIR must consider the full range of pollutants in the Delta, including pesticide pollution, toxic hot spots, salinity, mercury, and algal blooms. Any reduction in fresh water inflow to the Delta and/or outflow from the Delta may exacerbate existing water quality problems, resulting in a significant impact to the environment under CEQA/NEPA. In particular, salinity may not be used as a surrogate for an analysis of all water quality impacts. For example, changes in inflow patterns could change Delta residence time, lead to dissolved oxygen problems, and change the ratio of Sacramento River inflow to San Joaquin River inflow. These water quality impacts are unlikely to be adequately analyzed by a narrow focus on salinity. While many pollution problems are not caused by the Projects, the operation of the Projects undoubtedly plays a role in the magnitude, duration, and location of these water quality impacts. In addition, these water quality impacts may have cascading effects; for instance, it has been hypothesized that altered salinity levels resulting from Delta exports has increased the habitat suitability for invasive species, such as the Asian clam, that harm covered species like Delta smelt. The EIS/EIR must analyze the Projects’ effects on water quality, including indirect effects to covered species and other wildlife, and those effects must be mitigated to a less than significant level.

C. The EIS/EIR Must Analyze and Minimize Impacts to Biological Resources and Habitats, Including Upland Habitats

CEQA and NEPA require that the EIS/EIR’s analysis of the impacts to biological resources include the full range of plant and animal species and habitats that depend on the Delta ecosystem and may be affected by the covered activities in the BDCP. Impacts to these
biological resources must be minimized and mitigated to a less than significant level. Under CEQA, a project results in a mandatory finding of a significant impact if it would “substantially reduce the habitat of a fish or wildlife species; cause a fish or wildlife population to drop below self-sustaining levels; threaten to eliminate a plant or animal community; substantially reduce the number or restrict the range of an endangered, rare or threatened species.” CEQA Guidelines § 15065. Such impacts must be minimized to a less than significant level if feasible mitigation measures can be implemented. Pub. Res. Code §§ 21002, 21002.1(b), 21081; CEQA Guidelines §§ 15021, 15091-93.

The EIS/EIR therefore must analyze the impacts of the Project on listed and covered species, as well as the full range of plants, birds, fish, and wildlife that live in the Delta and are affected by the CVP and SWP. This includes upland habitats and species, including grasslands and wetlands in the South Delta, Suisun Bay, and state and federal protected areas, including wildlife refuges such as the San Luis National Wildlife Refuge. The EIS/EIR should also analyze the BDCP’s consistency with existing HCPs in the Delta, as well as HCPs that are in development now.

We also note that the inclusion of fall-run Chinook salmon on the list of covered species (NOP at 6) raises significant concerns. Although not currently listed under either the ESA or CESA, the fall run’s population has declined precipitously in recent years, in part due to the operation of the SWP and CVP. For the first time in the State’s history, the commercial and recreational fisheries for salmon were closed this year, and current data suggests that this closure may be extended to at least 2009. Inclusion of this species provides an unwelcome suggestion that DWR and the Bureau of Reclamation will manage the water projects in a manner that fails to prevent the listing of the species during the life of the permits. The analysis in the EIR/EIS must focus particular attention on this issue, and the HCP/NCCP must be designed so as to avoid the need for listing fall-run Chinook under CESA or the ESA. Fish and Game Code § 2805 (definition of “conserv[e]”); see CEQA Guidelines § 15065(a)(1). But that is far from sufficient; a goal of the BDCP must be to maintain healthy sport and commercial fisheries, and the BDCP must include conservation measures to conserve, restore and sustain the fall-run Chinook population.

In particular, the analysis of potential impacts to salmonids and natural resources upstream of the Delta should include, but not be limited to, the following potential impacts: entrainment in any new conveyance facility; entrainment or interrupted downstream migration as a result of continued Delta pumping; increased predation; degraded water quality; reduced carry-over storage (particularly in light of the potential for deeper and longer droughts as a result of climate change); reduced cold-water pools, increased in-stream temperatures; and changes in river flows upstream of the Delta.

Finally, the EIS/EIR must analyze impacts to the entire Bay-Delta ecosystem as a whole. For example, a species-by-species approach is likely to fail to address fundamental issues related to ecosystem function.

D. The EIS/EIR Must Analyze and Minimize Cumulative Impacts

Finally, the EIS/EIR must analyze and minimize the cumulative impacts of the covered activities in conjunction with other reasonably foreseeable projects and activities, including urban and
agricultural runoff, in-Delta diversions, upstream diversions, continued and reasonably foreseeable increases in these diversions, and implementation of the San Joaquin River settlement. Even if the BDCP is limited to the covered activities specified in the NOP, and other impacts to the Delta ecosystem are not included, CEQA and NEPA require that the cumulative impacts of these other stressors be analyzed in conjunction with the impacts of the SWP/CVP. It is critical – and CEQA requires – that the cumulative impacts of the BDCP and other foreseeable projects on fish, wildlife and habitats be minimized to a less than significant level.

VIII. Effectiveness of the BDCP’s Conservation and Mitigation Measures

Given the proposed fifty year term of the BDCP, ensuring that the conservation strategies and mitigation measures are likely to be effective is critical to the success or failure of the BDCP. As discussed above, the EIS/EIR must include a detailed analysis of impacts to all fish, wildlife, and habitats that could be affected by the BDCP. In order to do so, the EIS/EIR must analyze the effectiveness of the proposed conservation and mitigation measures in the BDCP.

In particular, to the extent that flexible operations and/or market mechanisms are relied upon in the plan, the document must include a thorough analysis of the performance of the Environmental Water Account (“EWA”). The EWA failed due to a wide range of problems, including: weakening of the regulatory baseline; the failure of operational flexibility to provide anticipated supplies; inadequate funding; the failure to trigger Tier 3 resources when needed; increases in the price of water on the market; a failure to fully implement the recommendations of the scientific community and regulatory agencies; the failure to analyze emerging problems and “adaptively manage” the EWA, and more. See Environmental Defense Fund, “Finding the Water,” (2005), available online at http://www.edf.org/documents/4898_FindingWater.pdf; Letter from K. Poole and B. Nelson to S. Cervantes dated December 10, 2007, attached hereto as Exhibit C and incorporated by this reference. To the extent that the BDCP relies on similar conservation measures, the EIS/EIR must analyze the EWA and the likelihood that the BDCP could suffer from similar problems.

IX. Consistency with the Delta Vision “Vision” and Strategic Plan

The EIR/EIR should analyze consistency with and potential impacts on the Delta Vision “vision” and strategic plan. The Delta Vision process is addressing some of the same issues as the BDCP. However, the Delta Vision process is broader in scope. It is not yet clear to what extent the BDCP and Delta Vision will have identical or complementary ecosystem restoration goals and strategies. Given the scope of the BDCP and the 50 year proposed term of permits, the BDCP could have a significant impact on the ability of the state of California to implement the Delta Vision strategic plan. The BDCP and Delta Vision may or may not reach the same conclusion regarding conveyance. The BDCP’s proposals could have indirect effects on Delta resources within the scope of the Delta Vision process. We will mention here only two possible impacts. First, if the Delta Vision Strategic Plan recommends reductions in water diversions, the achievement of that goal could be affected if the BDCP provides assurances regarding an operational scenario for the water projects at a higher rate of diversion. In addition, Delta Vision recommends governance reform to allow more balanced operation of the projects, the assurances in the BDCP could interfere with the implementation of this recommendation.
X. **Scope of the BDCP**

A. **Scope of the BDCP and Project Area**

We strongly encourage the BDCP to consider expanding the geographic scope of the BDCP. The NOP identifies the Project Area as limited to the statutory Delta, NOP at 7, even though the NOP notes that other conservation actions required by the BDCP may take place outside of the Project Area, *id.*, and the BDCP includes the operation of the SWP and CVP within the covered activities, NOP at 5. In order to manage the CVP and SWP facilities in the Delta, however, changes to upstream CVP and SWP facilities may be required; for instance, maintaining water and/or salinity levels in the Delta is dependent upon releases from CVP and SWP dams and reservoirs, which are currently not included in the Project Area. The BDCP therefore should include these reservoirs within the scope of the BDCP and include an evaluation of upstream reservoir reoperation to achieve the water quality and quantity in the Delta necessary to achieve the BDCP’s goals. We also note that if these upstream reservoirs are not included in the Project Area, it would appear that they must seek separate take authorization under State and federal law. Likewise, the BDCP may want to include Suisan Bay in the Project Area, as it is a key spawning area for Delta smelt and the site of proposed restoration activities under the BDCP.

A holistic approach to managing the Delta requires that these upstream and downstream facilities and habitats be included in the BDCP. Even if such facilities and habitats are not included in the EIS/EIR, impacts outside of the Project Area must be analyzed and mitigated to a less than significant level.

B. **Duration of BDCP Permits**

The BDCP has proposed a fifty-year permit term. In light of the changing nature of the Delta and scientific uncertainty over causes of species declines, we encourage the BDCP to consider shorter permit terms, such as 5-10 years, rather than a fifty-year permit. *See also* Fish and Game Code § 2820(f)(1)(D), (H) (extent of regulatory assurances depend on the duration of the permit). The EIS/EIR should consider including alternative permit durations among the range of reasonable alternatives.

C. **Other Activities to Potentially Include in the BDCP**

The BDCP Points of Agreement asserts that other conservation actions outside of the habitat restoration program should be developed to address other stressors on the Delta, such as exposure to contaminants and toxics, entrainment in non-CVP/SWP intake facilities, and invasive species. BDCP Points of Agreement (Nov. 16, 2007) at 3, 7. However, the NOP does not include these activities within the scope of the BDCP. *See NOP at 5-6.* These activities cause significant impacts on the Delta ecosystem and listed species, and excluding these activities from the BDCP compromises its ability to develop a sustainable “solution” for the Delta.

Therefore, we encourage the BDCP to work with parties involved with these activities in order to consider including these activities in the framework of the BDCP. Regardless of whether they
are included in the regulatory framework, NEPA and CEQA require that their impacts be included in the current regulatory baseline, and that the cumulative impacts of the BDCP and these activities be analyzed and mitigated to a less than significant level.

D. Inclusion of Mirant Delta Power Plants in the BDCP HCP/NCCP

We have some concerns about including the operations of the Mirant Delta power plants within the scope of this HCP/NCCP. While there are significant concerns with effect of the operation of these power plants on endangered species, notably Delta smelt, see Mike Taugh, Mirant plants attract attention in delta crisis, Contra Costa Times, March 15, 2006, there are also numerous other activities that cause potentially significant harm to Delta smelt and other covered species, as discussed above.

If the Mirant Delta power plants are included in the BDCP, particular attention should be paid to the following issues related to operation of the plants and their environmental effects:

- Analysis and minimization of the impacts of the entrainment of fish, effects of thermally heated discharges, and other impacts on covered species and other fish and wildlife species, including operational and structural changes such as:
  - Requiring more effective screening of the plants’ cooling water intakes;
  - Changes to existing cooling water intakes and intake flow velocities;
  - Monitoring and reporting the plants’ take of covered species;
  - Temporal and/or other restrictions on water withdrawals; and
  - Elimination of the existing once-through cooling systems for the plants, and replacement with dry cooling or recirculating cooling systems;
- Operational changes or other actions to reduce greenhouse gas emissions from plant operations; and,
- Establishing strict and enforceable numeric limits on the take of covered species.

As with operation of the SWP and CVP, the operations of the Mirant Delta power plants authorized by the HCP/NCCP must minimize take of covered species, minimize all environmental impacts to a less than significant level, and comply with existing legal requirements applicable to the plants.

XI. The EIS/EIR Should Analyze the Economic Costs and Benefits of Water Conservation and Other Measures to Meet Water Supply Needs, as well as Identifying Reasonable Sources of Funding to Implement the BDCP.

Although not required by CEQA, see CEQA Guidelines § 15064(e), an EIS under NEPA often includes an analysis of the economic impacts of the Project. See also 40 C.F.R. § 1502.23. In addition, as noted earlier, both the ESA and NCCPA require an identification of the guaranteed funding sources for implementation of the actions contemplated in the approved HCP. 16 U.S.C. § 1539(a)(2)(B)(iii); Cal. Fish and Game Code § 2820(a)(10), (b)(6), (8), (f)(1)(E).
More broadly, informed policy-making on the question of sustainably managing the Delta requires some analysis of the economic costs and benefits of each alternative, as well as an identification of funding sources that will implement the alternative plans being considered in the BDCP. While some environmental benefits are likely to be speculative and unquantifiable, and economic considerations cannot trump environmental considerations under NEPA and CEQA, economic considerations can be useful to inform decision-making.

In particular, numerous studies have demonstrated that water conservation and investments in water efficiency are far more cost effective than developing new storage facilities or otherwise expanding water supplies, including DWR’s California Water Plan Update 2005. In light of the BDCP’s water supply reliability goal, to the extent that the BDCP looks at how to meet the water supply needs of exporters in light of alternatives that reduce water exports over historic levels, the EIS/EIR should compare the cost effectiveness of water conservation and efficiency, and a full range of water supply alternatives with the construction, maintenance and operation of Delta conveyance facilities and other water supply components identified in the BDCP.

XII. **The Scoping and Comment Period for the EIS/EIR Should be Reopened Upon Completion of the BDCP Conservation Strategy and Adoption of the Delta Vision Strategic Plan.**

Consistent with our March 24, 2008 letter, and in order to improve informed public participation in the process, we respectfully request that the agencies re-open the scoping and comment process upon completion of the draft BDCP conservation strategy and Delta Vision Strategic Plan. Doing so will ensure that the conservation actions and alternatives that are developed through the BDCP conservation strategy are analyzed in the EIS/EIR, and it will better ensure that the BDCP is consistent with the Delta Vision Strategic Plan.

XIII. **Conclusion**

Thank you for consideration of our views. Please feel free to contact us at your convenience if you have any questions or concerns.

Sincerely,

Doug Obegi
Natural Resources Defense Council

Kim Delfino
Defenders of Wildlife

Ann Hayden
Environmental Defense Fund

Gary Bobker
The Bay Institute
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May 30, 2008
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cc: Russell Strach, National Marine Fisheries Service
Donald Koch, Department of Fish and Game
Steve Thompson, U.S. Fish and Wildlife Service
Donald Glaser, Bureau of Reclamation
Karen Schwinn, Environmental Protection Agency

Enclosures:
Exhibit A: Scoping Comments on BDCP EIS/EIR from NRDC, EDF and Defenders of Wildlife submitted to NMFS and USFWS dated March 24, 2008
Exhibit B: Key Elements of a Strategic Plan to Implement the Delta Vision (May 2008)
Exhibit C: NRDC Comments on the Draft Supplemental EIS/EIR for Extending the Environmental Water Account and OCAP Consultations (Dec. 10, 2007)
March 24, 2008

VIA EMAIL AND FIRST CLASS MAIL

National Marine Fisheries Service  
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BDCP-NEPA.SWR@noaa.gov

Re: Scoping Comments on the proposed EIS/EIR for the Bay-Delta Conservation Plan

Dear Ms. del Rosario and Rinek:

We are writing on behalf of the Natural Resources Defense Council ("NRDC"), Environmental Defense Fund ("EDF"), and Defenders of Wildlife ("Defenders") with regard to your agencies' request for input on the proposed Environmental Impact Statement/Environmental Impact Report ("EIS/EIR") for the Bay-Delta Conservation Plan ("BDCP"). See 73 Fed. Reg. 4178 (Jan. 24, 2008). Collectively, our organizations represent hundreds of thousands of members and activists in California. EDF and Defenders are participants in the BDCP planning process and members of the Steering Committee. NRDC has previously submitted comments on the BDCP process, but has not participated as a member. Despite our differing levels of participation, our organizations would like to raise the following issues regarding the scope of the proposed EIS/EIR, and urge your agencies to address these issues in order to develop a comprehensive and legally sufficient EIS/EIR.

I. THE EIS/EIR MUST CLEARLY IDENTIFY AND SEGREGATE CONSERVATION ACTIONS FROM WATER SUPPLY RELIABILITY ACTIONS

The BDCP has a number of laudable and potentially competing goals, which will need to be carefully considered in the development of the EIS/EIR. As described by the
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California Department of Water Resources, the state lead agency for the EIS/EIR: “the BDCP is intended to secure authorizations that would allow the conservation of covered species, the restoration and protection of water supply reliability, protection of certain drinking water quality parameters, and the restoration of ecosystem health to proceed within a stable regulatory framework.” DWR, Notice of Preparation, BDCP EIS/EIR at 2 (March 17, 2008) (“DWR NOP”). It is clear that some proposed actions will be better at achieving some of these objectives, and worse at achieving others. The EIS/EIR must clearly identify and segregate actions that are proposed to achieve each of these objectives, and how each action affects the remaining objectives, to allow decisionmakers and the public to identify the optimal suite of actions for restoring the Bay-Delta.

With the BDCP’s stated co-equal goals of fish and wildlife conservation and water supply reliability, we urge the federal agencies to structure the EIS/EIR in a manner that does not subjugate the BDCP’s conservation goal to the water supply reliability goal. The NOP states DWR’s intention to “evaluate at least four alternative Delta conveyance strategies in coordination with the BDCP efforts to better protect at-risk fish species, within the context of broader habitat conservation principles....” DWR NOP at 3. In addition, the NOP states that “the collective goals of the PRIs will provide the basis for the project objectives under CEQA and the purpose and need statement under NEPA.” Id. at 4. These statements could lead the public to believe that the focus of the analysis will be on water supply, with actions to achieve conservation goals being secondary considerations. As you know, an EIS/EIR designed to analyze and authorize new conveyance with fish, wildlife and habitat conservation actions tacked on secondarily will very likely fail to generate the level of necessary level of public support for a Delta plan, not to mention fail to meet all of the BDCP’s goals. Therefore, we urge the agencies to conduct the EIR/EIS analysis in a manner that makes it clear that the BDCP is designed to meet both the conservation and water supply reliability goals.

II. THE EIS/EIR MUST INCLUDE IN-DEPTH ANALYSIS OF THE IMPACTS OF REDUCED DELTA DIVERSIONS AND IMPROVED WATER CONSERVATION, RECYCLING AND GROUNDWATER MANAGEMENT

Key actions to help meet water supply reliability and improve the Bay-Delta ecosystem in a cost-effective and environmentally sound manner include increased water conservation, recycling, and conjunctive use of groundwater and surface water. DWR’s most recent State Water Plan update indicates that these three tools combined could cost-effectively yield new water supply on a scale equivalent to recent exports from the Delta: approximately 6 million acre-feet. Broad application of low impact development, appropriate land retirement and transfers, agricultural conservation, water pricing reform, and other tools could generate significant additional supply. Clearly these readily available tools can help provide enough water to meet the state’s future needs while significantly reducing Delta diversions, with potential water supply reliability and ecosystem benefits. While the press release accompanying DWR’s NOP acknowledges that “[i]increasing water conservation is an essential element of fixing the Delta,” there is
no clear commitment to include these alternative water supply actions as a central component of the EIS/EIR. The EIS/EIR must include analysis of the impacts of this option.

As DWR explains, the water supply-related goal of the BDCP is “the restoration and protection of water supply reliability.” DWR NOP at 2. Water supply reliability is a function of both supply and demand, and demand reduction measures can be just as effective at improving reliability as supply enhancement measures. Indeed, we believe that they can often be more effective in improving reliability. See, e.g., DWR, Draft State Water Project Delivery Reliability Report 2007. Water users statewide, including those involved in the BDCP, have considerable untapped capacity to improve the efficiency of their water use, reduce their demand through improved groundwater management, water recycling, stormwater capture, and other methods. Realizing this untapped capacity would help reduce water demand, and subsequently reduce reliance on the Delta while improving water supply reliability. See NRDC, Effective Solutions to Meet California’s Water Supply Reliability Needs (February 25, 2008), appended as Attachment 1; Testimony of Jeffrey Kightlinger, General Manager, Metropolitan Water District of Southern California before the House Committee on Natural Resources, Subcommittee on Water and Power (January 29, 2008), appended as Attachment 2; Testimony of Richard W. Atwater, General Manager, Inland Empire Utilities Agency before the House Committee on Natural Resources, Subcommittee on Water and Power (January 29, 2008), appended as Attachment 3. Indeed, Governor Schwarzenegger recently recognized the potential for this type of demand-side water management by releasing a new water plan that includes a 20 percent reduction in per capita water use statewide by 2020. See Letter from Governor Schwarzenegger to Senators Perata, Steinberg, and Machado (February 28, 2008), appended as Attachment 4.

The EIS/EIR should include an analysis of the impact of these demand reduction measures on water supply reliability and the other goals of the BDCP process.

III. THE GEOGRAPHIC SCOPE OF THE EIS/EIR SHOULD INCLUDE STATEWIDE ACTIONS AND IMPACTS

The scoping notice states that the geographic scope of the BDCP is generally limited to the legal Delta. However, whatever the geographic scope of the BDCP itself, NEPA and CEQA require the consideration and analysis of connected actions. It is clear that water use beyond the scope of the legal Delta will affect conservation actions and water supply considerations that are within the scope of the BDCP’s goals. For example, upstream water users who deprive the Bay-Delta system of inflow by diverting water upstream of the Delta or contributing polluted return flows clearly impact the downstream ecosystem and fisheries. The Delta Vision Task Force has highlighted the impacts of these upstream diversions. See Delta Vision Blue Ribbon Task Force, Our Vision for the California Delta, at 37 (November 30, 2007). These impacts and ways to address them should be included in the EIS/EIR.
IV. THE EIS/R MUST ANALYZE A BDCP THAT IS DEVELOPED TO ACHIEVE RECOVERY OF THE BAY-DELTA ECOSYSTEM

The EIS/EIR must clarify that the BDCP will not provide any assurances or take permits without a firm commitment to and demonstrable progress in achieving recovery of the Bay-Delta ecosystem. To date, many of the BDCP Steering Committee members have not fully committed that the BDCP will meet the recovery requirements of the California Natural Community Conservation Planning Act (“NCCPA”). However, the federal Endangered Species Act requires that any lawful BDCP must not only prevent the extinction, but must also bring about the recovery of threatened and endangered species. *TVA v. Hill*, 437 U.S. 153, 185 (1978). The Ninth Circuit Court of Appeals has recently rejected several plans for failing to satisfy this recovery directive of the ESA. *National Wildlife Federation v. Nat’l Marine Fisheries Serv.*, 481 F.3d 1224, 1237-38 (9th Cir. 2007); *Gifford Pinchot v. U.S. Fish & Wildlife Service*, 378 F.3d 1059, 1069 (9th Cir. 2004).

While the decision has not been made yet as to whether or not the BDCP will be a Natural Community Conservation Plan (“NCCP”), our organizations continue to work to ensure that the final plan does meet NCCP standards. As such, we urge the agencies to broaden the list of species considered for conservation to include terrestrial wildlife and plants. The various alternatives to be examined within the BDCP will all have enormous impacts on land-based birds and wildlife as well as plants. The goal of any NCCP is to develop a plan that is designed to conserve the “entire community” of species within a planning area. To date, the NOI and other BDCP documents have not yet begun to grapple with the conservation issues beyond the imperiled fish species. The time has come for the BDCP parties to expand the list of species to include terrestrial as well as aquatic species. Therefore, the EIR/EIS must analyze impacts and conservation actions for all fish, wildlife and plants within the planning area, with particular attention to declining, sensitive, threatened and endangered species.

Finally, in light of ESA and NCCP “conservation” requirements, the EIS/EIR should make clear that recovery is a fundamental and necessary goal of any acceptable alternative.

V. THE EIS/R MUST INCLUDE A MEANINGFUL BASELINE FROM WHICH TO MEASURE IMPACTS

As indicated above, the NOP states that the water supply-related goal of the BDCP is “the restoration and protection of water supply reliability.” DWR NOP at 2. This statement includes significant ambiguity. Some parties are clearly seeking a “restoration” of deliveries to previous and unsustainable levels of exports. If this is the case, then BDCP could have the effect of increasing freshwater diversions, in comparison with current conditions. The EIR/EIS must include a meaningful regulatory baseline for current Delta operations, against which potential impacts would be measured. That baseline must include the existing protective measures required to protect delta smelt, pursuant to the
federal court’s decision in NRDC v. Kempthorne. See Interim Remedial Order Following Summary Judgment and Evidentiary Hearing, NRDC v. Kempthorne, civ. no. 1:05-cv-1207 (Dec. 14, 2007). It must also include any requirements that may be imposed to protect crashing salmonid populations in the Sacramento and San Joaquin River systems in the companion case of Pacific Coast Federation of Fishermen’s Associations v. Gutierrez, civ. no. 1:06-cv-0245. Clearly, court orders required to limit exports and diversions to protect imperiled fisheries provide evidence that the diversion levels of recent years are not sustainable and cannot serve as a reasonable baseline.

VI. THE TIMELINE FOR THE BDCP DOCUMENT MUST REFLECT THE TIMELINE FOR THE CONSERVATION STRATEGY PROCESS

The timeline in the NOP indicates that the scoping process will be completed at the end of 2008. However, the timeline also indicates that the draft conservation strategy will not be completed for approximately another 6 months. It is inappropriate to close the scoping phase for the BDCP EIR/EIS in advance of the development of the draft plan that is the ostensible purpose of the process. Clearly, the process of developing a conservation strategy could lead to possible actions that may not be included in or anticipated by a scoping process that was completed half a year previously. This potential imbalance in the schedule could leave the public with the impression that water supply considerations, rather than conservation objectives, are driving the process. Therefore, we urge the lead agencies to adjust the scoping process as necessary to adequately incorporate the development of a conservation strategy. This adjustment would also likely provide adequate time for the BDCP to incorporate the final implementation recommendations of the Delta Vision process, which we believe would be of great benefit to the overall planning effort of both BDCP and Delta Vision.

In addition, it is possible that the schedule for the BDCP may need to be extended to adequately develop the conservation plan itself. Therefore, the lead agencies should make a provision to adjust the closure of the NEPA/CEQA scoping process in the event of any extensions in the BDCP timeline.

Thank you for considering our comments.
Sincerely,

Katherine Poole
Senior Staff Attorney
Natural Resources Defense Council

Kim Delfino
California Program Director
Defenders of Wildlife

Ann Hayden
Senior Water Resource Analyst
Environmental Defense Fund
EFFECTIVE SOLUTIONS TO MEET CALIFORNIA'S WATER SUPPLY RELIABILITY NEEDS

The Bay-Delta Estuary is facing a crisis. Numerous species are listed as threatened or endangered, or proposed for listing. The Delta smelt is on the verge of extinction. The status quo is not sustainable for any of the Delta’s users, including farmers, commercial and sport fishermen, Delta residents and the 23 million Californians who rely on the Delta for a portion of their water supply. Investments to improve water supply reliability must also improve conditions in the Delta. By directing state funds to alternative water supplies, Delta flood protection and restoring a healthy ecosystem, the State will help improve water supply reliability, meet the needs of a growing population and protect imperiled fish species.

There is a broad consensus regarding the most effective tools to meet California’s future water supply needs. The 2005 California Water Plan update contains extensive, detailed estimates of the water supply potential of a range of proven water supply tools. The bar chart below presents many of those totals, ranging from low to high yield estimates. We believe that the more ambitious estimates are realistic, and that aggressive targets and ambitious programs are required to assure Californians a reliable water future. DWR estimates that the three tools with the greatest potential – urban water conservation, wastewater recycling and improved groundwater management – could, together, produce more than six million acre-feet of new water. This represents approximately as much water as the CVP and SWP have diverted from the Delta in recent years, and more than enough to reduce Delta diversions and meet future growth needs.

NRDC believes that total Delta diversions must be reduced from the unsustainable record levels in recent years. We are working with other members of the environmental community to develop a science-based target for that reduction, which we will provide to the Task Force in the near future. Urban water use efficiency and other tools discussed below can provide the State with near-term and cost-effective supplies to offset any impacts from a reduction in Delta supplies.

Proven “Cornerstone” Water Supply Reliability Tools

Urban Water Use Efficiency: Currently, urban areas use over eight million acre-feet of water during a typical year. One-third or more of this water is used to irrigate urban landscapes. Urban water use efficiency could yield up to 3,500,000 acre-feet of water per year according to the Pacific Institute’s most recent projections. (This estimate is close to DWR’s estimate of 3.1 million acre-foot high estimate of the potential of urban conservation at $230-522 per acre-foot.) Significant reductions in water use can be achieved through design, installation and maintenance of water efficient landscapes, along with indoor conservation measures in the commercial, industrial and residential sectors. These savings can be realized by investing in current, off-the-shelf technologies, reducing lost and unaccounted for water through system water audits, and increasing implementation of conservation pricing. New water efficient technologies will undoubtedly continue to emerge and contribute additional savings in the future.

Recycled Water: Recycling urban wastewater (also known as reclamation or re-use) is an important strategy to increase water supply. Recycled water is most frequently used for agricultural or landscape irrigation or groundwater recharge. DWR estimates water recycling can generate up to 1,500,000 acre-feet a year by 2030 at average cost of $600 per acre-foot.
**Improvement Groundwater Management**: The Department of Water Resources estimates that improved groundwater management, such as the conjunctive use of surface and underground storage, has the potential to provide between 500,000 and 2 million acre-feet at costs ranging from $10-600. The average cost in a recent round of applications received by DWR for conjunctive use projects was $110 per acre-foot. The appropriate target for conjunctive use will be determined in part by decisions on water management in the Delta, which will influence potential yield from groundwater storage. Such investments are likely to yield greater benefits south of the Delta, where projects may be less constrained by Delta operations and provide greater independence from the Delta. This effort could also be coordinated with floodplain and habitat restoration efforts in the Central Valley.

**Additional Effective Strategies**

In addition to the key tools discussed above, a number of additional water management tools can generate significant additional supplies.

**Agricultural Water Use Efficiency**: Eighty percent of California's annual water use goes to agriculture. Although in some areas considerable strides have been made in water use efficiency, farming methods are not as water-efficient as they can be. The California Bay-Delta Authority's Year Four report estimates up to **620,000 acre-feet** of water can be saved through agricultural water use efficiency, which includes installing micro-irrigation technology or other water management improvements, at a cost of $242 per acre-foot. We believe that these estimates underestimate the true potential of this tool.

Additionally, agricultural water is often highly subsidized. Pricing reform that sends clear, meaningful signals to agricultural water users can be very effective in encouraging increased water use efficiency.

**Groundwater Clean-up**: Removing salts, including nitrate, from groundwater can be a cost-effective means of producing clean water supplies, recharging stressed and contaminated aquifers, and increasing groundwater storage capacity without the need to build expensive surface storage projects. DWR estimates brackish groundwater desalination costs $250-500 per acre-foot, with a potential of yielding up to **290,000 acre-feet per year**.

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**Potential Water Savings**

- **High Estimate**
- **Low Estimate**

**Sources:**
Urban Storm Water Management: Urban water agencies, particularly in Southern California, are increasingly recognizing the potential to provide multiple benefits by capturing, treating (where necessary), storing and using urban storm water. Use of low impact development techniques (LID) results in the diversion and capture of storm water and dry-weather runoff before it flows into surface waters. This water can then be used on- or off-site as an alternative water source for irrigation of parklands, sporting fields, cluster housing groups, or for fire-fighting. Such projects can provide water supply and flood management benefits, while reducing coastal pollution from urban runoff.

Nationally, research has repeatedly shown that LID has the potential to deliver vast quantities of useable water through recharge and infiltration, and that it is the most effective and cost-efficient means of managing storm water and abating water pollution. Further, LID uses common sense and simple technology – strategically placed beds of native plants, rain barrels, “green roofs,” porous surfaces for parking lots and roads, and other tools – to retain rainfall on site or help rainfall soak into the ground, rather than polluting the nearest water body.

The Los Angeles Integrated Regional Water Management Plan indicates that proposed urban storm water management projects can generate 100,000 acre-feet from urban storm water capture, and that the maximum potential is at least twice that amount. NRDC’s preliminary estimate of the water savings from implementation of LID practices suggests that if LID were used in just 50% of all residential and commercial properties in Los Angeles, Riverside, and San Diego Counties, 377,000 acre-feet annually could be infiltrated or otherwise reused. By offsetting energy-intensive imported water in like amounts, and after accounting for average energy requirements associated with pumping groundwater in these areas, LID could result in the reduction of up to 45,000 metric tons of CO₂ annually in Los Angeles County and an additional 55,000 metric tons of CO₂ in San Diego and Riverside Counties combined.

Transfers and Land Retirement. These tools must be carefully designed in order to avoid impacts to third parties. However, significant land retirement on the west side of the San Joaquin Valley is very likely and can generate significant water savings. For example, the Westlands Water District has advocated a land retirement program of up to 200,000 acres. Farming this land has historically required as much as 700,000 acre-feet of water.

Benefits of Alternative Water Management Strategies

A Healthier Bay-Delta and Other Ecosystems: Investments in surface storage could harm the Bay-Delta ecosystem by reducing flows to the Delta or increasing diversions from the Delta. In contrast, alternative water management tools would decrease our reliance on the Delta.

Energy Savings and Reduced Greenhouse Gas Emissions: Almost 20% of California’s electricity use, and over 30% of its non-power plant natural gas use, is associated with the use of water. Water use efficiency and recycling can generate substantial energy savings and reductions in greenhouse gas emissions, and help the State meet AB 32 implementation targets.

Water Quality Benefits: Investing in water efficiency and groundwater cleanup will improve water quality by reducing urban runoff from lawns and gardens. In addition, investments in these tools will also help stretch limited state and federal funds available for water and wastewater treatment facility expansions and upgrades, by delaying or reducing the size of water system expansions. These investments will also improve drinking water quality, particularly for poorer communities in the Central Valley that rely on groundwater.

Reducing the Economic Risk from Delta Levee Failures: A massive levee failure in the Delta could jeopardize a critical water supply for 23 million Californians. Investments in alternative water management tools will reduce reliance on Delta diversions, thereby decreasing the risk to California’s economy from potential Delta levee failures.
Strategies to Achieve Maximum Water Savings

This memo focuses on potential targets for a range of water management tools. The bullets below briefly outline key strategies that can maximize the water savings from these tools. We will present more details regarding these and other strategies in the future.

A Clear Conclusion Regarding Delta Diversion Totals: The single most effective thing the Delta Vision Task Force could do to encourage the development of alternative water supplies would be to make a clear, forceful recommendation regarding the need to reduce Delta diversions by a specified amount. Reducing Delta diversions will be a significant change from the trend over the last four decades. The likelihood that we will succeed in this transition will be greatly increased if the state has a clear goal to guide planning efforts and investments.

Learning from California’s Energy Efficiency Success: California has emerged as a global leader in energy efficiency. We believe that the policy tools, such as a loading order and public benefits charges that have made this progress possible in the energy arena, can produce similar progress in encouraging water use efficiency. (See NRDC’s white paper entitled: Transforming Water Use: A California Water Efficiency Agenda for the 21st Century.)

AB 32 Implementation: Reducing Delta diversions and investing in alternatives, such as water conservation, has the potential to significantly reduce energy use and greenhouse gas emissions. By integrating water planning with energy and climate change efforts, the state can take advantage of the synergies among these issues, including potential additional funding sources for less energy intensive alternatives to Delta diversions.

Integrated Regional Water Management: In recent years, IRWM has emerged as a key strategy to design water management solutions tailored to local needs, by considering local conditions, a full range of water management tools and a broad spectrum of potential benefits.

Credible Economics and Financing: Delta Vision should recommend that state and federal agencies carefully analyze the cost of alternative water supply strategies. Individual water agencies do this as a matter of course. However, state and federal agencies often fail to incorporate adequately basic economic analysis. For example, public funds dedicated to improving water supply reliability should be focused on the most cost-effective environmentally sound tools. The Delta Vision Task Force should develop recommendations to reduce water subsidies (e.g. by reforming renewed CVP contracts) and move toward real “beneficiary pays” financing.
ATTACHMENT 2
Testimony

Provided By

Jeffrey Kightlinger, General Manager
Metropolitan Water District of Southern California

On

The Immediate Federal and State Role in
Addressing Uncertain Water Deliveries for California
and Impacts on California Communities

Before the

Committee on Natural Resources
Subcommittee on Water and Power
United States House of Representatives

January 29, 2008
Thank you Chairwoman Napolitano. I am pleased to give you and the subcommittee a brief survey of the impacts being felt throughout Southern California from the evolving water situation and Metropolitan’s response. We face a new reality and new roles for Metropolitan and the state and federal governments to bringing more certainty to our water future.

At the moment we are roughly on track for an average rainfall year in both Southern California and Northern California. Traditionally this was good news. Traditionally this would mean that Metropolitan would likely receive enough water from the Sacramento-San Joaquin Delta to meet local demands and make modest additions to our storage reserves.

But not this year. Because of ongoing environmental problems in the Delta, there are court-ordered curtailments in water deliveries that started late last year and are expected to last into June. At the moment, the State Water Project has committed to delivering 25 percent of water supplies to its contractors throughout California. This percentage may increase, but Metropolitan is making preparations for a significant cutback in supplies. Metropolitan is responding by seeking to purchase additional supplies on the open market and funding a $6 million dollar water use efficiency outreach campaign to encourage conservation throughout our service area. In addition, Metropolitan’s board of directors has approved over $30 million to aggressively implement water conservation and recycled hook-ups for public agencies and the commercial and industrial sectors. Our tracking polls suggest that nearly half of the 18 million people in our service area have gotten the message and are taking steps to lower water use. This is helpful. Along with our efforts to creatively manage our resources, Metropolitan also invested in efforts to increase our storage capacity. In fact, today we have 10 times the amount of water in storage than we did during the last drought in the late 1980s and early 1990s. This includes a $2 billion capital investment in the building of Diamond Valley Lake, which alone nearly doubled the region’s surface water storage capacity. Those reserves provide a cushion and give us some time. But, with the new restrictions in the Delta, we are now living on that borrowed time. That realization, and the uncertainties in the Delta, are beginning to create water supply impacts throughout the region.

Metropolitan, working with its member agencies, is developing a plan to equitably allocate our available State Water Project supplies from the Delta, the Colorado River Aqueduct and water stored in reserves. The primary objective of the plan is to minimize the impact on the overall regional economy. We are also striving to strike a balance recognizing needs from MWD, accounting for local supply and rewarding local districts that lower demands and increase supplies. A sterling example is Orange County. Last week it celebrated the opening of one of the largest water recycling facilities in the world. This facility will turn wastewater that used to drain into the Pacific Ocean into a reliable
high-quality drinking water supply that will help replenish the local groundwater basin. Metropolitan provided incentive funds to help make this project a reality. This is precisely the kind of strategic regional partnership that Metropolitan is working to replicate throughout our service area.

In the coming weeks and months, Metropolitan will review existing and new programs to lower demand and increase local supplies. We will be doing this despite rapidly rising costs from the State Water Project and other investments, which will likely require double-digit rate increases into the future. We continue to identify and implement new ways to lower demand and increase local supplies because we have seen the dramatic results of past efforts. And we are re-evaluating and updating our long-term water strategy, our Integrated Resources Plan, to determine if our conservation and local water supply targets should be even more ambitious.

To ensure our long-term plans are taking into account the impacts of climate change, Metropolitan has entered into a partnership with the RAND Corporation to develop appropriate planning models and protocols that would take into account long-term impacts on water supplies. The state has taken a leadership role with its energy policy, which is focused on landmark efforts to reduce greenhouse gases and working to ensure a better linkage between water and energy. Conserving water helps reduce the need to transport and treat water, which are energy-consumptive activities. Metropolitan is evaluating its carbon footprint in tandem with our water supply and planning efforts.

While there is much still to be done when it comes to water conservation, it is important to recognize how far Southern California has come. As an example, in the past 15 years Metropolitan has invested more than $200 million in water-conserving devices. These conservation investments, combined with plumbing code reforms, reduce our potential demands by about a million acre-feet per year. Had we not been this successful in lowering demand and simply expected the State Water Project to solve the region’s problems, our demand on the Delta would be about 50 percent larger now. Given the multiple changing conditions due to climate change, endangered species rulings and other impacts in the Delta, Metropolitan has embarked upon a comprehensive update of its long-term Integrated Resources Plan. A renewed focus on the development of local resource projects will help decrease our dependency on the Delta. But we do need a more reliable supply from the Delta than the current system is providing. And we embrace the notion that restoring the health of this ecosystem is an essential ingredient to creating a more reliable water system.

How can the federal government help? We urge the federal agencies to remain active and engaged participants in the Delta. We need a new biological opinion from the U.S. Fish and Wildlife Service that will guide the operations of the State Water Project and the Central Valley Project. Metropolitan is actively seeking operational strategies that can help reduce conflicts between pumping operations and fish migration patterns. We also need the active participation of the federal wildlife agencies in coming up with a new Bay Delta Conservation Plan, which is exploring new and better ways to separate the movement of water supplies from the natural flows in the estuary. Yes, that may mean some form of a canal as one piece of a much larger solution. We need the feasibility studies and better science to understand new ways of moving water supplies. The deliberations ahead should be based on new facts and not old fears. Metropolitan has made a commitment to seek reliability from Delta supplies, and to find the water for new
growth from within our service area, a historic difference between the emerging Delta
discussion and debates of the past. Metropolitan urges the federal government—our
elected officials, federal agencies and staff—to support our local resource projects
including recycling and other conservation programs.
As for assistance from the state, while we recognize the challenging fiscal situation, there
are ways that the state can help. Metropolitan seeks to sponsor or support state legislation
that would create a standard approach for regional water boards to authorize water
recycling projects that seek to store supplies in groundwater basins. There are hundreds
of millions of dollars from bonds that voters have already approved that are available to
address parts of the Delta problem and to help regions become more self-sufficient.
Metropolitan remains a constructive and realistic participant to bring about dramatic and
historic change in the Delta. We are very pleased to have the interest and involvement of
both the state and federal governments to solve our problems and a collective recognition
that the Delta as we know and manage it today is a broken ecosystem that needs fixing.
Thank you Chairwoman for today’s hearing and I would be happy to respond to any
questions.
ATTACHMENT 3
COMMITTEE ON RESOURCES
Subcommittee on Water and Power

"The Immediate Federal and State Role in
Addressing Waste Deliveries for California
and the Impacts in California Communities"
January 29, 2008

Testimony by
Richard W. Atwater
General Manager
Inland Empire Utilities Agency

I. Introduction

Thank you Chairwoman Grace Napolitano and members of the Subcommittee for Water and Power for the opportunity to testify before today regarding the water problems facing California. I am the General Manager of the Inland Empire Utilities Agency. The Subcommittee has asked four important questions related to how address the critical water problems from Judge Wanger’s court decision and how we develop regional and statewide strategies with the federal government to meet the challenges of having less water available from the Delta and the related issues with developing a sustainable ecosystem. The Inland Empire Utilities Agency in partnership with many other agencies in southern California and with financial assistance from the State of California and the Bureau of Reclamation is implementing a “Drought Proofing Strategy” that is a key element of a Delta Plan. We have recognized the challenges for a long time of meeting the statewide water needs in an environmentally responsible manner have committed over $500 million over the past seven years to implement projects that will develop new local supplies in southern California and reduce our need for Delta exports.

A. Inland Empire Utilities Agency/Chino Groundwater Basin

The Inland Empire Utilities Agency, a municipal water district under California law, was formed in 1950 by a popular vote of its residents. The service area of the Agency is entirely in San Bernardino County and has a current population of approximately 800,000. The IEUA service area is rapidly growing and will probably increase by 50 percent to 1.2 million within the next 20 years. The Chino Groundwater Basin was adjudicated in 1978 and is governed by a 9 member Watermaster Board. Overall water use is about 350,000 acre-feet annually, 70 percent of the supplies are from local sources within the Santa Ana Watershed. With the rapid growth, demand from MWD could increase from 70,000 acre-feet per year currently to 150,000 acre-feet in 2020 if we did business as usual! However IEUA, Chino
Basin Watermaster and in cooperation with many other agencies have developed a “Drought Proof Plan” that will develop over 100,000 acre-feet of new local supplies to minimize the need for additional imported water from MWD, thereby reduce our need for more Delta (SWP) water supplies.

B. History, Background and Interagency Relationships with CALFED Bay-Delta Program

The Agency has been a member agency of the Metropolitan Water District since 1950 and distributes about 70,000 acre-feet of imported water to the cities of Chino, Chino Hills, Fontana (through the Fontana Water Company), Ontario, Upland, Montclair, Rancho Cucamonga (through the Cucamonga County Water District), and the Monte Vista Water District. The Agency also provides wastewater treatment service (four regional water recycling plants that produce about 60 million gallons per day or 67,000 acre-feet per year). Excess recycled water flows downstream into the Santa Ana River where the Orange County Water District recharges that water into the Orange County groundwater basin for drinking water.

The Agency is also a member of the Santa Ana Watershed Project Authority (SAWPA) and is an active member of the Santa Ana River Watershed Group and the Chino Basin Watermaster. As a member agency of SAWPA, the Agency’s water projects are closely coordinated with the SAWPA watershed wide planning and the funding of priority projects through the Water Bond Proposition 13 and Proposition 50 grants.

Public and Private Partnerships to Improve the Santa Ana Watershed

- Santa Ana Watershed Project Authority (SAWPA) has maintained an inclusive dialogue with all interested parties and is leading the update of the Santa Ana integrated regional watershed management plan through the “One Water-One Watershed” (OWOW) process;
- All local governments within the three counties (San Bernardino, Riverside and Orange) are working cooperatively together to manage growth and plan for the water/wastewater infrastructure needed to meet the needs of this rapidly urbanizing watershed;
- Partnerships with industry including dairies, manufacturing, and developers have resulted in creative solutions to local water quality problems (e.g. the Santa Ana brine sewer to the ocean) as well as producing new sources of renewable, cost effective energy;
- Industrial customers throughout the area are planning on using recycled water to reduce costs, ensure reliability, and to be excellent environmental stewards.

The Chino groundwater basin is one of the largest in Southern California. The Chino Basin Watermaster adopted an Optimum Basin Management Plan (OBMP) to protect the water
quality of the basin and to manage the local supplies effectively to the maximum benefit of the local ratepayers. A key element is the expansion of the conjunctive use operation of the Chino Basin to expand the storage and recovery by approximately 300,000 to 500,000 acre feet.

Other key components are the Inland Empire Utilities Agency regional water recycling project to develop new local supply of 100,000 acre-feet per year and the Chino Basin desalters that would develop an additional new local supply of 40,000 acre-feet per year.

The key benefits of the Chino Basin regional “OBMP” water plan are as follows:

**Benefits**

- Provide a more dependable local water supply and reduce the likelihood of water rationing during future droughts and the impacts of climate change;
- Economic benefits of reliable water supply to industry and provide incentives to attract new industry and jobs in the Inland Empire region;
- Environmental protection – reduce wastewater discharges into Santa Ana River by 50 percent through local water recycling and protect Orange County drinking water supplies through implementation of comprehensive lower Chino Dairy area manure management strategy;
- Reduce imported water use in the rapidly growing Inland Empire region (upper Santa Ana River Watershed) and thereby contribute in a significant manner to the statewide CALFED Bay-Delta and Colorado River solutions through more efficient use of existing local supplies;
- Assist in solving multiple Endangered Species Act problems within the Santa Ana Watershed, the CALFED Bay-Delta program, and the Colorado River/Salton Sea;
- Implement a sustainable long-term water resources management program that maintains the salt balance of the Santa Ana River watershed;
- Reduce the energy intensity of the region’s water supplies, helping to conserve energy and reduce greenhouse gas emissions that are contributing to climate change.

**II Chino Basin “Drought Proofing Strategy”**


- Water Conservation – 10% savings 35,000 AF
- Water Recycling – 100,000 AF
- Local Groundwater Storage and Conjunctive Use – 500,000 AF of new storage
- Chino Desalter 40,000 AF
✓ Stormwater – 25,000 acre-feet of new supplies
✓ Renewable Energy and Organics Recycling – Clean energy through biodigesters (using biosolids, dairy manure and food waste), solar power and wind power (goal of 15 megawatts)
✓ Water Quality Management – Establishment of Chino Creek Wetlands and Educational Park at IEUA and a continued partnership with Orange County Water District on Prado Wetlands implementation of the Chino Creek Integrated Watershed Plan.

A. Water Conservation- (35,000 acre-feet per year, 10 percent of overall use)

IEUA and its retail utilities are committed to implementing the Memorandum of Understanding (MOU) regarding Urban Water Conservation in California. IEUA is an active member of the California Urban Water Conservation Council (CUWCC). Currently, the Agency is expanding its conservation efforts to promote both water and energy conservation programs to our customers. IEUA’s goal is to reduce water demands by 10 percent (35,000 acre-feet per year) through aggressive implementation of customer conservation programs. Innovative programs initiated by IEUA include the Inland Empire Landscape Alliance, in which elected officials from cities and water agencies within IEUA’s service area are working to promote outdoor conservation including turf reduction rebates, use of California-friendly native plans and new regional model landscape ordinances that will promote water savings. Other programs include conservation rebates which are offered in partnership with the Metropolitan Water District of Southern California (ultra-low-flow toilets, weather-based irrigation controllers, synthetic turf, efficient sprinklers, water brooms X-Ray recirculation units and other water saving devices), landscape audits, and school education programs including the award-winning Garden In Every School program.

B. Water Recycling (50,000 acre-feet by 2010)

IEUA owns and operates four water recycling plants that produce high quality water that meets all state and federal requirements for non-potable landscape irrigation, industrial uses, and groundwater replenishment. Since 2000 the Agency has spent over $60 million expanding its recycled water distribution system and currently recycles about 15,000 acre-feet annually. Recently the IEUA Board approved an accelerated implementation plan to increase annual recycled water use to approximately 50,000 acre-feet within the next 3 years by constructing “purple” recycled water pipeline system to hookup existing large customers (schools, golf courses, city parks, groundwater recharge). IEUA’s Board has approved a $140 million budget to expedite the construction of recycled water pipeline distribution system. The accelerated implementation plan was developed through a collaborative process with local cities, water districts, Chino Basin Watermaster and other stakeholders and represents a comprehensive evaluation of the infrastructure needed to maximize recycled water use in the region. In addition, IEUA and local cities have coordinated with developers to incorporate dual “purple” piping into new urban developments to maximize recycled water use for non-potable purposes.
The energy demands to produce and deliver recycled water are less than one third of the energy required to deliver water through the State Water Project. Additional energy savings are included in the plan by building new smaller water recycling plants in the northern part of our service area to provide recycled water to communities (Upland, Fontana, and Rancho Cucamonga) without the need to pump the water to them. The Cucamonga County Water District (CCWD) proposed satellite plant authorized by HR 2919 would be the prototype water recycling plant to reduce energy use of pumping recycled water to the higher elevations along the San Gabriel Mountains.

Approximately 25% of the recycled water will be used for groundwater replenishment within the Chino Groundwater basin to augment the potable water supply. IEUA and Chino Basin Watermaster recently got court approval to expand the artificial recharge of the Chino Basin Groundwater Basin. The plan is to blend recycled water with stormwater and imported water in a coordinated fashion with flood control district to ensure that all water sources are conserved in an optimal manner (targeted goal is an additional recharge of 80,000 acre-feet per year).

C. Local Groundwater Storage and Conjunctive Use (500,000 acre-feet of new storage)

The Chino Basin Watermaster is implementing an Optimum Basin Management Plan to enhance the conjunctive use storage of the Chino Basin. Today MWD has stored over 80,000 AF in the Basin and has funded $1.5 million in engineer feasibility studies to expand the storage to 150,000 AF. The Optimum Basin Management Program developed over the past two years by the Chino Basin Watermaster would implement a comprehensive water resources management strategy to drought proof the area and enhance the yield of the groundwater basin. The Chino Basin Watermaster has developed a conjunctive use program to store 300,000 – 500,000 acre-feet of imported water in wet years for drought year withdrawal for local, regional and statewide availability. In June, 2003 IEUA, Chino Basin Watermaster, Three Valleys MWD, Western MWD and the Metropolitan Water District executed an agreement for the initial 100,000 acre-feet of storage and recovery projects ($27.5 million funding from MWD and Calif. DWR). In June 2007 MWD agreed to fund studies to evaluate expanding this storage program.

D. Chino Desalination Projects (40,000 acre-feet annually by 2020)

Historically, Colorado River water (relatively high salinity) and “Route 66” agricultural practices have caused areas of the Chino Basin to have high salts that make the water unfit for domestic uses. To correct this problem and to recover this poor quality water, the Chino Basin Optimum Management Plan recommends implementation of groundwater cleanup projects to pump and treat poor quality groundwater to meet drinking water standards. Additionally, the desalination projects of the lower Chino Basin area will protect and enhance the water quality of the Santa Ana River and the downstream use by Orange County. HR 813 (passed the House on October 22, 2007) would provide authorization under the Bureau of Reclamation’s Title XVI program to provide funding for the third Chino desalter and brine line improvements with the SAWPA SARI brine system.
recommended in the Southern California Comprehensive Water Reclamation and Reuse Study (USBR, 2003) and the joint MWD/USBR Salinity Management Study (1999). The third phase expansion is projected to cost $110 million and increase to approximately 40,000 AF.

E. Stormwater (25,000 acre-feet annual average of new stormwater capture percolation)

A critical issue facing the coastal plain of Southern California as the region continues to urbanize and hardscape our landscapes will be how to implement both small scale and larger scale projects for stormwater capture to allow percolation into our groundwater basins. IEUA in coordination with the Chino Basin Watermaster, the San Bernardino County Flood Control District and the Chino Basin Water Conservation District has developed an integrated recharge master plan to optimize the capture of stormwater with replenishment of imported water from MWD and our local recycled water to enhance the storage and recovery of water from the Chino Basin. During the past five years, IEUA has funded construction of over $50 million in improvements on the Groundwater Recharge Basin.

IEUA is also sponsoring innovative small scale, on-site (neighborhood development) storm water management projects to enhance percolation of rainfall to minimize runoff, reduce contamination of rainwater before it percolates into the ground and to cost effectively reduce flood control requirements while helping the cities and county meet regulatory requirements. This innovative program is being funded in partnership with the CALFED Bay-Delta Program, Metropolitan Water District of southern California, and the Southern California Concrete Association.

III. Climate Change Impacts on California Water Supplies

In the fall of 2006 IEUA collaborated with RAND on a study of the potential affects of Climate Change on the IEUA and Chino Basin area. This work has been recently completed and a Congressional briefing will held on January 31, 2008 to explain the findings of this report. Climate change will affect water supplies in California, but few water-management agencies in the state have formally included climate change in their water-management plans. RAND researchers have worked with Southern California’s Inland Empire Utilities Agency to help it identify vulnerabilities related to climate change in its long-term water plans and to evaluate its most effective options for managing those risks. But in summary the RAND research project highlights the critical need to develop more local supplies in California (e.g., water recycling, local groundwater storage and stormwater replenishment programs, implement excellent water use efficiency/conservation programs) to avoid significant water shortages and economic impacts.

IV. Future Issues and Need for Federal Assistance

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Southern California does have enormous water problems when you consider the following trends:

- The current population is about 18.5 million and will likely double over the 50 years;
- The imported water infrastructure from MWD can optimistically only deliver 2.4 million acre-feet, assuming resolution State Water Project Delta issues and the Colorado River problems are successfully resolved;
- Climate change is expected to impact both amount and timing of future water supplies, increasing the likelihood of shortages during critical times;
- Importing water to southern California requires a large amount of electrical energy, substantially more than the alternative local supplies (recycled water, capturing stormwater, and groundwater recovery of poor quality water);
- The region faces significant shortages unless we develop a local supply strategy.

The issue for the region as articulated in the MWD Integrated Water Resources Plan adopted in 2004, is to develop a balanced approach to multiple sources of supplies with a clear priority to local resources management and emphasis on less energy intensive uses of water that protect water quality and the wildlife habitats of the region.

Addressing the four questions asked in the letter inviting me to testify. My response to these questions and suggestions are as follows:

The Committee should continue to examine the opportunities for State and Federal agency partnerships to promote water use efficiency programs recommended in the CALFED Bay-Delta Record of Decision (increase water conservation, water recycling and new local groundwater storage programs to reduce the need for Delta exports consistent with the California Water Plan.

The Committee has developed Views and Estimates in the past few years that strongly supports increased funding for the Bureau of Reclamation’s Title XVI Program. For FY 2009 I recommend the Committee support an increase of $100 million increase in the funding of Title XVI Program expenditures.

A coordinated approach to regional infrastructure planning for water supply, groundwater management, stormwater, wastewater reuse and recycling needs to be integrated on a watershed and regional scale. Regional leadership in the planning of flood control, wastewater and water facilities is an opportunity that can save billions over the next 5 decades as well as help address the serious challenge facing this nation through climate change. The federal government should be a partner in this process helping both to facilitate redirection of federal programs to support local planning and providing funding for projects that contribute to the nation’s goals for water security and reduction of climate
change impacts. EPA, Army Corps, US Bureau of Reclamation, the USDA Natural Resources and Conservation Service all have significant activities within the region.

A historic example of a state/federal partnership was the leadership of this committee in 1996 in drafting the CALEED Bay-Delta legislation that provided the authorization.

I would recommend that your Committee hold additional hearings on these opportunities to develop new regional, state and federal partnerships that address comprehensively watershed divide problems

In closing, thank you for the opportunity to testify. If I can provide any additional information on the current and future water problems facing California, please don’t hesitate to contact me.
ATTACHMENT 4
PRESS RELEASE

02/29/2008  GAAS:112:08  FOR IMMEDIATE RELEASE

Governor Schwarzenegger Outlines Comprehensive Actions Needed to Fix Ailing Delta

Governor Schwarzenegger sent the following letter to Senators Perata, Steinberg, and Machado in response to their unfounded concerns that his administration is "unilaterally" beginning work on a so-called "peripheral canal." Consistent with the extensive work done by his administration over the last two years to gain consensus on a bipartisan legislative solution for a comprehensive plan to upgrade California's water infrastructure, Governor Schwarzenegger detailed his agenda in the following letter:

February 28, 2008

The Honorable Don Perata The Honorable Darrell Steinberg
President pro Tempore California State Senate
California State Senate State Capitol
State Capitol Room 4035
Room 205 Sacramento, California 95814
Sacramento, California 95814

The Honorable Mike Machado
California State Senate
State Capitol
Room 5066
Sacramento, California 95814

Dear Don, Mike and Darrell,

My administration has been working on solutions for addressing California's water supply and the environmental crisis in the Sacramento-San Joaquin Delta for more than two years. As you all have acknowledged during our negotiations on a comprehensive water infrastructure package over the last year, the heart of California's vital water supply system is in jeopardy of collapse without both immediate action and long term solutions to restore the ecosystem and protect water supplies.
I created the bipartisan Delta Vision Blue Ribbon Task Force by administrative action in 2006. The Task Force has issued its Vision and will develop a Strategic Plan to implement the Vision by the end of this year. In its recommendations, the Task Force identified a series of near-term actions that should be taken to protect the estuary, including studying the options for improving water transfer in the Delta. Far from acting unilaterally, my administration has been transparent in working with stakeholders and legislators on identifying both administrative and legislative actions that will be necessary to address the recommendations of the Task Force. As part of that effort, I will continue to negotiate in good faith with legislators on a comprehensive water infrastructure package.

To clarify the administrative actions we are considering as part of a comprehensive solution in the Delta, let me outline some of the key elements under development:

1. **A plan to achieve a 20 percent reduction in per capita water use statewide by 2020.** Conservation is one of the key ways to provide water for Californians and protect and improve the Delta ecosystem. A number of efforts are already underway to expand conservation programs, but I plan to direct state agencies to develop this more aggressive plan and implement it to the extent permitted by current law. I would welcome legislation to incorporate this goal into statute.

2. **Protection of floodplain in the Delta.** The Department of Water Resources (DWR) and other appropriate state agencies will expedite the evaluation and protection of critical floodplains. This action protects people and property, the existing water export system and the Delta ecosystem.
   - **Policy guidance on Delta land use.** The Blue Ribbon Task Force made it clear that changing land use patterns may limit our ability to address critical issues with the existing water export system and the Delta ecosystem. Accordingly, I will ask the Delta Protection Commission to update their Land Use and Resource Management Plan and direct the Governor's Office of Planning & Research and the State Architect to develop model Delta land use guidelines for distribution to local governments.
   - **Levee protection and standards.** DWR is actively involved in efforts to improve our flood protection and levee systems and, as part of this effort, should establish recommended standards for Delta levees.

3. **Multi-agency Delta disaster planning.** DWR, in coordination with the Office of Emergency Services, and other appropriate state agencies will develop and implement an emergency response plan and conduct a multi-agency disaster planning exercise in the Delta.
   - **Contract for emergency response equipment and services.** I will authorize DWR to continue its efforts to obtain equipment and services including barge services, sheet piling and other flood fighting materials to respond to disasters in the Delta. In addition to my previous orders, we must expedite the placement of materials and supplies in and near the Delta, to improve our emergency response capabilities.

4. **Expedite interim Delta actions.** The Resources Agency, DWR, Department of Fish and Game and the State Water Resources Control Board have already begun efforts to help protect and restore Delta habitat and help water users cope with supply interruptions.

I will direct the Resources Agency to expedite the completion of the Bay Delta Conservation Plan (BDCP), including the environmental review and permitting activities. Ongoing Delta actions, in conjunction with these efforts, will provide a foundation to help conserve at-risk species and improve water supply reliability.

5. **Water quality.** While additional storage and improved conveyance can allow greater control
of water flows that improve drinking water quality, more must be done. I will direct the State Water Resources Control Board to develop and implement a comprehensive program in the Delta to protect water quality.

6. **Improvements to Delta water conveyance.** DWR and other appropriate state agencies will soon begin the public process to study the alternatives available for improving the Delta water conveyance system. As part of this study, DWR must coordinate with BDCP efforts to recover at-risk species. DWR must also incorporate the issues of water supply reliability; seismic and flood durability; ecosystem health and resilience; water quality; and projected schedule, cost and funding in their options review, as suggested by the Task Force.

The Task Force recommended that we study a "dual conveyance facility" as a starting point. However I believe we must look at a full range of options for improving conveyance in the Delta.

Accordingly, I intend to direct DWR to proceed with the NEPA/CEQA analysis on at least four alternatives for Delta conveyance. They shall consider the following:

- The possibility of no new Delta conveyance facility;
- The possibility of a dual conveyance facility, as suggested by the Task Force;
- The possibility of an isolated facility;
- The possibility of substantial improvements and protections of the existing water export system, most often referred to as 'arming the Delta' or a "through-Delta" solution.

7. **Water storage.** DWR will complete the feasibility studies for the CALFED storage projects including Temperance Flat, Sites Reservoir, and the Los Vaqueros expansion. Each of these projects, depending on how they are built and operated, can provide substantial public benefits. Unlike in the past, when local entities built storage facilities for their own benefit and with little state investment, the current deteriorating condition of the Delta and the statewide water system demand public investment in exchange for the public benefit the entire state will realize.

In addition, I will direct DWR to expedite funding for groundwater storage projects throughout the state that will improve water supply reliability.

Please know that I will continue to work with the Legislature and all stakeholders to develop a comprehensive solution to the crisis in the Delta, and I will act on administrative measures in a transparent manner at the appropriate time.

California's history is filled with innovators and problem solvers. In 2006, with Democrats and Republicans working together for a common cause, we added to that legacy by building up our infrastructure. We showed leadership, not for the benefit of our own ambitions, but for the future of the state. That's something that Californians weren't used to, and they responded forcefully, approving all of the bonds. It's time for us to put the state first and add another chapter to the history books. It's time to secure a safe, clean and reliable water supply for the next generation of Californians. We have a great opportunity, and the people are counting on us. Let's not let it pass.

Sincerely,

Arnold Schwarzenegger
KEY ELEMENTS
OF A STRATEGIC PLAN
TO IMPLEMENT THE DELTA VISION

Prepared by:

The Bay Institute
Environmental Defense Fund
Natural Resources Defense Council
Defenders of Wildlife
Sierra Club California

Submitted to:
Delta Vision Blue Ribbon Task Force

May 2008
KEY ELEMENTS OF A STRATEGIC PLAN
TO IMPLEMENT THE DELTA VISION

Executive Summary

- Nine clear, measurable and enforceable targets for the Delta ecosystem, to maintain resident fish populations at levels greater than the 1967 – 1991 period before the ecosystem collapse; restore 325,000 acres of four habitat types in the Delta, Suisun Marsh and adjacent areas; increase Delta outflow to about 65% of spring runoff, and to higher levels in the fall as well; and provide other environmental benefits.
- Enough dedicated environmental water to meet the targets.
- A new Delta Water Master to oversee use of the environmental water.
- A new Delta State Park and National Heritage Area, along with stronger oversight of land use in all areas of the Delta.
- A new water use fee, and specific criteria for financing future projects.
INTRODUCTION

At the heart of the conflict over the fate of the Sacramento-San Joaquin Delta has been an approach to managing the Delta’s resources that is intended to maximize water diversion and land conversion while limiting the protection of native species and habitats to regulatory minima and voluntary efforts. By designating the Delta ecosystem as a co-equal value that must function as an integral part of a healthy estuary, and by calling for the incorporation of the constitutional principles of reasonable use and public trust into water resource policymaking and for other improvements in institutions and policies, the Delta Vision seeks to redress the imbalance between protection of the Delta ecosystem and how the Delta is managed for water supply and land use. The Strategic Plan must first and foremost identify the steps necessary to elevate Delta ecosystem protection as a co-equal value.

The Delta Vision Blue Ribbon Task Force has invited interested parties to propose elements for its October 2008 Strategic Plan with emphasis on three areas (appropriately incorporating the principles of reasonable use and public trust in California water policy making; governance and strategic finance; and reliable water for California). Recommendations concerning the third area will be the subject of a separate document. In order to adequately address the first two areas, establish the co-equal values of the Delta ecosystem, and implement the twelve recommendations contained in the November 30, 2007, Delta Vision, the Bay Institute, the Environmental Defense Fund, the Natural Resources Defense Council, Defenders of Wildlife and Sierra Club California propose the following Strategic Plan elements:

Key elements of a strategic plan to implement the Delta Vision
1. Adopting clear, measurable and enforceable targets for protection of the Delta ecosystem as an integral part of a healthy estuary that address abundance of estuarine species, extent of tidally and seasonally inundated habitat, frequency and duration of Delta outflows, and limit entrainment and contaminant effects to levels that do not harm Delta species.

2. Incorporating ecosystem targets that comply with the public trust constitutional requirement, by statute, rulemaking and executive order as appropriate, in the state and local permits and licenses of all water users and land managers.

3. Securing additional water for the environment to help meet ecosystem targets, including a new state environmental water right allowing for the appropriation of water to augment minimum regulatory requirements for fish and wildlife purposes.

4. Creating a new Delta Water Master entity to manage environmental water, beyond the minimum regulatory requirements, and to oversee water operations in the Delta and interbasin transfers.


6. Working with Delta communities to establish a new Delta State Park and Delta National Heritage Area,

*Key elements of a strategic plan to implement the Delta Vision*
7. Implementing clearly defined “beneficiary pays” criteria within all aspects of the Delta Vision, with particular attention to costly infrastructure projects.

8. Establishing user fees based on the volumetric consumption of water, and other funding sources to support attainment of Delta ecosystem targets and other public policy purposes.

INCORPORATING THE PUBLIC TRUST PRINCIPLE IN WATER POLICYMAKING: ECOSYSTEM TARGETS; PERMITS AND LICENSES; NEW ENVIRONMENTAL WATER

The following section provides details on the first three steps, which are intended to incorporate the public trust constitutional requirement into decisions about resource policy and management: ecosystem targets, their incorporation into state and local permits and licenses, and a new environmental water right.

Last fall, a number of highly respected scholars correctly pointed out to the Task Force that the reasonable use and public trust doctrines are synergistic and reinforcing: "A use of water violative of elements of the public trust is not reasonable." As these scholars stated, the constitutional requirement of "reasonable use" and the even more ancient doctrine of the public trust are twin foundations of California water law. The right to use water is limited to the amount of water reasonably required for the beneficial use to be served. The right does not extend to waste, or to unreasonable methods of diversion. What constitutes reasonable

Key elements of a strategic plan to implement the Delta Vision
use must take into account not only the rights of other water users but the broader public interest. Under the California constitution, Art 10, sec 2, no one in this state can have a protectable interest in the unreasonable use of water.

The public trust doctrine provides that the people of California own all of its waterways and lands beneath and that the state government serves as "trustee of a public trust for the benefit of the people." National Audubon Society v Superior Court (1983). 658 P.2d 709 (National Audubon). The doctrine imposes on the state an ongoing duty to protect "trust resources" which include explicitly fish, aquatic habitats, and even scenic beauty. In practical terms, the public trust means that - as is true under the reasonable use doctrine - no one can obtain a vested right in a use of water that harms trust resources. At best, water rights are burdened with an ongoing examination of the water requirements to ensure the long-term health of trust resources.

National Audubon, decided a quarter century ago, remains the pre-eminent California Supreme Court case on this issue. The court held that the public trust is not simply an affirmation of the power of the state to use water for general public purposes, even the important public purpose of providing drinking water. Rather, the public trust is "an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands, and tidelands, surrendering that right only in rare cases where abandonment is consistent with the purposes of the trust." Thus, as the professors pointed out, all elements of state government have the duty to protect, preserve and even restore the state's public trust resources, such as fish, habitat and wildlife.

*Key elements of a strategic plan to implement the Delta Vision*
For the purposes of the Delta Vision, the great benefit of *National Audubon* is that it provides a roadmap for integrating long-standing water rights with these concepts of ensuring environmental health. The court declined to hold that all past allocations harmful to trust resources were improper, but strongly confirmed the state's obligation to correct past mistakes regardless of the longevity of water rights. Key to this holding was the court's rejection of the argument that 'vested' water rights preclude the application of public trust or reasonable use principles to an environmental problem. Indeed, the high court reiterated eight separate times within the opinion that no one can acquire vested rights to use water in a manner harmful to trust resources.

So how does the state integrate existing water management and the public trust and reasonable use doctrines? *National Audubon* accomplishes this integration through a weighted balance. The public trust imposes a substantive duty on the State to affirmatively protect fish and other water-related resources "whenever feasible," and must "avoid or minimize any harm" to those resources.

Reasonable use and public trust principles both require that water diversions must be compatible with a healthy environment. Placing an environmental standard as the foundation for water policy is one of the most important ways that Delta Vision's Strategic Plan could incorporate these principles into water management going forward.

In the past, the State has felt constrained even when environmental harm was specifically

*Key elements of a strategic plan to implement the Delta Vision*
the anticipated result of proposed diversions. In 1940, when it issued the water rights permits to Los Angeles that would later be at issue in *National Audubon*, the State Water Resources Control Board (the State Water Board) knew that its actions were going to cause grave harm to Mono Lake. The Board characterized this result as "indeed unfortunate," but stated that "there is apparently nothing that this office can do to prevent" the diversions. *National Audubon*, 658 P.2d at 714, citing Division of Water Resources Decs. 7053 et al. (April 11, 1940).

The way to best incorporate these principles in water policy making and Delta resource management is to adopt specific ecosystem targets and then incorporate them into all relevant permits and licenses.
Targets for protection of the Delta ecosystem as an integral part of a healthy estuary

Viable and Resilient Populations

The Delta Vision's overarching goal that the Delta function as an integral part of a healthy estuary requires that it be able to support viable, resilient populations of estuarine species.

Target 1. Restore abundance of estuarine fish species to greater than 104% of average levels measured during the 1967-1991 period.

This performance target measures the combined abundance of three estuarine fish species (delta smelt, longfin smelt, and splittail) relative to their average combined abundance measured for the 1967-1991 period (Figure 1). These species were selected because they represent estuary-dependent aquatic organisms with a wide range of life-history requirements. The target level, greater than the average 1967-1991 abundance (or greater than the average plus one standard error, or >104%), represents an abundance level at which estuarine fish populations are viable (i.e., at low risk of extinction) and resilient (i.e., capable of responding to variations in environmental conditions without

Key elements of a strategic plan to implement the Delta Vision

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collapsing). This target complements but does not replace existing statutory and regulatory targets for Bay-Delta species, including the federal and state requirements to double natural production of Chinook salmon and other anadromous fish species.

**Habitats**

Three of the performance targets are designed to restore the extent and diversity of physical habitat types and the complexity of channel configurations by restoring specific acreages of tidal marsh, uplands and seasonal wetlands, and floodplains.

**Target 2. Restore 80,000 acres of tidal marsh habitat in the Delta and 50,000 acres of tidal marsh habitat in Suisun Marsh.**

This performance target measures the total area of vegetated lands with elevations ranging from mean lower low water to mean higher high water that are fully exposed to tidal action and are connected to the other tidal marshes, the Delta and/or the estuary by waterways. These habitats support estuarine and migratory species, increase primary and secondary productivity in the estuary, export of carbon and food organisms to the Delta and estuary, and improve water quality by filtering contaminants from surface runoff and tidally exchanged waters. More than 90% of historic tidal marsh habitat has been lost in the Delta and Suisun Marsh; therefore the target levels represent the total areas of land with the appropriate elevation in each region. The state already owns significant amounts of land in the Delta that could be restored as tidal marsh.
Target 3. Restore 130,000 acres of terrestrial grasslands and seasonal wetland complexes in the Delta and 5000 acres in Suisun Marsh.

This performance target measures the total area of lands in the Delta and Suisun Marsh with elevations above mean higher high water that support terrestrial grasslands and/or season wetland complexes. These habitats support wildlife, improve water quality by filtering contaminants in surface runoff, and provide accommodation space for sea level rise; therefore the target levels represent the total areas of land with the appropriate elevation in each region.

Target 4. Restore 60,000 acres of floodplain habitat to seasonal inundation for a minimum of 45 consecutive days at least once every two years.

This performance target measures the total area of lands adjacent to Delta tributary rivers with elevations above mean higher high water that are inundated by river flow during the spring (February-May). Seasonally inundated floodplains provide spawning habitat for splittail (one of the target estuarine fish species), an enhanced migration corridor for juvenile salmonids, robust primary and secondary productivity for export to the Delta, and improved flood protection in adjacent and downstream areas. The target season and acreage and duration levels are designed to support these objectives.

Ecological Processes

Ecological processes in the Delta include transport of materials (e.g., by flow and tidal exchange across connections between different habitat types), primary and secondary productivity, seasonal variability in environmental conditions (e.g., flow, location and

Key elements of a strategic plan to implement the Delta Vision

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area of low salinity habitat, temperature), and disturbance (e.g., flood events). Some of these processes are provided by the natural function of specific habitat types (e.g., tidal marshes or floodplains) but others are tightly linked with water management operations that control freshwater inflows to the estuary. Two of the performance targets are designed to address seasonal freshwater inflows and the resultant estuarine open water habitat quantity and quality.

**Target 5. Restore spring Delta outflow to provide low salinity habitat in Suisun Bay, with average February-June X2 values ranging from less than or equal to 70 km from the Golden Gate in critically dry years to less than or equal to 58 km in wet years.**

This performance target measures the volume of Delta outflow (or freshwater inflow into San Francisco Bay) and the resultant location of low salinity, open water habitat during the spring (February-June; Figure 2). The ecologically important spring season is when upstream dam and Delta water export operations have had the greatest effects, reducing spring outflows by more than 50% in many years. The water year type dependent target levels are based on statistically significant relationships between spring

*Key elements of a strategic plan to implement the Delta Vision*
outflow and estuarine fish population abundance and designed to provide conditions that
previously supported estuarine fish populations at levels that would meet Target 1 by
increasing Delta outflow to about 65% of unimpaired runoff.

Target 6. Restore fall Delta
outflow to provide low salinity
habitat downstream of the
Sacramento-San Joaquin River
confluence, with September-
November average X2 values
less than 80 km in all years
except critically dry years.
This performance target
measures the volume of freshwater Delta outflow (or freshwater inflow into San
Francisco Bay) and the resultant quantity and quality of low salinity, open water habitat
during the fall (September-November; Figure 3). Declining freshwater outflows during
this season are correlated with degraded open water habitat conditions and declines in
delta smelt population abundance. The water year type dependent target level is designed
to provide good open water habitat quality.

Stressors
The Delta ecosystem is adversely affected by both anthropogenic (e.g., entrainment,
pollution) and biological stressors (invasive species). Entrainment and pollution are

Figure 3. Fall Delta outflow (as X2) compared to the water year
type dependent outflow target (as X2). The performance target
varies with water year type and is therefore shown at 0 as the
horizontal red line. The Y axis shows the difference in measured
fall X2 from the performance target: positive values indicate that
outflow exceeded the target, negative values indicate that outflow
was less than the target.

Key elements of a strategic plan to implement the Delta Vision
directly responsive to management actions but the prevalence of invasive species in any ecosystem is as much an indicator of degraded habitat conditions resulting from loss of physical habitat, altered flow regimes, and impaired water quality as it is a driver of ecological problems. Therefore, carefully designed management and restoration actions to meet habitat, ecological processes, and water quality performance targets will also function to reduce the impacts of invasive species. Three performance measures address entrainment and contaminants.

**Target 7. Limit annual entrainment losses of estuarine fish species to less than 5% of the population and to less than 2% for migratory fish species.**

This performance target measures the percentage of the populations of estuarine and migratory fish species that are entrained into water diversions located in the Delta and Suisun Marsh. Entrainment of estuarine and migratory fishes at the more the 2000 water diversions in the Delta and Suisun Marsh can be a significant contributor to population declines in some years. The target levels are designed to reduce entrainment mortality to levels that are proportional to species population size and low enough to not cause the populations to decline.

**Target 8. Limit total ammonia concentration to <0.07 mg/L and unionized ammonia concentration to <0.01 mg/l in Delta waters.**

This performance target measures the concentrations of total ammonia and unionized ammonia in Delta waters. High concentrations of total ammonia can inhibit

*Key elements of a strategic plan to implement the Delta Vision*
phytoplankton production and high concentrations of unionized ammonia are directly
toxic to fishes. The target levels are set at levels that eliminate these adverse effects.

Target 9. Reduce discharge of contaminants into Delta waterways and tributary
rivers so that <5% of estuarine and anadromous fish populations exhibit evidence of
toxic exposure and there are zero incidents of fish kills.
This performance target measures the prevalence of toxic contaminants in waters and
sediments of the upper estuary, Delta, and tributary rivers by evaluating contaminant
effects in fish species that are frequently and regularly sampled in the system. The target
levels are designed to prevent incidents of direct mortality from contaminants and to
reduce contaminant discharges to levels where only a small fraction of resident and
migratory fish populations are exposed and/or affected.

More detail on the conceptual framework, specific rationales, and strategies for
implementation of the ecosystem targets is contained in Attachment 1 (The Bay Institute,
Targets for protection of the Delta ecosystem as an integral part of a healthy estuary).

Incorporating Ecosystem Targets into State and Local Permits and Licenses
The Delta ecosystem targets must drive decision-making about water policy and land use.
To that end, the Strategic Plan should propose that:

*Key elements of a strategic plan to implement the Delta Vision*
1. The legislature should adopt these targets by statute as requirements to be incorporated in all relevant state and local permits and licenses, and as objectives for all relevant state planning and management activities.

2. The State Water Board should review and revise all relevant water rights permits, waste discharge requirements, and other relevant permits and licenses to comply with the appropriate ecosystem targets.

3. All state and local agencies with authority over land use in the Delta should review and revise all relevant general plans, permitting approval criteria, and pending permits and licenses to comply with the appropriate ecosystem targets.

Securing and Managing Additional Water for the Environment, Including a New Environmental Water Right

The current allocation of water for environmental purposes has not been sufficient to prevent collapse of the Delta ecosystem. While a number of factors are implicated in this collapse, the long-term, radical alteration of hydrologic patterns and decrease in Delta outflow under most conditions has been a primary driver of habitat degradation, rendering the Delta more vulnerable to secondary factors that would not be as likely to adversely affect a healthy estuary.

The ecosystem targets proposed above include several that will provide high quality hydrological conditions for estuarine species and habitats. For a variety of reasons, however, complying with these targets must be combined with the dedication of additional water supplies for Delta ecosystem protection that can be used in a flexible,
adaptively managed fashion in order to augment baseline regulatory protections. These additional water supplies can be provided under a new environmental water right and/or agreements that ensure environmental control over existing and new water supply infrastructure.

First, changes in operations and in storage and conveyance capacity in and upstream of the Delta, and in areas exporting water from Northern California, can undermine the protections afforded by any set of regulatory requirements or other targets, as evidenced by the recent shifts in the timing and amounts of export pumping and in the capacity to store exported water, which have played a major role in the pelagic fish population collapse. New environmental water would be used to avoid or offset such shifting impacts. Second, environmental conditions in the Delta are highly volatile as a result of both the accelerating effects of global warming and depressed population levels of native species. Episodic events that are not easy to predict may have a significant impact on the viability of estuarine species. New environmental water would be used to rapidly respond to emerging problems and fill gaps in the baseline regulatory requirements and other targets. Third, the amount of water currently dedicated to flexible environmental use under the Central Valley Project Improvement Act and the Environmental Water Account has been relatively trivial compared to the amount of water extracted from the Delta ecosystem and the amount of water needed to improve habitat conditions. New environmental water, if sufficient in magnitude, would allow for large-scale improvements in hydrological conditions for estuarine species on a real-time basis. In

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summary, new environmental water would serve as a buffer between baseline protections and emerging, episodic and shifting impacts on estuarine species.

For these reasons, the Strategic plan should propose that:

1. The legislature should create a new environmental water right, i.e., a water right that allows for the appropriation of water for Delta ecosystem protection in order to augment minimum regulatory requirements.

2. Other arrangements should also be made to secure additional environmental control over existing and new water supply infrastructure.

3. A share of water stored and conveyed throughout the Delta watershed sufficient to achieve ecosystem targets (in combination with regulatory requirements) and provide an adequate buffer above attainment of targets should be secured to endow the new environmental water right and/or implement other environmental water arrangements. This environmental water should not be reliant on purchased water, since funding and purchase prices fluctuate from year to year, and long-term voluntary agreements are difficult to arrange.

4. The new environmental water should be managed by a new Delta Water Master (see below).
GOVERNANCE AND STRATEGIC FINANCE

This section provides greater detail on steps 4 through 8 as described on page 4.

Delta Water Master

Delta water operations -- in-Delta diversions and interbasin water transfers -- are managed on a real-time basis by water agencies primarily concerned with maximizing water deliveries while minimizing environmental compliance obligations. Regulators and resource agencies may set the baseline terms of compliance in permits but have limited or no ability to make direct decisions on a real-time basis regarding operational changes to avoid adverse habitat conditions or provide improved habitat conditions.

The creation of a new entity to act as a Delta Water Master (DWM) to manage a new environmental water right and oversee water operations in the Delta and interbasin transfers would correct this imbalance and elevate the place of the Delta ecosystem as a co-equal value in water management. In effect, the DWM would be able to flip the switches and turn the dials, just as water project operators do to maximize project deliveries today. The proposed DWM is the "functional equivalent" of the proposed Delta Water Management Commission that was included in our July 2007 recommendations to the Delta Vision Blue Ribbon Task Force.

The DWM would have the authority to:

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1. Make releases from water stored or otherwise controlled by the new environmental water right to augment regulatory requirements. These releases could be used to directly improve habitat conditions or to offset reductions in diversions.

2. Require reductions in diversions and exports within the Delta and throughout its watershed to improve inflows, outflows, and water quality as needed.

3. Approve operational decisions by water project agencies involving interbasin transfers.

4. Operational decisions made by the DWM may be made in advance or in real time in response to biological and hydrological monitoring.

5. Administer fees imposed by the State Water Resources Control Board and/or directly impose fees.

6. Coordinate the activities of state and federal agencies that have legal responsibilities for fishery and water quality protection, including but not limited to the California Department of Fish and Game, the United States Fish and Wildlife Service, the National Marine Fisheries Service, and the U.S. Environmental Protection Agency. (This coordination function is not intended to have any effect on the existing statutory obligations of these agencies).

For more ideas on how the DWM could function, see Attachment 2 (Environmental Defense Fund, *Increasing the Flexibility of Environmental Water Supply Operations in the Delta*).

There are many ways to structure the DWM. Primarily, it is critical that a streamlined entity be created that would effectively and efficiently coordinate all agencies with legal

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responsibilities for protecting water quality and natural resources in the Delta. Under one potential approach, the DWM entity would be managed by an executive director with the authority to hire sufficient staff to perform the functions described above. The executive director would be appointed by the State Water Board, and all decisions of the DWM would be subject to the concurrence of the Board (or its executive director). Under an alternative approach, the DWM entity would be overseen by a board consisting of members filling specific positions with expertise in Delta agriculture; Delta communities; export water use; commercial and recreational fishing; communities downstream of the Delta; environmental justice; water quality; public interest environmental advocacy; and aquatic biology. The members would be appointed by the Governor (5), the President Pro Tem of the Senate (2) and the Speaker of the Assembly (2). Their authority would be delegated from the State Water Board, and their decisions would be subject to the oversight and concurrence of the State Board.

The DWM would have the authority to impose new fees and/or would administer fees collected by the State Board, which already has the authority to impose fees. These fees would be imposed in the following areas:

*Ecosystem Restoration:* A fee for ecosystem restoration is required to provide more complete mitigation for the system-wide impacts of water diversions in the watershed. The fee should be imposed on all water diverted from the watershed. However, this state fee should take into account the contributions made to the Central Valley Project Restoration Fund for a system-wide mitigation program. The goal of the ecosystem restoration fee is to

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create an equitable, watershed-based, state Bay-Delta restoration fund parallel to that created for the Central Valley Project by the Central Valley Project Improvement Act. These funds should be awarded by the DWM to restoration program managers such as the Department of Fish and Game.

*Delta Flood Management:* A fee on water exported from the Delta should be created to provide funding for flood management efforts in the Delta that produce direct reliability benefits for the exporters. These funds should be awarded by the DWM to flood management entities such as the Department of Water Resources Division of Flood Management to implement portions of the State Plan of Flood Control (currently under development) that provide direct reliability benefits for the exporters. This fee should be designed to ensure that the flood management program is consistent with ecosystem restoration goals.

*Science:* A fee to provide ongoing, reliable support for the existing Bay-Delta science program would allow the state to better understand the impacts of water management and allow more effective management over time.

*DWM Management:* Fees should be imposed to fund the activities of the DWM. These activities will include operational costs, staffing costs, and potentially costs of storing and releasing environmental water. The DWM will not buy or sell water supplies in the normal course of business, however, so it is not expected that fees will be collected for this purpose.

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Land Use Regulation

In our July 2007 recommendations, we proposed the creation of a Delta Conservation and Development Commission with authority to regulate land use, protect and restore habitat, and address water quality, on the pattern of the existing Bay Conservation and Development Commission. (This entity could perhaps also be established by modifying the authority of the existing Delta Protection Commission). This element should be included in the 2008 Strategic Plan.

Special Status for the Delta

In our July 2007 recommendations, we proposed state and federal designations for the Delta designed to strengthen the “sense of place” in the Delta, increase public awareness of this unique resource, and drive efforts to acquire, manage and restore habitat areas in protected zones throughout the Delta. Specifically, the Strategic Plan should propose that:

1. The state should, working with Delta communities, create a Delta State Park. This park would also serve the purpose of unifying the different state property interests in the Delta. The state is already an extensive land owner in the Delta. Over time, particularly as restoration efforts proceed, existing state land (e.g. Sherman Island) and additional lands that will be purchased by the state to facilitate ecosystem restoration should be unified as separate units in a single state park. The Sonoma Coast State Park provides an example of a state park composed of several different units, but retaining a single identity and unified management.

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2. The federal government should, working with Delta communities, designate the Delta as a National Heritage Area. This designation would reflect the broad cultural, historic and natural values of the Delta. It is likely that most public purchases in the Delta in the near future would be made with state, not federal funds. This fact makes the NHA designation particularly appropriate, as the NHA model is not based on federal ownership and management. The NHA designation, however, could make a significant contribution to increasing public awareness of the Delta. See http://www.nps.gov/history/heritageareas/FAQ/INDEX.HTM for more information.

Strategic Finance

Implementing an effective Strategic Plan that successfully addresses a full range of Delta issues will require an extremely large financial investment totaling tens of billions of dollars over the life of the plan. Securing that funding will be a major challenge. Meeting that challenge should not wait until after the plan is written.

Issues related to economics and finance have proven to be important challenges for other water policy efforts in California. The CALFED Bay-Delta Program stumbled over the task of developing a realistic financing plan. Development of a detailed financing plan was not begun until years after the CALFED Record of Decision (ROD) was finalized. The legislature pressured the CALFED Program to develop a financing plan to guide the implementation of the ROD. The CALFED Program did some good work in this area, but the plan was never finalized. As a result, key elements of the CALFED ROD, such as the levee program, were dramatically underfunded. The failure of the CALFED Program regarding

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financing contributed to the legislature’s loss of confidence in the program and its ultimate failure. The legislature is currently considering SB 1102 (Machado), which would disband the CALFED Program. In 2006, the Governor proposed the creation of a Resource Investment Fund (RIF) to finance water management programs. The RIF proposal failed to win approval in the legislature, in large part due to opposition from water users who did not want to pay into a RIF without knowing how those funds would be spent.

In short, the CALFED ROD was, in some ways, an investment plan without a finance plan. On the other hand, the RIF was a finance plan without an investment plan. With a price tag in the tens of billions of dollars, an effective Delta Vision implementation plan must address both what investments are needed, and how they will be financed. Economics and financing will be central to the success or failure of the Delta Vision strategic plan. Given the scope of this effort, a focus on economics is essential to ensure that the plan is as cost-effective as possible. An early focus on financing is also essential to maximize the chances that the plan will be successfully implemented, rather than merely sit on a shelf gathering dust.

These observations have led to the following initial conclusions, which have shaped our subsequent recommendations.

Businesses and water users seek the most cost-effective solutions, but agencies have not always done so. Water users are very focused on the cost-effectiveness of any benefits they might receive from an investment they are considering. However, policy discussions in the legislature and state and federal agencies regarding potential elements of a comprehensive

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Delta plan frequently fail to address the issue of cost-effectiveness. Without a focus on the cost-effectiveness of key elements of a Delta Vision plan, there is a greater risk that water users will be unwilling to invest in that plan. The state does have a successful model that Delta Vision can build on. For example, the state’s focus on Integrated Regional Water Management in the last several years has helped the state work collaboratively with local agencies to direct state investments to cost-effective strategies that local agencies are eager to invest in.

In the future – unlike the past - most of the funds to address issues related to the Bay-Delta, particularly to ensure adequate future water supplies, are expected to come from water users, not federal or state general funds or bonds. For example, in testimony before the Senate Committee on Natural Resources and Water on March 11, 2008, the Legislative Analyst reported that “local matches and other local direct expenditures likely outplace state funding for water conservation” and that “local funding for groundwater management far exceeds state local assistance funds by more than 2 to 1.” While it is a mark of progress that local beneficiaries are expected to pay for more than two-thirds of the cost of groundwater development, we generally believe that beneficiaries should pay for 100% of benefits received.

Economics and finance will play an important role in the transition from a focus on developing traditional water projects to a focus on improved management and efficiency. We do not mean to suggest that there will be no significant infrastructure investments in the future. However, there is remarkable agreement around the conclusion in the California

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State Water Plan Update (2005) that the new water supplies needed to meet California’s future water needs will come largely from efficiency, water recycling and improved groundwater management (e.g. groundwater clean-up), not from new surface storage. Almost by definition, effective efficiency programs must focus on cost-effectiveness and financing issues. Internalizing costs are an important part of that process. The energy field has undergone this transition in the last 20 years, resulting in a much sharper focus on cost-effectiveness and user-financing. Environmental limits on the historic pattern of steadily increasing Delta diversions, along with the pressure of global warming on water systems, will, over time, increase the need to focus on economics and finance. Simply put, California is no longer in an era of cheap, abundant water.

With these conclusions in mind, we offer the following recommendations regarding finance and economics.

An integrated approach to economics and financing should be developed as early as possible. Economics and financing are not merely implementation issues to be considered at the end of the process. They should be integrated into the planning process from the start, because they will likely shape the substance of the plan. For example, an early focus on financing will lead potential funders to focus on the cost-effectiveness of proposed projects. The result will be a more effective, less costly plan that is far more likely to be implemented.

A meaningful “beneficiary pays” approach is key. As stated above, water user funding will likely exceed state and federal funding in many areas of the Delta Vision plan. Given this

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fact, and given that water users will be unwilling to pay for benefits that their neighbors
would receive, it is essential that the Strategic Plan include a meaningful “beneficiary pays”
approach to financing. Our remaining recommendations will focus largely on the elements
of such an approach.

For example, however Delta conveyance issues are resolved, it is anticipated that levee repair
will cost many billions of dollars. Repairing levees would benefit highways, railroads, power
transmission, shipping, local communities, and many other interests. To ensure fairness and
cost-effectiveness, the strategic plan should identify mechanisms for distributing the costs of
levee repair in a rational and equitable way.

The focus should be on cost-effectiveness, including the full cost of protecting environmental
resources. There are many ways to meet our future water needs (e.g. efficiency, transfers,
conjunctive use, water recycling, traditional water projects.) Likewise, there are different
ways to improve flood management in the Delta (e.g. land use decisions, flood bypasses,
levee improvements). A focus on cost-effectiveness will help decision-makers select among
alternatives and increase the willingness of water users to invest in that plan. Any public
funding for water supply should be focused on cost-effective water strategies that are aligned
with the priorities of water agencies for investing their own funds. A focus on cost-
effectiveness necessarily requires that water strategies are designed in a process that includes
a careful evaluation of competing approaches.

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Public funds should be dedicated to achieving well defined public benefits. It is not enough merely to promise public benefits. The Strategic Plan should clearly define what constitutes a public benefit. For example, mitigation is not a public benefit. Increasing the reliability of supply for one set of water users is not a public benefit. This step is essential to equitably apportion costs.

Proposals to develop new storage capacity, operated to provide environmental benefits, are essentially mitigation, as they are an admission that operation of existing facilities has over-manipulated the natural hydrograph. The cost of developing any new storage capacity dedicated to the environment should appropriately be borne by user fees rather than taxpayer funds or general obligation bonds. This will ensure that the price of water will better reflect the cost of extracting it for consumptive use.

Unfortunately, there is a long history of unfulfilled promises of public benefits from water projects. Therefore, the Strategic Plan should recommend the creation of effective assurances that provide guarantees that public benefits will be achieved. Water projects have routinely written water contracts with water contractors. These contracts are intended to provide water users with some predictability regarding the allocation of water supply from a particular project. However, water projects have generally not made similar commitments regarding the public benefits that are used as justification for public funding. To the extent that state or federal funds are invested in water projects in the future, as a result of promised public benefits, new enforceable mechanisms should be required that provide some assurance that public benefits will be achieved. These assurances can take several forms:
- Enforceable regulatory commitments.
- Enforceable water efficiency and recycling targets to ensure reasonable use,
- Contracts, including private enforcement agreements and commitments in bonds.
- Governance structures, including ownership interest.

Designing a “beneficiary pays” financing approach for large infrastructure projects. A careful approach is particularly important for large infrastructure projects, because of potential environmental impacts, the large amount of funding required, and the risk of stranded investments in the planning phase if needed financing for implementation fails to appear. Specifically, the Strategic Plan should condition the consideration and selection of any large infrastructure project on the following:

- Requiring a completed finance plan as a precondition for design and construction phases of a large capital project.
- Requiring local agencies to prepare a finance plan to pay the local share of a capital project.
- Requiring participation from potential beneficiaries in funding for initial studies.
- Establishing a clear “without project” baseline from which to measure project benefits.
- Assigning cost shares proportionally to expected benefits. As stated above, public benefits of mitigating project impacts should be subsidized by water user fees.

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Learning from California’s pioneering energy and climate programs. The Delta Vision Task Force should consider the approach to economics and finance in California’s energy and climate programs. We recommend that the Task Force consider incorporating the following concepts in the implementation plan:

- The creation of a loading order and public goods charge. These policy tools guide energy investments to cost-effective solutions and provide use-based financing. They have played a major part in California’s dramatic progress on energy efficiency. (See Natural Resources Defense Council, *Transforming Water Use: A California Water Efficiency Agenda for the 21st Century*, previously submitted to the Task Force.)

- The energy benefits of water conservation and other tools that could increase regional self-sufficiency could provide a significant source of new funding.

- The carbon sequestration benefits of wetlands restoration in the Delta, particularly on subsided Delta islands, could provide an additional source of funding.

Create a system of equitable user fees to internalize externalities. User fees are essential to ending the “free rider” syndrome and ensuring that all users address impacts to which they contribute and support programs from which they benefit. There are many examples of such fees. (e.g. California’s commercial salmon fishermen purchase a salmon stamp to support the health of that fishery.) The Strategic Plan should propose a carefully designed water use fee.
A water user fee should be primarily based on volume and applied to all water diverted within the Bay-Delta watershed for consumptive use on farms and in cities. It may also be appropriate to incorporate diversions for hydropower as part of the water user fee.

For example, Delta Vision has acknowledged that all water users in the watershed contribute to the degraded state of the Delta ecosystem. Granted, some water projects are a larger cause than others. However, all water users should contribute to the effort to restore the Delta environment. The Central Valley Project does collect a user fee for a system-wide program to mitigate for the impacts of the project. Other water users in the watershed, however, contribute little or nothing to address Delta issues. User fees would be an important complement to public funding for this effort and are likely to prove to be essential to the long term success of any Delta restoration effort.

Similar user fees could be developed to provide support for Delta flood management from the export water users who depend on Delta levees. Likewise, a user fee could be designed to support an ongoing science program for the Bay-Delta ecosystem. (See recommendations above regarding the Delta Water Master).

Use fees must be designed carefully to tie fees to specific impacts and benefits. Likewise, fees must be carefully designed to address the risk that the general fund deficit could result in pressure to divert revenue from these user fees to other purposes. A system of user fees must not be allowed to become a de facto tax, providing revenue for the state's general fund. (This recommendation is also discussed in our governance recommendations.)

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Look for opportunities to reduce water subsidies that increase pressure for diversions in the Bay-Delta watershed. Water resources throughout the Bay-Delta watershed are substantially over-allocated. Moving away from historic water subsidies could be an important part of a Delta strategy. For example, expiring CVP water contracts provide an opportunity for the Bureau of Reclamation to move more toward realistic cost- and market-based pricing. Reducing such subsidies could provide increased incentives for users to invest in efficiency and decrease pressure on the Delta.
December 10, 2007

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VIA ELECTRONIC AND U.S. MAIL

Re: Comments on the Draft Supplemental EIS/EIR for Extending the Environmental Water Account and OCAP Consultations

Dear Ms. Cervantes:

We are writing on behalf of the Natural Resources Defense Council ("NRDC") and its more than 120,000 members in California with regard to the draft supplemental EIS/EIR ("DSEIS/EIR") for the Environmental Water Account ("EWA"). The DSEIS/EIR proposes to extend the existing EWA program, which is currently set to expire at the end of 2007, for another four years, through 2011. The U.S. Bureau of Reclamation and the California Department of Water Resources, the co-lead agencies for the DSEIS/EIR, propose to take this action without providing any analysis of how the EWA has functioned since its inception in 2001 or whether the EWA has succeeded in achieving its stated fish protection purposes. In fact, the EWA has not functioned as envisioned and, by placing artificial restraints on the amount of water ostensibly available for fish protection, has contributed to the decline of imperiled fish in the Delta, most of which are in worse condition today than they were in 2001. For these reasons, we urge the agencies to discontinue the failed experiment of the EWA, and to devote the taxpayer resources currently dedicated to the EWA to actions that could provide a real benefit to imperiled fish.

In previous biological opinions on the joint operations of the Central Valley Project and State Water Project (i.e., the "Operating Criteria and Plan" or "OCAP"), the agencies have considered the EWA a central feature to mitigate the harmful impacts of the projects on listed fish. The Bureau has reinitiated consultation on those OCAP biological opinions, and those reconsultations are ongoing. Apparently, the agencies have not yet defined the "project" for this reconsultation and it is unclear whether the agencies are contemplating including the EWA in the new project description. Because the EWA has failed to function as a fish protective measure and should not be considered an effective mitigation or conservation tool in the new biological opinions, we seek consideration of these comments in those ongoing consultations as well. Likewise, we request that this information be incorporated, by DWR and DFG, into efforts to comply with the requirements of CESA.

I. THE EWA HAS NOT FUNCTIONED AS ENVISIONED
There is no doubt that in past years the water promised for fish protection through both the Environmental Water Account and the CVPIA (b)(2) account has been significantly less than what was promised in the CALFED ROD. *Finding the Water: New Water Supply Opportunities to Revive the San Francisco Bay-Delta*, Environmental Defense, 2005 (appended as Exhibit 1). From 2001-2004, the EWA provided only 29% on average of the expected 195,000 acre-feet of operational assets. *Id.* at 12-13. Collectively, the EWA and b(2) have contributed as much as 500,000 acre-feet less water per year towards fish protection and restoration than anticipated in the CALFED ROD. These shortfalls have occurred while exports from the Delta have reached record high levels and the ecosystem has continued spiraling downward. Clearly, the EWA experiment has not performed as planned.

The failure of the EWA to function as envisioned is epitomized in the failure of the agencies to invoke Tier 3 this year – the intended backstop for any shortfall in EWA assets. EWA Tier 3 was supposed to ensure that if EWA was underfunded or failed to perform as anticipated (both of which have happened), sufficient water would be provided to ensure no jeopardy to listed fish. As explained in the Tier 3 Protocol, a copy of which is appended hereto as Exhibit 2:

> As part of the MSCS Conservation Agreement and the FWS and NMFS biological opinions, the CALFED agencies have provided a commitment, subject to specified conditions and legal requirements, that for the first four years of Stage 1, there will be no reductions, beyond existing regulatory levels, in CVP or SWP Delta exports resulting from measures to protect fish under FESA and CESA. *This commitment is based on the availability of three tiers of assets:*

> ... Tier 3 is based upon the commitment and ability of the CALFED Agencies to make additional water available should it be needed.

> ... Tier 3 is a fail-safe device, intended to be used only when Tier 1 and Tier 2 are insufficient to avoid jeopardy to the continued existence of an endangered or threatened species.

> ... The State and Federal Projects will be responsible for making preparations for the activation of Tier 3.

(Emphasis added). This language makes clear that the assurances provided under CALFED, and the ESA and CESA compliance of the EWA, were dependent upon the existence and availability of these Tier 3 assets.

Unfortunately, when the time came to call upon this Tier 3 “fail-safe”, the agencies failed to trigger it, ensuring that listed species rather than water users would suffer the consequences of the failure of the EWA to live up to its stated purpose. There can be no question that Tier 1 and Tier 2 have been and are insufficient to avoid jeopardy to the threatened delta smelt. A federal court held in May of this year that the “delta smelt is indisputably in jeopardy as to its survival and recovery.” *NRDC v. Kempthorne*, Order on Summary Judgment at 119 (May 25, 2007). This finding echoes the findings of several expert fisheries biologists, including staff of many

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state and federal agencies. *See, e.g.*, DSWG Briefing Statement (May 15, 2007) ("the species has become critically imperiled and an emergency response is warranted") (attached hereto as Exhibit 3); Statement Presented by Ryan Broddrick, Director, CDFG, to House Subcommittee on Water and Power (July 2, 2007) ("it is DFG’s position that actions must be taken to protect as many individual smelt as can be through manipulation of the water projects. Each reproducing organism is important to the survival of the species.") (appended hereto as Exhibit 4). Despite these findings and the continued take of large numbers of delta smelt at the Project pumps this past summer, *see* delta smelt May, June and July take tables (appended hereto as Exhibit 5), the Project agencies obstinately refused to invoke Tier 3.

Inexplicably, the DSEIS/EIR makes no mention of this breakdown of the EWA’s “fail-safe”, nor does it describe or analyze the historical shortfalls of the EWA or the program’s failure to function as envisioned. These shortcomings are far more relevant to the foreseeable impacts of extending the program than any of the purely hypothetical modeled impacts contained in the DSEIS/EIR. The DSEIS/EIR must be revised to address these issues. Further, these historical realities belie the statement in DSEIS/EIR that “[i]f pumping would be likely to put at risk the continued existence of a species listed as endangered or threatened under the Endangered Species Act (ESA), the Project Agencies would curtail pumping even if purchases already totaled 600,000 acre-feet and all assets were used.” DSEIS/EIR at ES-5. This is precisely the situation that presented itself to the Project Agencies this summer, and the agencies failed to curtail pumping once EWA assets were depleted even though continued pumping threatened the continued existence of the delta smelt.

Moreover, the DSEIS/EIR seeks to utilize the ESA/CESA process for coverage of the EWA initially established in the CALFED ROD, without addressing any of these fundamental failures of the process to operate as envisioned and which were essential to the CALFED analysis. *See generally* DSEIS/EIR Appendix C.1 For example, Tier 3 no longer exists as a viable “fail-safe device.” Yet, the CALFED assurances were explicitly “based on the availability of three tiers of assets.” Tier 3 Protocol. The DSEIS/EIR makes passing reference to this change, obliquely noting that “[b]ased on current circumstances, these three tiers are no longer an accurate way to describe EWA assets.” DSEIS/EIR at 2-4. But the document fails to acknowledge the implications of omitting this critical “fail-safe device” or to describe the replacement structure of the EWA going forward.

In short, the DSEIS/EIR fails to adequately describe the project to decisionmakers and the public or to disclose the environmental impacts associated with the policy choice of extending the EWA. The document should be revised to correct these shortcomings. We believe that an accurate description and assessment of the EWA will demonstrate that the program should not be extended.

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1 The DSEIS/EIR also fails entirely to discuss the state court decision finding that DWR lacks the necessary CESA coverage for operation of the SWP, which also likely impacts the CESA analysis in Appendix C. It is unclear, for example, how EWA assets pumped through the SWP facilities at Clifton Court forebay and Banks pumping plant have CESA take authority when the court found that the SWP lacked any take authority for its pumping operations. The DSEIS/EIR must be revised to address this issue.

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II. THE EWA HAS LIMITED, RATHER THAN EXPANDED, THE AMOUNT OF WATER AVAILABLE FOR IMPERILED FISH

Since shortly after the first EWA ROD was signed in 2004, the program has been used as an excuse by the agencies to deny needed water to imperiled fish rather than to help protect and recover imperiled fish. For example, in February 2005, when delta smelt populations were at then-record low levels, fishery biologists recommended that exports be curtailed to reduce entrainment. However, because EWA supplies were scarce, project managers did not curtail exports as much or as long as was requested. Compare “Data Assessment Team” call notes (Feb. 1, 2005) (recommending combined exports be reduced to 1500 cfs for one week) (appendend hereto as Exhibit 6, without attachments) with CVO smelt report (February 2005) (showing much higher combined export levels) (appendend as Exhibit 7). Hundreds of delta smelt were taken at the pumps as a result. Id. The lawful and proper course of action would have been for the agencies to fully implement the recommended action, and then use non-EWA project water to meet fish needs later in the year if EWA supplies ran short. Instead, the program has been implemented to turn this requirement on its head, and to short fish without any consideration given to imposing uncompensated reductions on project contractors and other water users.

Unfortunately, the agencies have continued this pattern of using limited EWA assets to deny needed fish protection actions. In 2006, as the delta smelt continued its unparalleled decline in abundance, the Delta Smelt Working Group (“DSWG”) evaluated a range of protective actions that could be taken to lessen the impacts of water project operations. One action that was evaluated was to address fall (September-December) Delta salinity levels by making releases from upstream reservoirs to increase Delta outflows. The discussions and analyses of this proposed action are reported in DSWG notes for July 10 (see also the notes from August 21, and Sept 26 (appendend hereto as Exhibits 8). The DSWG determined that the fall action had a high likelihood of being successfully implemented and that the scientific basis for the action was supported by statistically significant correlations.

Ultimately, the fall action was not taken because it was determined that “the amounts of water needed to demonstrably improve fall habitat quantity/quality [were] unavailable”. Based on analyses provided by DWR, the amount of water necessary for maintaining net Delta outflows at 7000 cfs for the September-December period would range from only 170-433 TAF. DSWG notes (Aug. 21, 2006). As a result of not taking this action, Delta outflows steadily declined, falling below 6000 cfs in October, and salinity levels shifted upstream of 80 km, the critical threshold identified by the DSWG for delta smelt habitat quality and subsequent abundance. Delta smelt abundance plummeted to a new record low the following year, indicating that the fisheries agencies were not sufficiently addressing adverse habitat conditions in the Delta and other stressors to ensure the delta smelt’s survival and recovery.

Perceived unavailability of water assets was also the reason behind the DSWG rejecting a protective action in winter 2006 intended to set net flows in Old and Middle Rivers to zero cfs to better protect pre-spawning adults. Low San Joaquin River inflows and negative flows on Old and Middle Rivers, concurrent with high export rates, are likely creating hydrodynamic conditions that draw greater numbers of fish to the pumps and correspond to significantly higher
salvage rates. Protection of these biologically valuable spawning adult fish is essential for recovery and sustainability of this at-risk species. Despite the expected benefit of taking this action, it was rejected because “DWR staff have derived estimates of the water costs of the potential actions in the Resources Agency POD Action Matrix and found that the proposed winter action could consume all available environmental water, leaving no assets for spring actions for larvae or juveniles.” DSWG notes (Dec. 11, 2006) (appended as Exhibit 9); see also DSWG notes (Oct. 10, 2006) (“The Working Group notes that some of the weaknesses of the DFG plan included the potential to exhaust all EWA and B2 assets in winter, leaving nothing in reserve for spring actions”) (appended as Exhibit 10).

More recently, NMFS’ biologists testified against taking actions to protect delta smelt based on a similar misperception that the total amount of water available to protect imperiled salmonids was limited to a pot of “environmental water” defined by EWA and b(2) assets, and that water used to protect smelt would necessarily deplete the amount of water available to protect salmon. See Declaration of Bruce Oppenheim in NRDC v. Kempthorne (June 15, 2007) (appended as Exhibit 11). For example, Mr. Oppenheim explained that “the use of environmental water after VAMP on the San Joaquin River may have consequences later in the year on the Sacramento River.” Id. at 3. This statement is only true if there is a limited pot of “environmental water” available to meet all fisheries needs—a position that is contrary to numerous requirements of state and federal law.

All of these decisions are based on the incorrect assumption that the amount of water available to protect listed fish species is limited to the assets of the EWA, CVPIA b(2), and other sources of water “dedicated” to the environment. The Bureau has perpetuated this fallacy, asserting that it must meet the needs of CVP contractors before meeting the needs of listed fish species. See Declaration of Ronald Milligan in NRDC v. Kempthorne (June 21, 2007) (“Reclamation operates New Melones to meet … project needs of the East Side Division CVP contractors” which leaves “no additional water available for out of basin releases from New Melones Reservoir” even if needed to prevent jeopardy to listed delta smelt) (appended as Exhibit 12); see also see also Transcript of Hearing re Interim Remedies Day 7, NRDC v. Kempthorne, Testimony of Ronald Milligan at 1553-54 (Aug. 31, 2007) (explaining that the WOTR rejected some recommendations of the DSWG because of concerns regarding “the ability for the EWA to function in a manner that it could, in essence, pay back the projects for curtailments without impacting operations in the long term sense or allocations to contractors”) (appended as Exhibit 13). Similarly, DWR has asserted that it has no additional water available for fish protection, while simultaneously making hundreds of thousands of acre-feet of surplus “Article 21” and “turnback pool” water available to water users and contractors.

This presumed EWA limitation on the amount of water available to protect fish is simply not correct. Numerous courts have made it abundantly clear that the Bureau and DWR must provide sufficient water to protect and recover listed fish species, whether it exceeds the amount of the water the agencies may have earmarked for that purpose or not. See, e.g., NRDC v. Kempthorne, Order on Summary Judgment at 61 (May 25, 2007) (“The EWA is simply a means by which the SWP and CVP can obtain water by purchasing it from willing sellers. …If money is unavailable to fund the EWA, Defendants are nonetheless required to prevent smelt take from exceeding permissible take limits. …[I]f all else fails, [additional] assets may be brought to bear, which
include ‘additional purchased or operational assets, funding to secure additional assets if needed, or project water if funding or assets are unavailable.’”) (emphasis in original).

The agencies have turned the EWA on its head and, instead of using it to supplement the resources needed and required for fish protection, have used it as an excuse to short the environment and avoid committing those mandatory resources. Unless the agencies make very clear that limited EWA assets cannot be used as a reason not to take an action that would help protect or restore imperiled fish, it should be discontinued.

III. THE ANALYSIS FAILS TO DEMONSTRATE THAT THE EWA HELPS PROTECT AT-RISK FISH SPECIES AND CONTRIBUTE TO THEIR RECOVERY

In addition to the problems discussed above, the DSEIS/EIR fails to provide adequate support for its conclusion that extending the EWA would benefit fish protection and restoration.

First, the document recognizes in several places that a pumping “window” during which EWA assets may be pumped out of the Delta without increasing adverse impacts to listed fish no longer exists. The document explains that “[t]he EWA protects fish at the pumps by reducing pumping when it would help at-risk fish species, then transferring EWA assets across the Delta at other times to repay CVP and SWP users for water lost during pump reductions.” DSEIS/EIR at 2-15. The DSEIS/EIR asserts that EWA assets should be used to reduce export pumping to protect fish from the months of December through July. DSEIS/EIR at 2-10 to 2-11. This proposal allows exports to increase to allow delivery of EWA water during the months of August through November. But several imperiled species are vulnerable to take at the pumps during this late summer/fall period. See id. at 2-13, 4-15. Moreover, the document notes that the alarming and continuing decline in four pelagic organisms in the Delta have corresponded to a period of “increased exports during June through December.” DSEIS/EIR at 4-11. In addition, recent studies have indicated that decreased Delta inflows in late fall and winter may result in reductions in fall habitat quality and eastward movement of X2, which may result in adverse impacts to fish. DSEIS/EIR at 4-13. Thus, it is unclear when a safe pumping window exists for EWA to increase Delta exports. Instead, it is likely that an extended EWA would simply help sustain the current record high levels of exports pumped out of the Delta – export levels that have corresponded to many of the declining fish populations in the Delta. See, e.g., id. at B-3 to B-4 (Banks pumping would increase in July, August, and September to convey EWA assets).

Second, the DSEIS/EIR assumes with no support that “[w]hile the fish actions in ... revised biological opinions [that are currently being developed for project operations] are unknown, they would likely be less than with the EWA program.” DSEIS/EIR at ES-4. This statement reflects a fundamental misunderstanding of the nature of ESA and CESA requirements, which mandate that project operations cause no jeopardy to the existence or recovery of listed species, cause no adverse modification of critical habitat for survival or recovery of listed species, and that the impacts of project take be minimized and fully mitigated. In addition, Section 7 also imposes an affirmative obligation on federal agencies to “utilize their authorities in furtherance of the purposes of this chapter by carrying out programs for the conservation of endangered species and threatened species listed” under the Act. 16 U.S.C. § 1536(a)(1). A program of “conservation” is one that brings the species to the point of recovery and delisting. Id. § 1532(3). In short, the
project agencies are obligated to protect, recover and conserve listed species, whether or not the EWA is in place.

Third, the DSEIS/EIR explicitly bases its analysis of fish actions on the invalidated, reinitiated, and discredited OCAP biological opinions, claiming that it “would be speculative to assume that the fish actions in the BO will be the same as those described by Judge Wanger because the BO will be based on a comprehensive review of all available information and science.” DSEIS/EIR at 1-6. In reality, Judge Wanger’s decision is based on a more comprehensive and current review of the science regarding the delta smelt than the invalidated BO, which failed even to acknowledge the precipitous decline of the delta smelt in recent years. In addition, the OCAP BO on listed salmonids has been discredited by more than three independent science reviews, including a CALFED review panel, which concluded that the BO was not based on the best available science. The DSEIS/EIR’s reliance on the fish actions encompassed in these discredited BOs for the basis of its analysis lacks a reasonable basis.

Fourth, the Bureau has reinitiated consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on the OCAP. That consultation is ongoing. Until the Bureau meets the requirements of ESA §7 and, among other things, obtains a valid biological opinion at the conclusion of consultation, the ESA § 7(d) prohibition on making any irreversible and irretrievable commitment of resources applies to the Bureau’s actions. Regional Director Kirk Rodgers has correctly recognized that reauthorization of the EWA during the pendency of the OCAP consultations would be a violation of §7(d), and has (twice) sworn to a federal court that such authorization would not occur before completion of the new BOs. See Declaration of Kirk Rodgers (Oct. 18, 2006), Declaration of Kirk Rodgers (July 9, 2007) (appended hereto as Exhibit 14). Reauthorization of the EWA as proposed in the DSEIS/EIR runs afoul of the 7(d) prohibition and contradicts Mr. Rodgers sworn statements in the pending OCAP lawsuits.

Finally, the DSEIS/EIR concludes that continuation of the EWA “would have a less than significant impact on X2 location during June through December.” DSEIS/EIR at ES-9. However, as the document recognizes, emerging science indicates that moving X2 westward of its recent historic location in the fall could have a significant beneficial impact on listed species and their habitat. By reducing outflow in the fall, EWA could have a significantly detrimental impact on the ability of agencies to meet this new threshold.

IV. THE ANALYSIS FAILS TO EVALUATE THE EWA’S FAILURE TO ASSIST IN ECOSYSTEM RESTORATION BEYOND ESA/CESA COMPLIANCE

To date, as discussed above, the EWA has primarily, even exclusively, been operated to limit protective ESA/CESA actions. However, the failure of the EWA extends even farther. The EWA was intended to “provide water for the protection and recovery of fish.” CALFED Programmatic ROD at 54. Note that these benefits are not restricted to listed species. The ROD also states that the EWA will “acquire water for ecosystem and species recovery needs.” CALFED ROD NCCP Determination at 21. Thus, the EWA was intended as a tool to provide restoration benefits beyond the requirements of ESA/CESA for listed species. These benefits were an important part of the Ecosystem Restoration Program and were the justification for
public funding for the EWA. The document does not analyze the failure of the EWA to provide these anticipated benefits.

Indeed, far from facilitating improved ecosystem health, by limiting ESA/CESA actions and by increasing diversions during the August to November period, the EWA has damaged ecosystem health. This failure is indicated by the fact that non-listed species, such as threadfin shad, are showing the same decline affecting listed species such as the delta smelt and that the Pelagic Organism Decline process has identified “water project operations” as a potential cause of the decline of Delta fishes. See Interagency Ecological Program 2006-2007 Work Plan to Evaluate the Decline of Pelagic Species in the Upper San Francisco Estuary (January 12, 2007) at 4 (appended hereto as Exhibit 15). The document does include one, inadequate mention of these impacts, by concluding that “(t)he entrainment indices for threadfin shad and American shad would be increase.” DEIS/EIR at 4-36. Clearly, the EWA has undermined, rather than facilitated, the CALFED ecosystem restoration goal.

The document must be revised to fully and adequately evaluate the failure of the EWA to contribute to fisheries and ecosystem restoration beyond the requirements of ESA/CESA.

V. THE ANALYSIS FAILS TO EVALUATE THE EWA’S FUTURE USEFULNESS TO FACILITATE “REAL TIME” MANAGEMENT

The EWA was also intended to provide “real time diversion management” of Delta flows and the CVP and SWP Delta pumps. CALFED ROD NCCP Determination at 29. Such real time management assumes that the EWA has enough flexibility to modify Delta flows and the management of the projects beyond the relatively fixed prescriptive requirements of ESA/CESA compliance. The document fails to analyze the extent to which the EWA will provide such flexibility to achieve additional ecosystem or protective measures. Unless the management priorities or assets of the EWA are changed dramatically (a change that this document does not anticipate) it appears unlikely that the EWA will have much, if any, flexibility to provide additional protective measures. To the contrary, to the extent that the EWA provides real time management, this flexibility is designed to increase pumping, potentially causing additional impacts to the ecosystem, and designed solely to provide additional water supplies for South of Delta CVP and SWP contractors.

VI. THE FAILURE TO ANALYZE PAST PERFORMANCE UNDERMINES A FUNDAMENTAL PURPOSE OF THE EWA -- TO FACILITATE ADAPTIVE MANAGEMENT

The CALFED ROD was designed with science-based adaptive management as a “central feature.” CALFED Programmatic ROD at 4. This document repeats this assertion that “(a)adaptive management is a key component of the EWA,” and that “(a)adaptive management provides a process to change fish actions or asset acquisitions.” DSEIS/EIR at page 2-24. The careful evaluation of the past performance of management tools is the defining feature of adaptive management, in order to allow improved, adaptive future management. Indeed, the ROD explicitly commits CALFED agencies to “assess the success of EWA operations.” CALFED ROD EWA Operating Principles Agreement at 4. Without such analysis, agencies

NRDC Comments on the Draft Supplemental EIS/EIR for Extending the EWA and OCAP Consultations
December 10, 2007
Page 8
cannot “adapt” the management of the program in a manner that builds on past successes and responds to failures. The analysis of past performance of the EWA as an adaptive management tool is critical to the central purpose of this document – extending the EWA into the future. Such analysis is also important to agencies, such as the Delta Vision Task Force, the Bay-Delta Conservation Plan process, the Department of Fish and Game, NOAA Fisheries and the Fish and Wildlife Service, which may consider the merits of incorporating the EWA into future management for the Delta. Finally, such analysis is essential to the legislature and the Administration as they consider the justification for public funding for the EWA. An analysis of the past performance of the EWA will reveal that there is no justification for such continued public funding. As discussed above, the document fails to analyze past performance, a failure that cuts to the core of the purpose of the EWA as an adaptive management tool. The document must be revised to fully and accurately analyze the effectiveness of the EWA as an adaptive management tool.

VII. THE DOCUMENT FAILS TO DESCRIBE ACCURATELY THE PROJECT PURPOSE

As discussed above, the document does not adequately analyze the EWA’s failure to engage in real time management and adaptive management, to ensure ESA/CESA compliance and to contribute to broader ecosystem restoration. The document also does not include any meaningful provisions to address these failures. The document, however, largely maintains the old, inaccurate description of the purpose of the EWA. DSEIS/EIR at page 2-3. Thus, the document fails to adequately describe the purpose of the project. At the moment, the actual purpose of the EWA appears to be to limit protective actions under ESA and CESA, and to provide additional water supplies to south of Delta water contractors. The document should be revised to include an accurate description of the project.

VIII. CONCLUSION

In light of these many shortcomings in the operation of the EWA and the analysis of the DSEIS/EIR, we urge you to reject the proposal to extend the program beyond the end of 2007. In the alternative, we urge you to withdraw this document and issue a new, adequate draft that addresses the concerns outlined above.

Sincerely,

Katherine S. Poole
Senior Attorney

Barry Nelson
Senior Policy Analyst

Cc: Cay Goude, USFWS
Maria Rea, NMFS
John McCammon, DFG
Lester Snow, DWR
Ms. Brown,

I’m writing you as a member of North Delta CARES (North Delta Community Area Residents for Environmental Stability) regarding the State of California’s plan to turn much of the North Delta into a tidal marsh wetland. Moreover, as a person who was born and raised in Clarksburg, I am heartbroken at the state’s plans to destroy the area where I grew up for short-sighted gains.

Governor Schwarzenegger was right to call for a Blue Ribbon Task Force to study the myriad issues confronting the California Delta. However, I feel there are several issues which are yet to be adequately addressed. Mainly:

- Why is the State considering turning an area which has never been a tidal wetland into a tidal wetland?
- Has the economic impact of destroying multi-generational agricultural land been considered? I am the fourth generation which has cultivated the soil in the North Delta. Clarksburg has only recently benefited from its appellation certification and the wine industry is in its formative years. In 2007, America for the first time became a wine-drinking nation (defined as one glass of wine per week per capita). Why is the State considering drowning these vineyards for “habitat restoration?” Surely the livelihood of these hard-working farmers and vintners deserve some consideration prior to the elimination of their way of life!
- What impact will flooding the North Delta have on land-based endangered species, such as the Swainson’s Hawk? While flooding the North Delta would benefit water-borne species, has the committee considered the impact on other species? Is it not possible that by solving one problem, you would be creating many others?

As I’m also a military man, where bringing “solutions not problems” is a daily way of life, I offer the following solutions as alternatives:

- If the issue following Hurricane Katrina is flood protection, dredge and rebuild the existing Yolo Bypass. The Bypass has served its purpose and is an effective deterrent to floods. By rebuilding the existing Bypass, the State would reclaim an added measure of flood protection and not need to flood the North Delta.
- Build the Auburn Dam. The subject of building a dam at Auburn seems missing throughout this entire debate. Holding water upstream prior to Sacramento would not only provide flood protection, but hydroelectric power (environmentally sustainable) and additional drinking water (allowing more to flow to Southern California).
- If the issue truly is habitat protection, stop diverting water into the California Aqueduct. The cessation of diversion to Southern California would adequately restore the saline levels in the South Delta as well as providing for safe travel of fish species. Surely, the money being spent on North Delta “habitat restoration” could be diverted and better spent studying desalinization efforts in Southern California. Southern California is not short on water, it is only short on DRINKABLE water.

Ma’am, as an environmentalist in my own right, I applaud your efforts to protect and restore what

7/10/2008
Mother Nature has provided. As a fourth-generation family in the path of this well-intended, though drastically off course, proposal; I ask you to consider all options prior to taking steps which are irreversible at a later date.

Regards,

Adam J. Marshall
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

Enclosed with this letter are 23 separate comments submitted by various members and entities within the Clarksburg community.

Some of these comments you may already have received through email.

Very truly yours,
North Delta CARES

By:
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the impact of the discharge of ammonia and other substances by the Sacramento regional sewage treatment plant into the Sacramento River accounted for in the BDCP?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the proposed primary habitat restoration area(s) on the ground water levels in the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
"North Delta CARES"
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
 Bay Delta Conservation Plan ("BCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What evidence is there that any part of Yolo County within the Delta was ever a tidal marsh wetland?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

In the Delta region, what is the impact of shallow water on the methylation of Mercury (Hg) on all species of fish population in any proposed primary habitat restoration area(s) in the ecosystem in which the shallow water area is a part?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability

“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

In the Delta region, what is the impact of shallow water on the methylation of Mercury (Hg) on all species of fish population in any proposed tidal marsh wetlands in the ecosystem in which the shallow water area is a part?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BCP EIR/EIS.

In the Delta region, what is the impact of shallow water on the methylation of Mercury (Hg) on plant-life in the ecosystem in which the shallow water area is a part?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the alternatives to relocating over to the Yolo Bypass of any and all proposed primary habitat restoration areas from the geographical area bounded by the southern West Sacramento City limit on the north, the Sacramento River on the east, the deep water channel on the west, and the Solano County-Yolo County common boundary on the south?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksville, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the alternatives to relocating over to the Yolo Bypass of any and all proposed tidal marsh wetlands from the geographical area bounded by the southern West Sacramento City limit on the north, the Sacramento River on the east, the deep water channel on the west, and the Solano County-Yolo County common boundary on the south?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What, in all of its detail, was defined as the project as of the date of the Scoping Meeting of April 30, 2008 in Clarksburg, California?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

[Signature]

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the economy of the historic Delta town of Clarksburg protected by the installation of a tidal marsh wetlands anywhere in the area within 15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability

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Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

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Chief, Office of Environmental Compliance
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P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the proposed tidal marsh wetlands on the existing septic systems in the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By:
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
"North Delta CARES"
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the proposed primary habitat restoration area(s) on the existing septic systems in the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability

“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the proposed primary habitat restoration area(s) on the existing domestic water wells in the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the nature of the historic Delta town of Clarksburg protected by the installation of a tidal marsh wetlands anywhere in the area within 15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BCP EIR/EIS.

How are the schools which are an integral part of the historic Delta town of Clarksburg protected by the installation of a tidal marsh wetlands or primary habitat restoration area(s) anywhere in the area within 15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: Mark Pruner, Chair

MAP: m
cc: Arnold Schwarzenegger, Governor
Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

Ms. DeLores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the small town quality and society which is an integral part of the historic Delta town of Clarksburg protected by the installation of a tidal marsh wetlands or primary habitat restoration area(s) anywhere in the area within 15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the agriculture which is an integral part of the historic Delta town of Clarksburg protected by the installation of a tidal marsh wetlands or primary habitat restoration area(s) anywhere in the area within 15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: ____________________________
Mark Pruner, Chair

MAP: m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
    Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

How is the BDCP tied to the Governor's Blue Ribbon Panel and Delta Vision?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
   Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
    Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection
with the BDCP EIR/EIS.

Will there be an increase in mosquito population because of the installation of a
tidal marsh wetlands or primary habitat restoration area(s) anywhere in the area within
15 miles of the town of Clarksburg?

If you have any questions, please do not hesitate to contact me. My personal cell
phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: ____________________________
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability

“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BDCP”)

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact on the food chains in the Delta of the discharge of ammonia and other substances by the Sacramento regional sewage treatment plant into the Sacramento River?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,

North Delta CARES

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

May 30, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BCP")

Dear Ms. Brown:

This is a scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact on each of species of fish living in the Delta of the discharge of ammonia and other substances by the Sacramento regional sewage treatment plant into the Sacramento River?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability

"North Delta CARES"
Post Office Box 1
Clarksburg, CA 95612

June 2, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
     Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the impacts on the "Farmland of Local Importance" identified by SACOG, the Sacramento Area Council of Governments, caused by the project envisioned by the BDCP?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

June 2, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCP”)

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the impacts on the “Unique Farmland” identified by SACOG, the Sacramento Area Council of Governments, caused by the project envisioned by the BDCP?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
NorthDelta Community Area Residents
for Environmental Stability
"North Delta CARES"
Post Office Box 1
Clarksburg, CA 95612

June 2, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BCP")

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment
and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the impacts on the "Prime Farmland" identified by SACOG, the
Sacramento Area Council of Governments, caused by the project envisioned by the
BCP?

If you have any questions, please do not hesitate to contact me. My personal cell
phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents  
for Environmental Stability  
"North Delta CARES"  
Post Office Box 1  
Clarksburg, CA 95612  

June 2, 2008

MS. DELORES BROWN  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P. O. Box 942836  
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment  
Bay Delta Conservation Plan ("BCP")

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What are the impacts on the "Farmland of Statewide Importance" identified by SACOG, the Sacramento Area Council of Governments, caused by the project envisioned by the BDCP?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,

North Delta CARES

By: Mark Pruner, Chair

MAP:m  
cc: Arnold Schwarzenegger, Governor  
Michael Chrisman, Resources Secretary
North Delta Community Area Residents for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

June 2, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan ("BDCP")

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the Metropolitan Transportation Plan for 2035, adopted by SACOG, the Sacramento Area Council of Governments, on the project envisioned by the BDCP?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

[Signature]

By: Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents
for Environmental Stability
“North Delta CARES”
Post Office Box 1
Clarksburg, CA 95612

June 2, 2008

MS. DELORES BROWN
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Re: EIR/EIS Scoping Comment
Bay Delta Conservation Plan (“BCDP”)

Dear Ms. Brown:

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.

What is the impact of the project envisioned by the BDCP on current flood protection measures throughout the Delta?

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.

Very truly yours,
North Delta CARES

By: [Signature]
Mark Pruner, Chair

MAP:m
cc: Arnold Schwarzenegger, Governor
    Michael Chrisman, Resources Secretary
North Delta Community Area Residents  
for Environmental Stability  
“North Delta CARES”  
Post Office Box 1  
Clarksburg, CA 95612  

June 2, 2008  

MS. DELORES BROWN  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P. O. Box 942836  
Sacramento, CA 94236  

Re: EIR/EIS Scoping Comment  
Bay Delta Conservation Plan (“BCP”)  

Dear Ms. Brown:  

In accord with my email to you on May 31st, this is a further scoping comment and question submitted for analysis in connection with the BDCP EIR/EIS.  

How are the analysis, data, and conclusions of scientists who believe world and sea surface temperatures (e.g., Loeble & McCulloch, 2008) naturally change up and down over time consistent with the assumption that sea levels will rise thereby prompting a need for further flood protection in the Delta?  

If you have any questions, please do not hesitate to contact me. My personal cell phone is: (916) 204-9097.  

Very truly yours,  
North Delta CARES  

By:  
Mark Pruner, Chair  

MAP:m  
cc: Arnold Schwarzenegger, Governor  
Michael Chrisman, Resources Secretary
Ms. Delores Brown  
Chief  
Office of Environmental Compliance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, California 94236  

Re: Comments on the Notice of Preparation of an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BCDP)  

Dear Ms. Brown:  

Thank you for the opportunity to provide comments to inform the preparation of an EIR/EIS for the BCDP. The Northern California Water Association (NCWA) and its counsel have reviewed the Notice of Preparation (NOP), as well as the BCDP Planning Agreement and Points of Agreement documents, and provide the following comments.  

General Requirements  

As an initial matter, a BCDP and the EIR/EIS must: be based on good science; respect the legal rights of the watersheds of origin; and allocate the costs of implementing the BCDP or any alternatives/mitigation measures based on a “beneficiary pays” principle.  

Geographic Scope of BCDP  

The project description within the NOP explains that the project under review is a
conservation plan covering the Statutory Delta, including new dual or isolated conveyance infrastructure for the Delta. NCWA generally supports the efforts to develop a mechanism that will protect the Bay-Delta ecosystem while providing assurances for water deliveries so long as BDCP conservation requirements are limited to the Statutory Delta. NCWA supports the notion that, where related actions outside of the Statutory Delta are deemed necessary to further the goals and objectives of the BDCP, future voluntary agreements with local agencies, non-governmental organizations, landowners, and others will be negotiated to facilitate cooperative conservation activities. (Planning Agreement, p. 11, ¶ 5; NOP, p. 7.) NCWA stresses the importance of not imposing regulatory requirements outside of the Statutory Delta through the BDCP because it is unlawful for a voluntary HCP to impose requirements on non-participating parties.

To the extent that the BDCP includes proposed voluntary agreements with upstream water users that would address issues in the Delta, the scope of those agreements must be well-defined in the EIR/EIS project description. Similarly, any voluntary arrangements outside of the Statutory Delta must not interfere with numerous fish and wildlife conservation efforts already underway outside the Statutory Delta.

Upstream Impacts

The NOP suggests that the BDCP will involve operational changes to the Central Valley Project (CVP) and State Water Project (SWP). These operational changes will result in environmental and water supply impacts related to the Sacramento and Feather Rivers that must be addressed in the EIR/EIS. These impacts include, but are not necessarily limited to, impacts on existing and ongoing conservation activities upstream, impacts to water supply diversions from those Rivers, impacts to agricultural and wildlife
refuge uses dependent upon said diversions, and impacts to regional water supply planning activities such as the Sacramento Valley Integrated Regional Water Management Plan. The BDCP EIR/EIS must contain mitigation measures and alternatives that minimize any such impacts.

Comprehensive Analysis

The EIR/EIS must provide a comprehensive environmental analysis of all of the BDCP’s elements. The EIR/EIS cannot defer environmental studies of any element of the BDCP.

Thank you for the opportunity to comment. As noted in the NOP, the BDCP planning effort is in “the preliminary stages of development, and further information regarding the various features of the BDCP may be provided to the public in subsequent public notices and/or in scoping meetings.” (NOP, p. 1.) Without additional information, it is impossible to anticipate all of the potential effects of the BDCP. NCWA provides these preliminary comments based on the information currently provided, but plans to supplement these comments upon receipt of more detailed information about the BDCP conservation and conveyance activities.

Sincerely,

L. Ryan Broddrick
Executive Director
Via Email: bdcp@water.ca.gov

May 5, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
Sacramento, California  94236

Subject: OCBC Support for the Bay Delta Conservation Plan

Dear Ms. Brown,

The Orange County Business Council, representing some of the largest and most innovative companies throughout Southern California, is concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents, in addition to its vital contribution to the state’s agriculture industry which supplies half of the nation’s produce.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan and a solution for the Delta. The key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

The Business Council supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. On behalf of the Orange County Business Council, I thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Lucy Dunn  
President and CEO

LAD: KLM:k
May 6, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
P.O. 942836  
Sacramento, CA 94236

Re: Scoping comments on Bay-Delta Conservation Plan

Dear Ms. Brown,

Our company has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California's residents. We are a builder of master planned communities and have been involved in water supply, delivery and conservation issues for many decades.

We commend the Bay Delta Conservation Plan's (BCDP) collaborative effort among water interests, environmental organizations, and state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan for the Delta. The key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

Pardee Homes supports the BDCP's environmental review process. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state's water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Amy L. Glad
May 14, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
P.O. 942836, Sacramento, CA 94236

Dear Ms. Brown,

The Pico River Chamber of Commerce has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all California’s residents as well as for half of the nation’s produce.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan and a solution for the Delta. The key to a reliable water system is a restored Delta ecosystem and a rebuild water conveyance system:

Pico Rivera Chamber of Commerce supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quality in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability is a key concern.

The success of the BDCP is essential to the continued economic health of California.

Sincerely,

Roger Hartter  
Executive Director

...a great place to do business!

P.O. Box 847 • Pico Rivera, CA 90660  
Telephone: (562) 949-2473 • Fax: (562) 949-8320  
e-mail: info@picoriverachamber.org • www.picoriverachamber.org
May 30, 2008

Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

also via e-mail: delores@water.ca.gov

RE: Comments in response to the Notice of Preparation of an Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan

Ms. Brown:

The Planning and Conservation League submits the following comments regarding preparation of the Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). Because the current scoping period concerns the environmental analysis of a plan still under development, we request that the Department of Water Resources (DWR), as lead agency, initiate additional scoping and comment periods as the BDCP progresses. At a minimum, DWR should provide the opportunity for further scoping comments upon completion of the proposed plan.

We recommend that the Department of Water Resources address the following issues in the EIR/EIS for the BDCP:

**A. THE EIR/EIS SHOULD CLEARLY STATE WHETHER OR NOT THE BDCP WILL BE IMPLEMENTED AS A HCP/NCCP**

Neither the Notice of Preparation nor the BDCP Planning Agreement commits its signatories to pursuing take authorizations by drafting the BDCP as a Natural Communities Conservation Plan (NCCP) (under the state Natural Communities Conservation Plan Act (NCCPA)) or as a Habitat Conservation Plan (HCP) (under section 10 of the Federal Endangered Species Act (FESA)). While these documents state the *intent* to develop the BDCP as an NCCP/HCP, the current ambiguity regarding this issue must be resolved. The EIR/EIS on the BDCP, if it is to provide meaningful analysis on necessary conservation objectives for Delta species and appropriate regulatory assurances, must unambiguously report the BDCP’s legal basis for take authorization.
B. THE EIR/EIS SHOULD FULLY ANALYZE AN APPROPRIATE RANGE OF REASONABLE PROJECT ALTERNATIVES

The EIS/EIR on the BDCP should include a comprehensive analysis of reasonable project alternatives. While engineering alternatives that compare different structural or routing solutions for improvements or additions to Delta conveyance infrastructure are certainly appropriate to consider, the reasonable project alternatives should also include:

- **NO PROJECT**: An alternative that fully complies with current regulatory standards, including all water quality objectives. In the recent past, water quality objectives and endangered species laws have been violated. Modeling of the no project alternative must include operations that are consistent with regulatory standards.

- **INCREASED RELIABILITY THROUGH DECREASED DEMAND ON DELTA WATER SUPPLIES* #1**: An alternative that includes reduced Delta exports and aggressive implementation of water conservation, water recycling, and groundwater treatment to fully meet water demand.

- **INCREASED RELIABILITY THROUGH DECREASED DEMAND ON DELTA WATER SUPPLIES* #2**: An alternative that considers the retirement of drainage-impaired lands in the San Joaquin Valley, consistent with the EIR on San Joaquin Valley Drainage.

All alternatives should include full implementation of species conservation measures necessary to comply with federal and state endangered species laws.

*For recommended analytical approaches to assess the effects of reduced demand on water supply and water reliability, see Section E.

C. THE EIR/EIS SHOULD DESCRIBE HOW EACH PROJECT ALTERNATIVE MEETS NECESSARY CONSERVATION TARGETS

The BDCP process was initiated by Potentially Regulated Entities to comply with endangered species laws. The environmental review must describe how the conservation objectives are met under alternative project scenarios. This discussion must include:

- A comprehensive presentation of evidence in support of any conclusion that the water supply and reliability measures in each project alternative are compatible with the species recovery goals necessary for compliance under endangered species laws.

- A comprehensive presentation of the decision process used to set biological goals and objectives.

- A comprehensive presentation of the decision process used to select conservation measures that are expected to attain the biological goals and objectives. Even for processes that are well-understood, selection of conservation measures may not be straightforward.
A comprehensive presentation of the scientific rationale behind selected conservation measures, including discussion of how the impacts of each measure differ by species, life history stages, or geographic area.

A comprehensive presentation of other considerations (e.g. economic, social, political, engineering) that influenced the selection of conservation measures.

D. THE EIR/EIS SHOULD DESCRIBE THE STATEWIDE ENVIRONMENTAL IMPACTS OF EACH BDCP PROJECT ALTERNATIVE

The BDCP Planning Agreement and Notice of Preparation identify the planning area as the Statutory Delta. Whether or not the BDCP takes a broader perspective on the full range of opportunities for BDCP participants to achieve improvements in ecosystem health and water reliability (i.e. by including more actions outside of the Statutory Delta), the EIR/EIS must describe the impacts of the BDCP both within and beyond the Statutory Delta.

**Upstream impacts** that should be considered in development of the EIR/EIS on the BDCP include:
- The potential for changed operations at upstream reservoirs and any resulting change in the availability of cold water pools for fisheries (e.g. Shasta Dam, Oroville Dam)
- The potential for changed management of groundwater resources (e.g. the Tuscan Aquifer)

**Downstream impacts** that should be considered in development of the EIR/EIS on the BDCP include:
- The potential for continued water quality degradation caused by delivery of Delta waters to drainage impaired lands in the San Joaquin valley

E. THE EIR/EIS SHOULD FULLY ANALYZE HOW REDUCTIONS IN DEMAND ON DELTA WATER RESOURCES AFFECT THE RELIABILITY OF WATER SUPPLIES FOR USERS UPSTREAM, IN, AND DOWNSTREAM OF THE DELTA.

**Recommendations for analysis of alternate demand scenarios**
In order to fully analyze the impacts of reducing exports from the Delta, models such as CALSIM II and CALSIM Lite must have the capacity to simulate reduced export scenarios in meaningful ways. Modeling reduced demand in a way that does not change the timing or level of pumping is unlikely to fully capture the potential ecosystem gains of reduced demand on the Delta.

**Recommendations for analysis of reliability under alternate demand scenarios**
“Exceedance charts”, which show the probability of receiving a certain level (or more) of Delta water supply, generally show that large export volumes are less probable than low export volumes.

The current focus of the BDCP seems to be on finding a way to increase water supply reliability by increasing the probability of high-export years, e.g. by changing facilities or operations in some way that changes the “shape” of the exceedance curve. We have doubts that this approach is compatible with protection of the Delta ecosystem. Instead, we recommend an approach that aims to increase water supply reliability by reducing supply expectations. Because lower exports are more probable, contractors would have more consistent delivery of their expected Delta water supplies. Additionally, it’s possible that the exceedance curve under a scenario of reduced demand on Delta water is of a different shape than the exceedance curve under a scenario of current demand, which may show
additional reliability gains. That is, reliability is almost certainly increased by demanding a lower export volume; reliability may also be increased if the probability of that lower export volume increases relative to the probability under higher demand scenarios.

G. THE EIR/EIS SHOULD FULLY ANALYZE HOW EACH PROJECT ALTERNATIVE PERFORMS UNDER DIFFERENT CLIMATE CHANGE SCENARIOS

The EIS/EIR on the BDCP should include a comprehensive analysis of how conservation objectives can be met by project alternatives given the expected impacts of climate change, including:

- changes in hydrology
- sea level rise
- the possible failure of multiple Delta islands
- changes in the extent and quality of important aquatic habitats (including level and frequency of inundation, water temperature, salinity, productivity, and food web dynamics)
- changes in the extent and quality of important terrestrial habitats
- potential impacts on vital rates of Delta species (aquatic and terrestrial)
- potential shifts in species ranges of Delta species (aquatic and terrestrial)

For those alternatives which propose changes to water conveyance through the Delta, the EIR/EIS should fully compare performance of these conveyance alternatives under different climate change scenarios. The Planning and Conservation League submitted a letter (March 5, 2008) to the BDCP Conveyance Workgroup on the analyses recommended for assessing the resilience of alternate conveyance options to the expected impacts of climate change. This letter is attached (ATTACHMENT 1), and we incorporate its recommendations by reference.

H. THE EIR/EIS SHOULD PROVIDE BACKGROUND ON THE ANALYTICAL TOOLS USED IN ORDER TO ALLOW APPROPRIATE INTERPRETATION OF RESULTS

The environmental review document must include clear identification of both the strengths and limitations of the analytical tools (e.g. CALSIM II) used for analysis. A tool’s capacity for sensitivity analysis (i.e. comparison of outputs given changes or uncertainties in inputs) is of particular importance given that the Delta ecosystem is both naturally variable and imperfectly understood.

I. THE EIR/EIS SHOULD DESCRIBE THE GOVERNANCE & ADAPTIVE MANAGEMENT PROCESS ESTABLISHED TO ENSURE THAT REGULATORY ASSURANCES ARE PROVIDED ONLY IF CONSERVATION ASSURANCES ARE MET

Given the tenuous state of the Delta ecosystem, the conservation goals of the BDCP must be supported by an effective governance structure and a strong adaptive management program. We recommend that the BDCP condition regulatory assurances on satisfaction of the conservation objectives. The environmental review document must explicitly describe the conditionality of regulatory assurances, including the timing of review and permitting periods.
PCL submitted a letter (May 12, 2008) to the Delta Vision Blue Ribbon Task Force recommending policy guidelines for improving water reliability for California. This letter is attached (ATTACHMENT 2), and we incorporate its recommendations by reference.

J. THE EIR/EIS SHOULD FULLY ANALYZE THE EXTENT TO WHICH THE FACILITIES, OPERATING CRITERIA, GOVERNANCE, FUNDING STRUCTURE AND TIMELINE OF THE BDCP COMPLEMENT OR CONFLICT WITH OTHER PLANNING AND PERMITTING PROCESSES.

NCCP/HCPs already in existence or in development
The EIR/EIS should discuss how the BDCP will be integrated with other conservation plans within and near the BDCP planning area.

Delta Vision
The Governor’s Delta Vision Blue Ribbon Task Force is working on an “Implementation Plan” for the Delta that is scheduled to be completed by the end of 2008. The BDCP process is scheduled to have completed the Draft Plan by early 2009, such that significant planning will take place during 2008 – potentially resulting in a plan at odds with the direction of the Delta Vision Task Force.

Reconsultation on the OCAP Biological Opinions
With the recent release of the CVP/SWP OCAP Biological Assessment, the reconsultation on the OCAP Biological Opinions is now underway. The EIR/EIS on the BDCP should clearly explain how the BDCP will be coordinated with the OCAP reconsultation process.

Recovery of the Delta ecosystem will require conservation measures that are robust to scientific uncertainties, the natural variability of the Delta, and the impacts of climate change; it will also require changes in the way in which we depend on Delta water supplies for our urban and agricultural needs. PCL hopes the above recommendations and questions will assist in the development of a plan that can achieve the desired conservation goals.

Sincerely,

Barbara Byrne
Water Policy Analyst

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bbyrne@pcl.org
ATTACHMENT 1

3-05-2008 letter submitted by PCL to the BDCP Conveyance Workgroup recommending needed analyses for changes to Delta conveyance
March 5, 2008

Ann Hayden
Co-Chair, BDCP Conveyance Working Group
Senior Water Resource Analyst
Environmental Defense Fund - California Regional Office
123 Mission Street, 28th Floor
San Francisco, CA 94105

Jerry Johns
Co-Chair, BDCP Conveyance Working Group
Deputy Director, Department of Water Resources
California Department of Water Resources
P.O. Box 942836, Room 1115-9
Sacramento, CA 94236-0001

Via e-mail

RE: Questions recommended by the Planning and Conservation League for consideration by the Bay Delta Conservation Plan Conveyance Working Group

Dear Ann, Jerry, and BDCP Conveyance Working Group members:

The Planning and Conservation League appreciates the opportunity to provide comments on the conveyance process now underway at the Bay Delta Conservation Plan (BDCP). PCL urges the BDCP process to gather the necessary information regarding the various conveyance options and their potential benefits and adverse impacts on the Bay Delta Estuary and its watersheds as quickly and as efficiently as possible.

However, the history of Delta policy in California demonstrates that a final decision should be made only after adequate information about the consequences of potential conveyance alternatives is available. In addition, given the likely uncertainties and information gaps that will exist even with the best of efforts, a discussion and decision
regarding Delta governance reform must parallel and complement a final decision on the conveyance of water. As your group considers how conveyance may be a part of the plan for the recovery of covered species under the Bay Delta Conservation Plan (BDCP), we offer this initial list of important questions.

**CLIMATE CHANGE**

1. How will various conveyance options reduce or exacerbate the impact of climate change on the water quality, timing and freshwater flow needs of aquatic species?

2. How will water quality at the various proposed intake locations, including an intake on the Sacramento River, be affected by differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?

3. What would it take to protect each conveyance option (including either a canal or pipeline) from the effects of differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?

4. What are the necessary flows including bypass and other flows, and diversion amounts consistent with ecosystem protection under various climate change scenarios, including differing levels of sea level rise, changed hydrology, and the possible loss of multiple delta islands?

5. To what degree are the answers to the questions below sensitive to future climate change scenarios? Are some conveyance configurations more resilient to climate change? How will each conveyance option impact the ability of California’s aquatic species to adapt to and recover under climate change?

**PHYSICAL CONSIDERATIONS**

**Fish Screens**

6. How will fish screens impact Delta smelt, salmon, green sturgeon, longfin smelt, splittail and other Delta-dependent species?

7. What standards exist or need to be developed for screening delta smelt, green sturgeon and other fish?
8. What bypass flows would be required for the fish screens to work effectively and how can those estimates be tested?

9. How much water could be diverted through screens meeting the necessary standards? Given the uncertainties as to how alternative facilities will impact aquatic species, what options are available for reversible experiments that would be put into place prior to making permanent commitments?

**Canal or Pipeline(s)**

10. What are the advantages and disadvantages of pipeline(s) versus a canal, including impacts on aquatic and terrestrial species?

11. What are the advantages and disadvantages of building a lined vs. unlined canal, including impacts on aquatic and terrestrial species?

**Local drainage**

12. How do the various options, including a canal, affect local drainage and the permits necessary for that drainage within and into the Delta?

**Alignment**

13. What are the advantages and disadvantages of different alignments for the various options, including impacts on aquatic and terrestrial species?

**Sizing**

14. What are the advantages and disadvantages of different capacities for a canal or pipeline(s), including impacts on aquatic and terrestrial species?

**Turnouts**

15. What are the advantages and disadvantages of freshwater turnouts from a canal or pipeline(s) that would discharge fresher water at various locations in the Delta, including impacts on aquatic and terrestrial species?
OPERATIONAL CONSIDERATIONS

Flow Objectives

16. What flows are required for:
   
   a. Hydrologic conditions that promote recovery of covered species?
   
   b. Effective fish screening?
   
   c. Support of an adequate food web in the Delta?
   
   d. Management of invasive species?
   
   e. Maintenance of water quality for other Delta beneficial uses, including drinking water, ecosystem, and agriculture?

17. How would alternative in-Delta operations change upstream operations, including effects on upstream flows, temperature, water quality and aquatic and terrestrial species?

Water Delivery Objectives

18. What amounts of water could be diverted in different water years, by season, and on average while meeting the planning goals of species recovery?

19. How would those diversion amounts differ under different climate change scenarios including differing levels of sea level rise, changed hydrology, and the possible loss of multiple Delta islands?

Water Quality Objectives

20. What would be the water quality at different locations in the Delta under different operations?

21. How would aquatic and terrestrial species have water of acceptable quality?

22. How would in-Delta agriculture have water of acceptable quality?
23. How would other water users (e.g. Contra Costa Water District and City of Rio Vista) have water of acceptable quality?

24. How would ecosystem water quality be monitored, managed, and protected?

**DUAL CONVEYANCE**

*In addition to the applicable questions above:*

25. How would the fish facilities (including both screening and handling) at the existing diversion locations in the South Delta be improved to minimize loss of fish?

26. How would different climate change scenarios affect functionality of pumps in the southern Delta?

27. What operational management conditions are necessary to avoid impacts to pelagic fish and other species at the South Delta pumps under the various conveyance options?

**COSTS**

28. What would be the costs for different conveyance configurations, including full mitigation and monitoring costs?

29. Who would pay the costs, and (e.g., if funded according to the beneficiary-pays principle) would different conveyance configurations and operations indicate different cost-sharing partners?

**TOOLS**

As analysis of these, and other, questions proceeds, the work must include clear identification of both the strengths and limitations of the available tools. A tool’s capacity for sensitivity analysis (i.e. comparison of outputs given changes or uncertainties in inputs) is of particular importance given that the Delta ecosystem is both naturally variable and imperfectly understood.

In addition, to provide full transparency and openness of decision-making, the analytical tools used to evaluate these questions (for example, CALSIM Lite) must be made available to all stakeholders.
Finally, although your working group is focusing on conveyance questions in particular, we emphasize that similar effort must be put into finding answers to questions relating to issues such as governance (including but not limited to conditions of potential assurances), adaptive management for both ecosystem management and water supply, and funding structures (e.g. beneficiary pays).

Sincerely,

Jonas Minton
Senior Water Policy Advisor

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cc: Karen Scarborough, Undersecretary for Resources
ATTACHMENT 2
5-12-2008 letter submitted by PCL to the Delta Vision Blue Ribbon Task Force recommending policy guidelines for improving water reliability for California
May 12, 2008

Phil Isenberg, Chair
Delta Blue Ribbon Task Force
Delta Vision
650 Capitol Mall
Sacramento, CA 95814

via e-mail:

dv_context@calwater.ca.gov
ullrey@calwater.ca.gov
sguillen@calwater.ca.gov

RE: Comments submitted for consideration in development of Delta Vision’s strategic plan – Area (2) Reliable Water for California

Dear Mr. Isenberg:

The Planning and Conservation League submits the following recommendations for the Delta Vision strategic plan, with particular emphasis on Area (2) of your invitation: Reliable Water for California. First, we propose some general guidelines for the development of policies that support the co-equal goals of reliable water supply and a healthy Delta ecosystem. Second, we highlight several bills currently under consideration in the California Legislature which exemplify some of our key policy recommendations.

The “Water Efficiency and Security Act” (AB 2153), jointly authored by Assembly Members Krekorian and Hancock, ensures that California maintains water supply reliability while accommodating growth. In doing so, AB 2153 can maximize water availability for the Delta while ensuring water supply reliability by reducing the growth in surface water diversions upstream of the Delta, and reducing reliance on Delta water in exporter areas.
AB 2175, co-authored by Assembly Members Laird and Feuer, establishes mechanisms for reducing per capita water use by 20%.

Our implementation suggestions are particularly relevant for the following Delta Vision recommendations:

1. *The Delta ecosystem and a reliable water supply for California are the primary, co-equal goals for sustainable management of the Delta.*

4. *California’s water supply is limited and must be managed with significantly higher efficiency to be adequate for its future population, growing economy, and vital environment.*

5. *The foundation for policymaking about California water resources must be the longstanding constitutional principles of “reasonable use” and “public trust;” these principles are particularly important and applicable to the Delta.*

6. *The goals of conservation, efficiency and sustainable use must drive California water policies.*

7. *A revitalized Delta ecosystem will require reduced diversions -- or changes in patterns and timing of those diversions upstream, within the Delta, and exported from the Delta -- at critical times.*

While we strongly recommend that the Delta Vision strategic plan include recommendations for legislative solutions in 2008 and beyond, we also urge participants in the Delta Vision process to, *this year*, actively support key water legislation (such as AB 2153 and AB 2175) that is consistent with Delta Vision objectives. If supported by both the Assembly and Senate, these bills may already be on the Governor’s desk by the time that the Delta Vision Strategic Plan is released. Successful passage of these bills during the current legislative session will assist the Delta Vision process by building momentum for improved management of water in California.

I. Proposed policy guidelines for improving water reliability for California

PCL recommends that Delta Vision include the following policy guidelines in the Delta Vision strategic plan to be released in October 2008.
Proposed policy guidelines:

Policies for a sustainable Delta must have as their foundation an understanding of how much water the Delta ecosystem needs
The recent dramatic declines in native Delta fish populations are clear evidence that current practices in the Delta are not sustainable. Toxics, invasive species, habitat degradation, salinity and turbidity patterns, altered flows and high water exports all contribute to the Delta’s ecological problems.

Policies for a sustainable Delta must be built on a comprehensive understanding of what flow regimes (e.g., quantity, flow direction, seasonal, annual and inter-annual variability) and water quality conditions (e.g., temperature, salinity, turbidity, contaminant load) are required under a variety of conditions (e.g., water year types, potential climate change impacts, different points of diversions) to provide for a healthy and sustainable Bay Delta Estuary (e.g., healthy, self sustaining populations of pelagic fish, anadromous fish, wildlife, terrestrial species and all elements of their food webs).

Policies for a sustainable Delta must go beyond “changes in patterns and timing” of diversions
CALFED’s Environmental Water Account is just one example of how “changes in patterns and timing” of diversions have failed to adequately protect the Delta ecosystem. While the patterns and timing of diversions are certainly important components of any operation plan, we have seen no plausible evidence that the Delta ecosystem can be recovered simply by “tuning” the Delta.

Policies for a sustainable Delta must be designed with the ecosystem end in mind
Policies to restore the Delta must provide sufficient protections to allow for species recovery. Importantly, the needs for ecosystem restoration should be defined by science, not by what is feasible under current export levels. We are concerned that some processes, such as the Bay Delta Conservation Plan, emphasize maintenance of exports as the barometer of the type and extent of restoration possible.

Policies for a sustainable Delta must address both near- and long-term solutions
It is necessary and appropriate that any plan to restore and protect a healthy Delta include long-term planning on policies or projects that will be implemented on the scale of decades. However, it is crucial that protective policies be implemented in the near-term as well.
Options for near-term actions should be screened for feasibility and, if promising, should be implemented on a reversible, experimental, basis, with real time monitoring and adaptive management.

**Policies for a sustainable Delta must take advantage of opportunities throughout the state**

Delta ecosystem health and water supply reliability can be and must be addressed at least in part by solutions outside of the Delta itself.

Improvements in regional water efficiency and regional water supplies are key components of a successful revival of the Delta by reducing demand on Delta water supplies. Restoring habitat and flow conditions upstream of the Delta will contribute to a sustainable Delta by improving spawning and rearing conditions for salmon and other Delta species.

**Policies for a sustainable Delta must not impair water resources elsewhere in California**

While we encourage the development of policies that take advantage of opportunities throughout the state, too often, a solution to an existing problem creates a new problem elsewhere. Policies that manage water demand on the Delta should not simply displace the negative impacts of water delivery, but should reduce the environmental impacts of water delivery statewide.

For example, while one tool to manage demand from the Delta may be a more active management of groundwater storage, the appropriateness of any such plan for groundwater use will depend on local circumstances. Many residents in the Sacramento River Valley north of Sacramento have domestic wells which tap into the Tuscan Aquifer. Because of the region’s geology, any intensification of withdrawals from this aquifer is likely to cause serious economic and environmental impacts in the region.

**How the proposed policy guidelines will contribute to achieving the vision:**

The above policy guidelines contribute to achieving the vision in that they, consistent with Delta Vision’s 12 linked recommendations, provide direction for the sustainable management and use of California’s limited water supply.
Potential barriers to successful policy solutions:

Besides the usual disagreements over reasonable and beneficial uses of water, some significant barriers to implementing successful policy solutions are:

- the disinclination to reduce exports from the Delta,
- the reluctance to embrace out-of-Delta solutions, and
- the unprecedented challenge of dealing with the coming effects of climate change.

How the proposed policy guidelines will serve California through 2030 and 2070

One of the themes in the policy guidelines recommended above is “living within California’s water means”. Policies that shape California’s water demand within the limitations of the state’s water supply are more likely to be sustained over the long-term than policies that focus on investment in marginal gains in traditional supplies.

How the proposed policy guidelines will address a changing Delta, including population growth, sea level rise, seismic events, and changed hydrology due to climate changes

Our policy recommendations recognize the need for water management strategies to adapt to the changing conditions in the Delta. New policies must clearly identify their resilience to a changing environment.

II. Policy measures currently under consideration in the state legislature

PCL recommends that Delta Vision actively support AB 2153 (the “Water Efficiency and Security Act”, authored by Assembly Members Krekorian and Hancock) and AB 2175 (the water conservation bill authored by Assembly Members Laird and Feuer) and encourage the Assembly, Senate, and Governor to pass these important measures.

Current bills:

AB 2153 (Krekorian/Hancock)
This critical measure (co-sponsored by the Planning and Conservation League and the Environmental Justice Coalition for Water) directs new development projects to use cost-effective water use efficiency measures and to mitigate their water demand through
investments in efficiency in existing communities or development of sustainable local water supplies.

According to the Department of Finance, by 2030 California’s population will grow by 11 million. Even if those new residents conserve the 20% called for in the Governor’s February letter to state senators, their annual water use will still be over two million acre-feet (of the same order of magnitude as the amount of water that the SWP can reliably deliver). While the surface storage projects currently being debated cannot meet that projected demand, AB 2153 offers a way to accommodate much of this growth.

**AB 2175 (Laird/Feuer)**
This important bill (sponsored by the Natural Resources Defense Council) directs California’s Department of Water Resources to achieve a 20% reduction in urban per capita water use by 2020, and to reduce annual agricultural water use by at least 500,000 acre-feet by 2020.

**How the current bills will contribute to achieving the vision:**

Delta Vision’s linked recommendations, particularly Recommendations 1, 4, 5, 6, and 7, highlight the idea of sustainability. To sustain both the Delta ecosystem and reliable water supply in the long-term, California must come to grips with the idea of limits and start to make the difficult decisions on how best to use and apportion its limited water resources.

Both AB 2153 and AB 2175 encourage the development of more water-efficient practices statewide. AB 2175 focuses on reducing per-capita water use in urban areas and on a statewide reduction in agricultural water use. AB 2153 ensures that the water demands on existing sources will not increase as we accommodate millions of new Californians.

**Potential barriers to passage of these current bills:**

One barrier to passage of these bills is a reluctance to accept that water from the Delta will not be the primary source to accommodate future growth. Delta Vision’s recommendation (#7) for reduced diversions from the Delta is an important message that can help build support for needed changes to water use such as those proposed in AB 2153 and AB 2175.
How the current bills will serve California through 2030 and 2070

AB 2153 manages the water footprint of residential and commercial water use in a way that allows population and economic growth without further damaging the water reliability of current residents and businesses. The water conservation targets for urban and agricultural uses called for in AB 2175 complement AB 2153, since the water needs of new development will in part be mitigated by water efficiencies in the urban and agricultural sectors.

Both AB 2153 and AB 2175 provide the flexibility to incorporate new technologies and adapt to new circumstances. The hard goal of reducing (or at least not increasing) California’s water demand is accomplished by measures that can evolve over the next 20 to 50 years.

How the current bills will address a changing Delta, including population growth, sea level rise, seismic events, and changed hydrology due to climate changes

Even under the expected scenario of increasing population growth and effects of climate change such as sea level rise and changing hydrology, both AB 2153 and AB 2175 promote investments in water that will “pay off” year after year. While these two bills are of course not a complete solution to California’s water woes, they are an important step forward.

Sincerely,

Mindy McIntyre
Water Program Manager

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mm McIntyre@pcl.org

cc: John Kirlin
May 30, 2008

Ms. Delores Brown,
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Also sent via email to delores@water.ca.gov.

Patti Idlof
Bureau of Reclamation
2800 Cottage Way, MP-150
Sacramento, CA 95825

Also via e-mail to pidlof@mp.usbr.gov

Re: Scoping Comments on Bay-Delta Conservation Plan EIS/EIR (Federal NOI and State NOP)

Dear Ms. Brown and Ms. Idlof:

These comments are submitted on behalf of the California Water Impact Network (C-WIN). CWIN requests that the scoping period on the EIS/EIR be extended or reopened until an actual “plan” is available to comment upon. To date, there is little specifically to comment on in terms of specific plans and alternatives. We fully intend to submit additional scoping comments as new scoping information becomes available prior to release of the Draft EIS/EIR.

CWIN hereby incorporates by reference the scoping comment letters by the California Sportfishing Protection Alliance (CSPA) and the Planning and Conservation League (PCL).

General Comments

The BDCP has mutually exclusive goals of providing water supply reliability and “safe harbor” guarantees to Potentially Regulated Entities (PRE), while also protecting and restoring ecosystem health and populations of listed species. CALFED proved that this cannot be accomplished, but this plan appears to be a reinitiation of that failed attempt. The BDCP is clearly a shallow attempt to obtain authorization for a Peripheral Canal under the auspices of the federal and State Endangered Species Acts. The BDCP should make recovery of listed species
Ms Brown

I am urged to voice my concerns regarding turning the Sacramento delta "back" into a marsh wetland. My husband's family immigrated to the Delta from Holland in 1882 looking for a better way of life. In the intervening 125 years there is a long history of diversified crops grown in this rich, river soil. In the past 30 plus years, wine grapes began to be planted and today are probably considered the major crop. Clarksburg area received a designation, Appellation 17, in the state's recognized grape growing areas, and is an important source of grapes for many major wineries. Locally even, there are probably close to a dozen wineries, one of which, we personally have watched from the beginning to the present, listed as one of the top 20 wineries in the United States, and that winery is BOGLE.

We urge you to look at this extremely vital, important, agricultural, scenic, recreational jewel and SAVE it. The Sacramento Delta is always on lists of scenic areas to visit and therefore an important neighbor of the Capitol City!! The economy of farming is significant to the state's coffer and the recreational value is invaluable.

We visited the Netherlands several years ago and visited their "Delta Works Project", a huge, innovative engineering project. The state of California can and must develop a solution to the south's water problem, without destroying FARMING. Where will your food come from (CHINA)?

Thank you for your consideration!

Joyce Pylman

916-744-1022

Pylman Vineyards, Inc.

P.O. Box 422

Clarksburg, Ca. 95612
May 27, 2008

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA  95814

Patti Idlof  
Natural Resource Specialist  
Bureau of Reclamation  
2800 Cottage Way, MP-150  
Sacramento, CA  95825

Re: Notice of Preparation – Environmental Impact Report and Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Ms. Brown and Ms. Idlof:

On behalf of the thirty-one member counties of the Regional Council of Rural Counties (RCRC), I appreciate the opportunity to submit the following comments relating to the Notice of Preparation (NOP) of an environmental impact statement/environmental impact report (EIS/EIR) for the Bay Delta Conservation Plan (BCDP) for the Sacramento-San Joaquin Delta.

**Project Area.** The NOP states that it may be necessary for the BDCP to include conservation actions outside of the statutory Delta that advance the goals and objectives of the BDCP within the Delta including, as appropriate, conservation actions in areas upstream of the Delta.

RCRC agrees the statement also contained in the NOP that any conservation actions outside the statutory Delta should be implemented pursuant to cooperative agreements or similar mechanisms with local agencies, interested non-governmental organizations, landowners, and others.

**Conveyance.** The NOP states that a key BDCP planning goal is to provide for the conservation and management of covered species within the planning area, and that one of the conservation actions to be analyzed is improved water conveyance infrastructure in the Delta (i.e. dual or isolated conveyance systems).

Widespread acceptance of new and/or improved water conveyance facilities will depend upon how the BDCP handles the issues of concern to the areas of origin. The BDCP must
acknowledge California's water rights priority system, and state and federal law relating to the areas of origin, county of origin, and watersheds of origin. Further, the BDCP must include assurances that water rights and water supplies of upstream communities will not be adversely impacted by the construction, operation, or management of new and/or improved water conveyance facilities.

In conclusion, RCRC appreciates the opportunity to comment on the NOP, and looks forward to participating in future opportunities as the EIR/EIS is developed.

Sincerely,

[Kathy Mannion's signature]

Kathy Mannion
Director of Water and Power

cc: BDCP Steering Committee
May 13, 2008

Delores Brown  
Chief Office of Environmental Compliance  
California Department of Water Resources  
P.O. 942836, Sacramento, CA 94236  
Via Email: hdcp@water.ca.gov

Subject: Support of Bay Delta Conservation Plan

Dear Ms. Brown:

The Regional Legislative Alliance of Ventura and Santa Barbara Counties (RLA) has grown increasingly concerned about the decline in the health of the Sacramento–San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents as well as for half of the nation’s produce. We are particularly concerned with the dwindling water supplies for Southern California.

The Regional Legislative Alliance of Ventura and Santa Barbara Counties (RLA) is a cooperative council of 12 leading chambers of commerce and associations in the Santa Barbara and Ventura county region. We represent 300,000 jobs and we are a strong, unified voice for the business community working to improve and enhance the business climate.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is the key to mapping out a comprehensive conservation plan—and, a solution—for the Delta. And, the key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

The RLA supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

Anna J. Vona  
Chair, RLA

Alliance Members:
Camarillo Chamber of Commerce, Carpinteria Valley Chamber of Commerce, Fillmore Chamber of Commerce, Gold Coast Hispanic Chamber of Commerce, Goleta Valley Chamber of Commerce, Oxnard Chamber of Commerce, Moorpark Chamber of Commerce, Port Hueneme Chamber of Commerce, Santa Paula Chamber of Commerce, Simi Valley Chamber of Commerce, Ventura Chamber of Commerce, Ventura County Economic Development Association (VCEDA), and

Capitol Circle Associates: Western States Petroleum Association (WSPA), The Boeing Company, Calleguas Water District, Metropolitan Water District of Southern California
RLA supports BDCP
2/2/2

Ventura and Santa Barbara County residents and businesses depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Lisa Rivas
Executive Director
(805) 637-6816
May 30, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836 Sacramento, CA 94236
delores@water.ca.gov.

Re: Restore Hetch Hetchy Scoping Comments for Bay-Delta Conservation Plan

Dear Ms. Brown

Restore Hetch Hetchy supports the effort to create a Bay-Delta Conservation Plan that will both protect estuary-dependent species and help to provide reliable water supply for much of California.

The BDCP, properly planned through the EIR/EIS process, has the potential to do more than protect estuary-dependent species and improve the supply reliability of SWP and CVP export agencies. The BDCP has the potential to improve reliability for Bay Area communities beyond those currently served by the export pumps in the south Delta. The BDCP also can help to facilitate restoration of Hetch Hetchy Valley in Yosemite National Park.

The communities served by the East Bay Municipal Utility District and the San Francisco Public Utilities Commission each rely almost entirely on a single conveyance system to move supplies from the Sierra Nevada to the Bay Area. While some new physical interconnections, along with institutional agreements, have recently been made, these Bay Area communities lack diversity of supply. Should the Mokelumne or Hetch Hetchy aqueducts fail due to earthquake, drought, flood, terrorism or other disaster, the consequences for these major urban centers would be extraordinarily disruptive and could be catastrophic.

Improving the reliability of water supply for EBMUD and SFPUC customers is within the domain of the BDCP, given the broad scope of the Department of Water Resources legal responsibilities for ensuring reliable water for all Californians. Note that both EBMUD and the SFPUC have received Delta supplies in the past during times of need\(^1\). It is likely that relatively little supply would actually be provided through improved Delta facilities to these customers, but it is very important that the capability exist in case that additional supply is needed. These supplies could be provided directly, perhaps through a new connection (and treatment plant) near the juncture of the California Aqueduct and the SFPUC’s Coast Range Tunnel. Improved Delta conveyance could also assure availability of Mokelumne and Tuolumne River supplies to

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\(^1\) EBMUD is expected soon to have its Freeport project online, but it will only provide limited incremental supply and little in the way of diversity as the conveyance will route supplies through the Mokelumne Aqueduct.
EBMUD and the SFPUC by exchanging Delta supplies with other agencies that also rely on those rivers.

There is little doubt that any changes in the suggested allocation of water in California has the potential to cause legitimate concern among agencies that are responsible for providing water to their own communities. The BDCP must, however, consider the broader welfare of all of Californians.

Similarly, it is likely that any changes within the Delta will cause legitimate concern among those who are dedicated to restoring the wildlife and fisheries that depend on a healthy Delta. Restore Hetch Hetchy supports Delta habitat restoration and project operating criteria that provide ample flows for ecosystem restoration, as well as assurances that the Delta environment will be protected over time.

An additional source of water for the San Francisco Public Utilities Commission, even if seldom used, could also replace the small amount of supply that would be lost if Hetch Hetchy Valley in Yosemite National Park were to be restored. While the BDCP has not heretofore considered restoration of Hetch Hetchy Valley in Yosemite National Park, it is evident from the valley’s proximity to the Delta and the actual crisscrossing of conveyance systems, that a Delta solution has the potential to be part of a Hetch Hetchy solution. We believe that analysis of the potential is legally required as part of the BDCP EIR/EIS.

Article 10, Section 2 of the California Constitution specifies that not only must all consumption of water within the State be “reasonable and beneficial”, but the method of diversion must also not be unreasonable. The reasonableness of the SFPUC’s diversion method must be addressed within the BDCP. Given that the BDCP is intended to guarantee a reliable Bay-Delta water supply system that dwarfs the capacity of the SFPUC system, and that only a small portion of the SFPUC capacity would need replacement were Hetch Hetchy Valley to be restored, it is only “reasonable” that the BDCP fully consider the potential restoration of Hetch Hetchy Valley in its alternative analyses.

The federal Raker Act, which authorized the construction of O’Shaughnessy Dam, states that Tuolumne diversions to San Francisco and its customers must conform to the laws of California. Therefore federal aspects of the BDCP analysis must address the reasonableness of

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2 Analysis by Environmental Defense Fund indicates that, without Hetch Hetchy Reservoir, more than 95% of the SFPUC’s delivery reliability would be retained by diverting Tuolumne River flows at Early Intake outside Yosemite and by building a new connection from either Cherry Lake or Don Pedro Reservoir to its conveyance system for diversion of stored supplies. See Paradise Regained: Solutions for Restoring Yosemite’s Hetch Hetchy Valley (2004) and Cherry Intertie Alternative (2005).

3 Raker Act, Sec. 11. That this act is a grant upon certain express conditions specifically set forth herein, and nothing herein contained shall be construed as affecting or intending to affect or in any way to interfere with the laws of the State of California relating to the control, appropriation, use, or distribution of water used in irrigation or for municipal or other uses, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with the laws of said State.
the existing diversion, given available alternatives. In addition, the Raker Act (Section 9, paragraph h) limits diversion of Tuolumne supplies to those that are supplemental to other supplies that either were existing at the time of the Act’s passage or that the “grantee ... may hereafter acquire”⁴. Delta supplies were not available in 1913 but are available today and many Bay Area agencies depend on them. Given the Raker Act’s express limitation on Tuolumne diversions to the Bay Area, compliance with the Raker Act must include consideration of the availability of Delta supplies.

Restoring Hetch Hetchy Valley in Yosemite National Park would provide a spectacular mountain valley for the enjoyment of future generations. It could be managed to accommodate visitors without the degree of development that has diminished the quality of Yosemite Valley, its sister valley 15 miles to the south.

Please incorporate both the potential benefits to these Bay Area communities and the potential restoration of Hetch Hetchy Valley in Yosemite National Park in the BDCP.

Thank you for considering these suggestions. Feel free to contact me if you have any questions at spreck@hetchhetchy.org.

Sincerely,

Spreck Rosekrans
Chair, Board of Directors

⁴ (h) That the said grantee shall not divert beyond the limits of the San Joaquin Valley and more of the waters from the Tuolumne watershed than, together with the waters which it now has or may hereafter acquire, shall be necessary for its beneficial use for domestic and other municipal purposes.
May 30, 2008

Paul A. Marshall
South Delta Improvements Program
Bay-Delta Office
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

RE: BDCP EIR/EIS scoping comments

Dear Mr. Marshall:

The purpose of the Sacramento County Farm Bureau is to protect and promote agricultural production and operations in Sacramento County. In the attached letter dated October 24, 2007, we supported executive order S-17-06 and the Blue Ribbon Task Force’s objective to create a vision and plan for a durable Delta.

In that letter, we stated that water exports must pass through the Delta. Farm Bureau emphatically opposes an isolated facility (peripheral canal). Any conveyance system that removes fresh water from the Delta would result in degraded water quality and irreversible environmental damage to the Delta as well as a tremendous negative impact to agriculture. It has been brought to our attention that the Bay Delta Conservation Plan (BDCP) is being developed to address negative impacts to fish caused by water exports from the Delta. The BDCP presents four options which describe modifications to conveyance of water through and around the Delta and establish a “primary habitat restoration zone” for each. It is our understanding that the habitat restoration zones are planned to become marsh and tidal marsh. In each of the four options, significant portions of highly productive farmland in Sacramento County, Yolo County, and Solano County are designated as “primary habitat restoration zone”.

With the exception of Prospect Island, we are opposed to designating any farmland located in the North Delta and east of the Sacramento River Deep Water Ship Channel for conversion to marshland for the following reasons,

1. This part of the North Delta is organized into reclamation districts.
2. This part of the North Delta is devoted to intensive, high value agricultural production to include pear orchards, apple orchards, wine grape vineyards, and cherry orchards.

3. This part of the North Delta provides a significant amount of habitat for terrestrial animals and is important nesting and foraging habitat for the Swainson’s hawk and other avian species.

4. This part of the North Delta does not include large tracts of land in public ownership.

5. This part of the North Delta will be the most resistant to the drivers of change being considered by the Blue Ribbon Task Force and should be preserved for agricultural production, recreation, and terrestrial habitat.

Reclamation districts operate to provide flood protection, drainage and in some cases, water to land owners within their boundaries. These districts are successful because all landowners need the same services. During winter and early spring months, reclamation districts try to remove every drop of water they can from within their borders. Water is the common enemy. Wetlands and cropland within the boundaries of reclamation districts cannot co-exist. Not only will there be conflicts concerning drainage, but wetland areas will increase groundwater elevations for surrounding neighbors, compromising the agricultural productivity of their lands.

The North Delta east of the Sacramento River Deep Water Ship Channel includes all of the Clarksburg Wine Grape Appellation. Within the Clarksburg Appellation, there are thousands of acres of highly productive vineyards designated as “primary habitat restoration zone” for all four options. In addition, the North Delta includes the largest and most productive Bartlett pear-growing region on the West Coast and produces more than half of all Bartlett pears grown in California. Apples, cherries, vegetables, seed crops, tomatoes, alfalfa, grains and other crops are also produced in the North Delta. Because the North Delta is such a highly productive agricultural area, the cost of acquisition and conversion will be billions of dollars. This is not a good area to convert to marsh.

The North Delta provides terrestrial habitat for many species of animals, reptiles, and birds which would be displaced by marsh. Where will the sandhill cranes go when there are no corn, wheat, safflower and alfalfa fields for foraging? Will the BDCP provide mitigation for Swainson’s hawk, loss of farmland, and for all the other negative impacts? This will add tremendously to the cost of acquisition and conversion and because the loss of farmland, jobs and economic activity cannot be replaced, the North Delta should not be considered for habitat restoration in the BDCP.

Because the area is broken up into many small parcels with many individual owners, acquisition will be infeasible. There will be few willing sellers. In order to execute a successful BDCP, conversion should occur where acquisition is possible and affordable. In the North Delta east of the Sacramento River Deep Water Ship Channel, it will be impossible to acquire land in
large parcels and impossible to convert any acquired land to marsh because during portions of the year, water is the common enemy in reclamation districts.

Finally, because the North Delta will be affected the least by the drivers of change, and because the State of California’s Delta Protection Act of 1992 has already reserved the North Delta for agriculture, recreation and habitat, this area should not be considered for conversion to marsh. For all the reasons explained in the Delta Protection Act, this area will become increasingly important to the surrounding urban areas.

A credible BDCP will be a feasible BDCP. As alternatives are developed for further study during the EIR/EIS process, we urge you to remove the North Delta east of the Sacramento River Deep Water Ship Channel for consideration as “primary habitat restoration zone” and concentrate your efforts on the Yolo Bypass, Prospect Island, Liberty Island and the Lower Bypass. The Yolo Bypass area will require minimal infrastructure, can be connected to water north of Sacramento by using the toe drain, is subject to frequent inundation, and includes large areas of public ownership. Designating the Yolo Bypass area as the “primary habitat restoration zone” to help offset the negative impacts caused by water exports is feasible and credible for all four options under consideration.

Thank you for your consideration,

Russell van Loben Sels,
Vice President,
Sacramento County Farm Bureau

cc.   Ms. Delores Brown, Department of Water Resources  
      Honorable Dan Lungren  
      Honorable Guy Houston  
      Honorable Mike Machado  
      Honorable Charles Poochigian  
      Honorable Lois Wolk  
      Honorable Dave Cox  
      Honorable Alan Nakanishi  
      Honorable Deborah Ortiz  
      Sacramento County Board of Supervisors  
      Contra Costa County Farm Bureau  
      Solano County Farm Bureau  
      Yolo County Farm Bureau  
      San Joaquin County Farm Bureau
October 24, 2007

Phil Isenberg, Chair  
Delta Vision Blue Ribbon Task Force  
650 Capitol Mall  
Sacramento, CA 95814

Dear Mr. Isenberg:

Sacramento County Farm Bureau supports executive order S-17-06, which directs the Blue Ribbon Task Force to develop a vision for sustainable management of a durable Delta by January 2008 and supports that part of Governor Schwarzenegger’s water plan which creates new surface water storage.

Sea level rise, climate change, subsidence, and potential seismic activity will negatively impact services provided by the Delta. Sacramento County Farm Bureau will only support a “Delta Fix” which includes the following elements:

1. Adequate levee maintenance and upgrades.
2. Water for exports moved through the Delta.
3. Exportation of surplus water only.
4. Reduced dependency on the Delta for water exports.

All Delta services, including flood management, transportation, utilities, ecosystem health, water supply, and land use, are dependent on a well-maintained levee system. Because these services are essential to the entire state of California and because any vision for the Delta will take many years for implementation, any plan for the Delta must provide for immediate and adequate levee maintenance and upgrades, especially in the Western Delta, where the greatest risk from seismic activity has been identified.

Water exports (State Water Project and Central Valley Project) must be rerouted in order to minimize negative environmental impacts. Any modified route for export water must pass through the Delta. Through Delta conveyance provides flexible management to protect water quality in the Delta Pool for all Delta water users. Sacramento County Farm Bureau emphatically opposes an isolated facility (peripheral canal). Any conveyance facility which removes fresh water from the Delta will result in degraded water quality for Delta water users and catastrophic and irreversible environmental damage.

When the State Water and the Central Valley Projects were built, Federal and State Governments clearly stated that only surplus water would be exported. Because water storage projects upstream from the pumps were not built as planned, there is
insufficient water in the Delta to support export targets and until significant new surface storage is created any Delta Vision will be severely compromised. Pumping export water from the Delta must be done on an “opportunistic” basis (only occur when there is a surplus), and cannot negatively impact either the supply or quality of area-of-origin users.

Users of export water should strive for regional self-sufficiency by using tools such as ground water storage, surface storage, conservation, reuse, and desalinization. By reducing dependence on Delta exports, the water supply for millions of Californians will be more secure in the future.

Sacramento County Farm Bureau understands that the Delta is a very complex system and that there are major gaps in scientific knowledge to support long-term changes. Therefore, within the framework outlined above, we can only support actions which are adaptive (easily modified to conform to knowledge as it develops) and are reversible in the event they do not work as intended. Actions should be incremental and subject to continuous scientific evaluation.

Thank you for your consideration.

Sincerely,

Ken Oneto, President
Sacramento County Farm Bureau

cc  Blue Ribbon Task Force
    Governor Arnold Schwarzenegger
    Honorable Barbara Boxer
    Honorable Dianne Feinstein
    Honorable Dan Lungren
    Honorable Guy Houston
    Honorable Mike Machado
    Honorable Charles Poochigian
    Honorable Lois Wolk
    Honorable Dave Cox
    Honorable Alan Nakanishi
    Honorable Deborah Ortiz
    Sacramento County Board of Supervisors
    Contra Costa County Farm Bureau
    Solano County Farm Bureau
    Yolo County Farm Bureau
    San Joaquin County Farm Bureau
    California Farm Bureau Federation
May 5, 2008

Karen Scarborough
Chair, BDCP Committee
C/O Paul A. Marshall
South Delta Improvements Program
Bay-Delta Office
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

RE: Bay Delta Conservation Plan

Dear Ms. Scarborough:

We would like to comment on the Bay Delta Conservation Planning process as an interested party in the Delta. The Farm Bureau represents 5,000 farming families, many of who rely on the Delta for their livelihood. We recognize that you are looking at various ways to protect species; however we feel you are not fully exploring all of the options available to make a comprehensive decision that would protect species, water exports, and most importantly in Delta water users.

The San Joaquin Farm Bureau Federation is concerned about the process by which the future management of California’s water is being decided. The BDCP is deciding how the Central Valley’s water will be managed, and how water will be conveyed in and upstream of the Delta. On March 24, the Department of Water Resources, DWR, held a meeting to initiate an EIR/EIS scoping process preparatory to implementing the as yet not publicly defined water management plan proposed by the BDCP. It was clear at that meeting that the intent is to expedite implementation of that Plan without any serious consideration of any other plan, and without first analyzing and making public a determination of the physical feasibility of implementing the BDCP plan, or the probable unintended consequences of the plan.

In other words the State Administration through the DWR has delegated to an unelected and unaccountable group the responsibility for determining the future of the Delta and of the State’s water supply. The BDCP has been exercising this responsibility through a process that is not subjected to public or independent technical scrutiny, and that can commit the State to a very expensive, irreversible course of action that could prove to be a disaster for all water interests in and beyond the Central Valley, including the Delta with its fresh water fishery, its recreation, its water and land uses, etc. There are features of that plan that could result over time in conversion of the Delta to an open salt-water bay.

The BDCP should provide credibility to its process by doing the following:

- The BDCP should make public an analysis of how we got into a situation where we can neither protect the Delta nor provide an adequate developed water supply, and should explain how the BDCP proposal will address these causal factors. The population has already outgrown the developed water supply, and the inadequacy of the water supply is
increasing as the population grows by about five million people every ten years. This growing inadequacy has resulted in almost eliminating the fresh water inflow to the Delta from the Mokelumne, Calaveras, and San Joaquin Rivers except during wet years.

- The BDCP should obtain and make public a competent, independent analysis of the salinity that would occur under its plan during months and years of low river flow in Delta channels south of the Sacramento channel.
- The BDCP should reveal what lands would be converted from agriculture to marshes or open water by its plan either overtly or because increases in salinity causes farming to be economically infeasible. The latter should be determined by qualified agricultural advisors rather than by economists.
- When farmers can no longer be the primary maintainers of non-urban levees will the BDCP proposal provide levee maintenance by some other designated entity, or will those levees be abandoned so that the Delta channel system converts to an open water bay?
- The BDCP should acknowledge that no change in Delta water conveyance can by itself increase the overall inadequate developed water supply and can therefore not solve the Delta protection versus water supply problem. The BDCP should explain how its proposal will address that problem or whether a canal would only serve to increase exports by trashing the Delta. In other words, are claims that the plan will protect the Delta while operating a canal, fraudulent claims?
- The BDCP and the DWR should revise the EIR/EIS and its scoping process so that the process is intended to determine the most effective method to protect the Delta while maximizing the average annual availability of water for export that is compatible with protection of the Delta. The process should give full consideration to a much improved through Delta plan without a canal. Specifically, the BDCP and the EIR/EIS process should consider the South and Central Delta's Comprehensive Management Plan on an equal footing with the BDCP proposal.

Ongoing processes are looking at the future of the Delta. It is imperative that we consider a through Delta approach to conveyance. Should a peripheral canal be constructed, the region will face significant devastation of increased flooding due to a barrier to the natural outflow of runoff. Residents and agriculture alike will be adversely impacted. Delta water quality must be maintained to in order for species and farming to survive.

You must consider all of the options available and make a decision based on sound peer-reviewed. We encourage you to take a step back and look at real solutions, not solutions meant to serve other ongoing processes.

Sincerely,

Joe Valente
President
To: DEPARTMENT OF WATER RESOURCES  
DIVISION OF ENVIRONMENTAL SERVICES  
901 P STREET, P.O. BOX 942836  
SACRAMENTO, CA 95814-6424  

Re: Scoping for the ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT  
FOR THE BAY DELTA CONSERVATION PLAN  

April 30, 2008  

Greetings,  

I am writing to offer my input to the EIR process that the proposed BDCP has initiated. My comments are specifically directed to the four Draft Conservation Strategy Options roughly outlined in the presentation to the Senate Natural Resources and Water Committee Hearing on the Governor’s Delta Actions by Lester A. Snow, Director, Department of Water Resources March 11, 2008 concurrent with the initiation of the EIR process.  

As a fifth generation California farmer (third generation Delta farmer), in total and grave seriousness, I urge you to include at the top of the protected species list the California Delta Farmer. Agriculture has coexisted within the Delta environment since the gold rush, and all four options proposed as a Conservation Strategy appear to significantly threaten if not completely exterminate this vital species. I was under the impression that the Delta Protection Act was created in large measure to protect Delta Agriculture. What happened to that?  

I farm about 2100 acres in the Clarksburg area and one of the primary crops that I grow is alfalfa for dairy hay. My 1000 acres of alfalfa enables dairies to produce enough milk to supply 61000 people per year. My neighbor grows 1000 ac. of tomatoes, which supply about 1.5 million people per year. Clarksburg produces virtually the entire world’s supply of dichondra seed. We are the tip of the iceberg. Yolo County is the fifth largest agricultural county in the leading agricultural state in the nation. Even though just 5% of Yolo County farmland in lies in the Delta, it generates more than 20% of that county’s agricultural revenue. Not only are we helping to feed people, but we also pay property taxes and assessments on that farmland, sales tax on all inputs, and personal and corporate income taxes too. We hire services and buy supplies from companies that help us fertilize, protect, harvest, and haul our crops. The people that help us grow our crops live on our farms, many with their families. These farms are what make the Delta communities function. Eliminate us and the communities wither.
We are environmental stewards of our land and water. We would be foolish not to be, the land provides our livelihood, and the water is our lifeblood. We are extremely careful about how we use our water and we participate in a watershed coalition which monitors and helps improve our use of water. In my lifetime I have seen a tremendous increase in the diversity of wildlife on my farm. One day last fall I counted more than 150 Swainson's Hawks hunting in one harvested wheat field that we were disking.

The Delta is a vital economic engine and a beautiful region to have in the heart of California. All of the distinct and unique towns that exist in the Delta came into existence to support agriculture. Eliminate agriculture to restore native habitat, and you will create the following problems adjacent to and upwind from metropolitan areas: no property tax revenue, no economic production, increased mosquito pressure (West Nile, bird flu, Malaria, etc.) and other insect pressures (the Minute Pirate Bug has become particularly obnoxious to our quality of life in last few years), putrid odors borne on the cooling Delta breeze that arise from lowlands as they dry out seasonally. I know exactly what you have to look forward to; I live two hundred yards from the Yolo Bypass, and downwind from government owned “managed” wetlands.

Because of our location we benefit from relatively inexpensive and readily available water. I find it inconceivable that it would be more beneficial to the state to convert my ranch to tules in order to allow a farm 100 miles from here to exist with much more expensive imported water, or to allow even 100 more houses to be built somewhere.

The problem California is faced with is not that the Delta is broken and needs to be altered; the true problem is that we have too many people in this state, living mostly in areas that lack the local water they need (and should have been required to prove they had before the land was developed). Rather than address that inconvenient truth, California plows blindly ahead, seeking ways to accommodate ever more people in inappropriate places, while we in the Delta would be forced from our homes and livelihoods to better serve the thirsty hordes that do not have enough water where they chose to develop and live.

California does indeed have a serious problem, but it is far better to address the true issue: overpopulation, rather than chasing the symptoms.

Thank you for your time,

Jeff Merwin
President
S.H. Merwin & Sons, Inc.
May 28, 2008

Department of Water Resources
Division of Environmental Services
P.O. Box 942836
Sacramento, CA 95814-6424

Re: Scoping Comments for the Bay Delta Protection Plan (BDCP)

Greetings,

These comments are in addition to my previous testimony, and written comments dated April 30, 2008. As I see it, this entire process is not being driven by a need to “fix the Delta”, but rather it is being driven by a dire need to export water south, and a realization that the only way that can happen is if the health of the Delta is enhanced. Although I am not a proponent of removing water from the Delta for any reason, the realities of our day are what we have to work with, and I have reached the conclusion that doing nothing is not an option. Quite frankly, an alternative water supply for Southern California through desalinization might prove to be the most cost effective solution in the end, but that is currently outside the scope of the BDCP, so I offer the following comments.

First, The Delta area and its inhabitants need to be protected from adverse impacts that are the result of any modifications to the current system. The potential impacts are many, and obviously would differ depending on what changes are made, but specifically the long term protection of the Delta infrastructure needs to be addressed. The levee system that is in place now, and that South state water users currently have a vested interest in helping to maintain, needs to have a mechanism built in that ensures continued funding for maintenance if an isolated conveyance option of any kind is implemented. Perhaps an endowment large enough to annually fund levee enhancement or protection / maintenance should be funded by water exporters who would benefit from the isolated conveyance. Further, there would need to be clearly defined limits on the extent to which the isolated conveyance may be used, in other words, it cannot be used to take water more aggressively than in the past.

There is a very real, (and historically justified – MWD vs. Owens Valley) public perception in Northern California that a separate conveyance around the Delta, literally moving the straw further upstream, will remove incentive to maintain water quality downstream of the straw which will ruin the Delta. This cannot be allowed to happen, and would need to be specifically addressed in any agreement to allow such a conveyance. If, the agreement is done right and the entire system is managed correctly, there may indeed be a way to make a dual conveyance system improve the water quality in the Delta.

Regarding any isolated conveyance that might be a part of a dual conveyance system I offer the following comments. I have seen maps outlining “eastern” and “western” alignments of such a
conveyance. It occurs to me that a significant portion of what would have been the Peripheral Canal was dug to provide fill dirt for I-5 in the 1970's. Is that factored into an eastern alignment option? If not, why not?

I live on the East berm (Right bank) of the Sacramento Deep Water Ship Channel, and I would prefer to see any “western conveyance” be located within the channel, and not across my farmland. The western alignment options I have seen both appear to have the diversion point set on the Sacramento River below East Bay MUD’s Freeport diversion, but above the Sacramento Regional Wastewater Treatment outfall, then cutting SW across established vineyard to the eastern side of the Sacramento Deep Water Ship Channel, and running parallel to the channel to Rio Vista. Why would you build such a conveyance when a better one already exists right beside it? It occurs to me that you could build locks at the Rio Vista end of the Ship Channel, which would allow the channel to be operated both as a ship channel and a reservoir for water. The intake is in West Sacramento less than a mile downstream of the American River. Increase the water level of the channel by 5 feet, and you could have significant water storage within the Delta (27 miles x 500 feet wide / 43560 sq ft/acre x 5 feet = +/- 8200 acre feet) with very little downside that I can see. The Port of Sacramento might not want to deal with locks, etc. but I know that they are trying to deepen their channel by 5 feet to allow larger ships in. West Sacramento might be interested in eliminating the potential flood threat from the “live” open channel down stream. I think there could be significant benefits to a joint use. The Ship Channel levees are perhaps the most reinforced in the entire Delta due to the 250 foot wide spoil berms on each side. The impact of higher water within the port area and Lake Washington in West Sacramento would need to be studied, as would the impacts of the increased water level on the levees (possible re-engineering of slope to prevent erosion), and seepage issues. Potentially increased maintenance of the shipping channel would need to be factored in as well.

I also have read about the high costs of creating multiple siphons under both the Sacramento and San Joaquin rivers and several sloughs. Why not consider a diversion from the channel above, or near Rio Vista, on the west side of the Sacramento River or Cache Slough, then digging one siphon somewhere nearer to Collinsville?

Regarding agricultural diversions within the Delta, in addition to studying the costly installation of fish screens at all such diversions, perhaps the use of shallow wells on the land side of the levees that would tap natural seepage under the levees might be a viable solution in some cases. Although I am not squeamish about acknowledging that under levee seepage exists and is a normal part of a dynamic levee system, such tapping into sand or gravel strata that exist 10 to 30 feet below the ground surface would need to be carefully studied for the ability to stop or control the flow when necessary, and the quality of the shallow ground water compared to river water.

Habitat restoration or enhancement projects, specifically tidal wetlands or projects that require at or near sea level land, should be initiated on a very small scale and studied intensively for their effectiveness. The economic realities and intensive use of current farm land in that “zone” of the Delta dictate that such projects should occur primarily where flood easements or other such encumbrances already exist. The primary purpose of the Yolo Bypass network needs to be incorporated in any project (e.g.: you can’t plant rows of trees across the flood area and expect the system to work as flood control). Detrimental impacts to neighbors such as increased insect or disease pressures, and seasonal odors need to be assessed. Also the economic impacts to agriculture adjacent to a project, such as spray buffers, potential hydrologic impacts such as increased seepage, and losses due to increased waterfowl feeding, need to be assessed and mitigated. As a life long resident and farmer in the North Delta, I have witnessed a tremendous increase in numbers and diversity of wildlife in the past forty years, including River Otter, Mink, coyote, raccoon, opossum, turkey, raptors including Swainson’s and Marsh Hawk, egrets, Herons, Wood duck, pelican,
cormorant, sandhill crane, etc. The impacts on these Delta inhabitants needs to studied too.

With the increasing desire for alternative fuels, perhaps there are some potential scenarios that could prove to be mutually beneficial to farmers and the ecosystem. Has anybody studied the possibility of using Tules for biomass (cellulosic ethanol production, for instance)? Perhaps a rotational system of growing and harvesting tules might be established that would be economically viable for farmers, while producing desired benefits for the water. This is one of very few scenarios that I could envision any serious “reversion” of farmland outside of the bypass. I would prefer to see any such system implemented without cutting or moving existing levees, but there might exist opportunities using this strategy to make setback levees a more viable option in some cases. Are there any opportunities in harvesting as a way of controlling invasive pests such as aquatic primrose or milfoil for biomass or fertilizer or mulch?

These are all things that should be looked at. Thank you for the opportunity to comment.

Sincerely,

Jeffrey Merwin
President
S. H. Merwin & Sons Inc.
May 12, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

RE: Bay Delta Conservation Plan Environmental Impact Report
/Environment Impact Statement

Dear Ms. Brown,

The Southern California Water Committee (SCWC) was pleased to testify at the Bay Delta Conservation Plan (BDCP) public scoping meeting held in Los Angeles on May 8, 2008.

The SCWC is a broad based nonprofit, nonpartisan organization that is committed to one purpose - securing adequate, reliable, affordable, quality water supplies for California. In the last twenty-four years we have represented eight counties, Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura, and their respective cities, water agencies, agricultural entities, and businesses.

There is an urgent need for action in the Sacramento-San Joaquin Delta and the SCWC believes that the BDCP process is critical to map out a comprehensive solution that improves the sustainability of the Delta by improving the Delta's environmental integrity and providing reliable, high quality water for California's economy.

The EIR/EIS includes a 'no action' alternative. In the opinion of the SCWC, no action in the Delta is not acceptable. Without new infrastructure, the Delta will continue to degrade and without substantial improvements and protections of water exports, California's economy will decline.

California requires a reliable water supply from the Delta and a healthy Delta ecosystem. Neither is possible without addressing the challenges of the Delta's deteriorating conditions. It is our expectation that the BDCP will advance a plan to improve the sustainability of the Delta and a comprehensive water solution for California.

Very truly yours,

[Signature]
Joan Anderson Dym
Executive Director

Enclosure: SCWC Membership Roster
Southern California Water Committee, Inc.

Membership

Benefactor

County of Kern
County of Los Angeles
County of Orange
County of Riverside
County of San Bernardino
County of Ventura

Founder

Metropolitan Water District of Southern California

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Anheuser-Busch, Inc.
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Camp Dresser & McKee, Inc.
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City of Encinitas
City of Indian Wells
City of Laguna Woods
City of Los Angeles
City of Ontario
Coachella Valley Water District
Imperial Irrigation District
Inland Empire Utilities Agency
Kennedy/Jenks Consultants, Inc.
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Mellano & Company
Moulton Niguel Water District
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Building Industry Association of Southern California
Calleguas Municipal Water District
Central Basin Municipal Water District
Chevron
City of El Centro
City of Hemet
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City of Los Angeles Department of Water & Power
City of Riverside
Hines Nurseries
Independent Oil Producers Agency
Johnson Machinery Co.
Kern County Water Agency
Krieger & Stewart
Milk Producers Council
NJD, Ltd.
RBF Consulting
Sea World of California
Sunkist Growers, Inc.
The Irvine Company
# SCWC Membership

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Dedicated to the appreciation of wildlife

Stone Lakes National Wildlife Refuge Association
1624 Hood-Franklin Road
Elk Grove, CA 95767

Via email: delores@water.ca.gov

Ms. Delores Brown,
Chief, Office of Environmental Compliance
Department of Water Resources,
P. O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown:

This letter provides the comments of the Stone Lakes National Wildlife Refuge Association (Association) on the Notice of Preparation (NOP) for the joint Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) for the Sacramento-San Joaquin Bay Delta Conservation Plan (BDCP). The Association is a nonprofit organization dedicated to preserving and protecting the Stone Lakes National Wildlife Refuge (Stone Lakes NWR), which is located within the legal Delta. Among other activities, the Association has worked to ensure that Stone Lakes NWR is protected from adverse impacts relating to changes in flows and water quality due to surrounding development in coordination with local, state and federal agencies.

The Refuge is the single largest complex of natural wetlands, lakes and riparian areas remaining in the Sacramento-San Joaquin Delta, and provides critical habitat for waterfowl and other migratory birds of international concern, as well as a number of endangered plant and animal species. Stone Lakes NWR and its surrounding agricultural areas are home to several special status species, including the tri-colored blackbird, greater sandhill crane, white-face ibis, long-billed curlew, Swainson’s hawk, burrowing owl, giant garter snake and valley elderberry longhorn beetle.

Please consult the “Draft Comprehensive Conservation Plan and Environmental Assessment for the Stone Lakes National Wildlife Refuge”, available at http://library.fws.gov/CCPs/stonelakes_draft.pdf for specific information regarding Stone Lakes NWR resources and as a potential resource in developing the content of the EIR/EIS.
Background

In 1972, the U.S. Army Corps of Engineers recommended establishing a national wildlife refuge in the Stone Lakes Basin after completing a flood control study of Morrison Creek, Sacramento County's largest creek system. In 1994, following six years of study and public meetings, the U.S. Fish & Wildlife Service ("FWS") established Stone Lakes NWR in Sacramento County, which borders the City of Elk Grove. Stone Lakes NWR is the 505th refuge in the National Wildlife Refuge System and one of the few urban wildlife refuges in the nation. Due primarily to encroaching urban uses, the Refuge has been designated as one of the six most threatened refuges in the nation. (See Exhibit A, State of the System: An Annual Report on the Threats to the National Wildlife System, National Wildlife Refuge Association (2005), at p. 9, available at: [http://refugenet.org/new-pdf-files/BeyondtheBoundaries.pdf](http://refugenet.org/new-pdf-files/BeyondtheBoundaries.pdf) see also [http://library.fws.gov/CCPs/stonelakes_draft.pdf](http://library.fws.gov/CCPs/stonelakes_draft.pdf) Changes to the manner in which state and federal water projects make water deliveries to exporters of water otherwise destined for the Delta also have the ability to adversely impact the resources of Stone Lakes NWR.

General Comments

The Association requests that the proponents of the BDCP carefully consider impacts of implementing the BDCP on the resources of the Refuge in the EIS/EIR. Specifically, impacts of alternative conservation actions including improved water conveyance infrastructure in the Delta must be considered. It is the Association's understanding that the dual and isolated conveyance system routes being considered as part of improved conveyance infrastructure would traverse Stone Lakes NWR lands. This could have very significant impacts on the habitat values of the Stone Lakes NWR.

The Association has also reviewed a Habitat and Operations Technical Team handout that mentions possible inundation of Stone Lakes Bypass for 45 days or more as a possible long term scenario. The environmental impacts of this or other possible uses of Stones Lakes NWR must be carefully evaluated. Such an evaluation would include consideration of drainage-related impacts already occurring as a result of increasing runoff from the growing City of Elk Grove. While more water can at time create environmental benefits, prolonged flooding can also cause trees to die and cause other impacts.
The significant public investments that made the Refuge possible should be honored by providing the very highest level of protection to the resources of Stone Lakes NWR.

Specific Suggestions

The Association recommends that the EIR/EIS address the following issues:

1. Establish Appropriate Project Objectives. A project objective relating specifically to the protection of sensitive publicly owned biological resources within the Delta should be included in the EIS/EIR.

2. Include a Complete Project Setting. The environmental setting in the EIR/EIS must include a detailed description of Stone Lakes NWR and other similar resources within the Delta.

3. Clearly Delineate the Proposed Location of Project Alternatives Involving Conveyance Systems. The impacts analysis should be based on a specific location for the alternatives involving freshwater conveyance systems. The Association and Stone Lakes NWR Staff are available to assist in identifying and/or refining the possible locations for the conveyance system.

4. Analyze Impacts on Refuge Specifically. Impacts analysis in the EIR/EIS should examine how each alternative would affect the resources of Stone Lakes NWR. Also, specialized biological expertise should be engaged to assess impacts on Refuge biota.

5. Include Feasible Alternatives to Minimize or Avoid Significant Impacts of the Project. To the extent significant impacts to the resources of Stone Lakes NWR are identified feasible mitigation measures and alternatives must be identified and adopted to reduce those impacts.

Conclusion

The Association feels strongly that whatever option the BDCP ultimately pursues to address the species issues associated with Delta water exports not degrade Stone Lakes NWR, which is already a threatened resource. Please contact me if you have any questions regarding the information contained in this letter or
would like to obtain more information about Stone Lakes NWR for purposes of drafting the EIR/EIS.

Very truly yours,

[Signature]

Robert Burness
Watershed Chair

cc:

Beatrix Treiterer, Acting Refuge Manager, SLNWR, Beatrix_Treiterer@fws.gov
Liz Zainasheff, President, Stone Lakes NWR Association, lizz@surewest.net
Scott Nakaji, District Superintendent, State of California Department of Parks and Recreation, snakaji@parks.ca.gov
Jill Ritzman, Acting Director, County of Sacramento, Department of Regional Parks, Recreation and Open Space, Ritzmanj@saccounty.net
Don Nottoli, Sacramento County Board of Supervisors, nottolid@saccounty.net
Virginia Mahecek, Valley Mountain Consulting, valley_mountainconsulting@yahoo.com
Pamela Creedon, Executive Officer CVRWQCB, PCreedon@waterboards.ca.gov
Greg Suba, Laguna Creek Watershed Council, gsuba@surewest.net
Barbara Washburn, Laguna Creek Watershed Council, BWASHBURN@oehha.ca.gov
SOS
STATE OF THE SYSTEM
An Annual Report On the Threats to
the National Wildlife Refuge System

2005 FOCUS:
Beyond the Boundaries
Featuring the top six threatened and top six rescued refuges

Unless we act now to protect lands and waters
surrounding our nation's refuges,
we may lose our magnificent wildlife heritage
The mission of the National Wildlife Refuge Association (NWRA) is to protect, enhance and expand the National Wildlife Refuge System, lands and waters set aside by the American people to protect our diverse wildlife heritage.

The NWRA works with decision-makers in Washington, DC, to help the Refuge System better fulfill its wildlife conservation mission. We promote community support for refuges by providing the more than 160 refuge Friends volunteer organizations with the tools, information and resources to make a difference. And we work to educate the public about the importance of protecting Teddy Roosevelt's unique conservation legacy.

Our diverse national membership includes current and retired U.S. Fish and Wildlife Service professionals, members of refuge Friends organizations, refuge volunteers and other conservation-minded citizens.

To learn more about the NWRA or become a member, please visit our website at www.refugenet.org, or write:

National Wildlife Refuge Association
1010 Wisconsin Avenue, NW
Suite 200
Washington, DC 20007
Our National Wildlife Refuge System is under siege. While refuge professionals and tens of thousands of refuge volunteers and more than 100 friends groups work to ensure that each of the 543 refuges across the country is managed to secure the needs of America’s wildlife, threats from beyond refuge borders— inappropriate development, competing water interests, mining and fossil fuels extraction, military maneuvers and other harmful activities—threaten to jeopardize the very future of these conservation gems.

This report highlights recent research that reveals the magnitude of these threats, and uses stories from six individual refuges to tell the story. In addition, we review six refuges that have turned threats into opportunity; refuges that are now better off having developed creative partnerships with adjacent landowners and galvanized the support of surrounding communities.

Finally, we offer five recommendations to Congress and the Bush Administration that, while strengthening the conservation mission of our national wildlife refuges, aid in the broader conservation of species on private, state and other federal lands, a vital requirement if we are to conserve our wildlife heritage for the benefit of future generations of Americans.

2005’s Top 6 Threatened Refuges

Stone Lakes NWR, CA ................................................. 9
Alaska Maritime NWR, AK .............................................. 10
Desert NWR Complex, NV ........................................ 11
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2005’s Top 6 Rescued Refuges

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Minnesota Valley NWR, MN ........................................ 17
Lake Umbagog NWR, NH ........................................... 18
Tensas River NWR, LA ............................................... 19
Red Rock Lakes NWR, MT ....................................... 20
Lower Rio Grande Valley NWR, TX ................................ 21
Stone Lakes National Wildlife Refuge

Near Sacramento, California
Current area: 6,200 acres
Authorized final area: 17,600 acres
6,000 visitors annually

Located in the San Joaquin-Sacramento Delta and the 100-year floodplain, the Stone Lakes NWR provides vital feeding and resting grounds for migratory birds on the Pacific Flyway and protects habitats that are rapidly disappearing in California’s Central Valley: grasslands, wetlands, riparian, oak forest, and agricultural lands. In the 10 years since the refuge was established, nearby Sacramento and its surrounding counties have grown at staggering rates—up to 20 percent annually. As what was once open country around the refuge lands fills with tract houses and strip malls, Stone Lakes NWR is struggling to connect its isolated parcels and acquire its planned total acreage of 17,600 acres.

Developers have already bought up lands within the approved refuge boundaries, and one 460-acre subdivision was built within the boundary in 1999. And now this frenzied development has reached the refuge doorstep: the newly incorporated city of Elk Grove—the second-fastest growing city in the United States among cities of 100,000 people or more—directly abuts the refuge’s eastern border. More development at the gates means the refuge will confront diminished water quality, invasive plants and other human-caused disturbance.

More people also mean more refuge visitation. Refuge manager Tom Harvey welcomes the interest in the refuge, but the demand for access “creates a tension between restoring habitats and allowing wildlife to rediscover these new areas versus opening them to visitors.” When habitats have been restored, wildlife usage has increased.

There are “glimmers of hope,” says Harvey, in the onslaught of development. Some area farmers who opposed establishing the refuge now appreciate its utility as a buffer between agricultural lands and urban encroachment. (One of the most vocal opponents subsequently sold his farmland to the refuge.) In fact, traditional farming practices on the lands around the refuge benefit species such as the Swainson’s hawk, greater sandhill crane, and many other migratory birds. Still, Stone Lakes has its work cut out as development closes in on this key migratory and wildlife corridor.
Thank you for the meeting. I concur with many of the comments made by the community members. Specifically, I’d like to have an agenda that’s more “meaty” in advance, more advance notice of the meetings, and local representation (elected officials, area residents) on the Steering Committee.

And please be mindful of this: We know that this is your job. None of you live here. You can go home at the end of a day, week, month at retirement, and have collected your pay and forgot about it. For us, it’s day-to-day. It’s our home, our work, our past, our future. We know how important the delta is — to ourselves and to the others — everyday!

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 30, 2008.

Thanks!
May 5, 2008

Delores Brown
Chief Office of Environmental compliance
California Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

The Western Carwash Association (WCA) has grown increasingly concerned about the decline in the health of the Sacramento-San Joaquin Delta and the deteriorating reliability of this key water supply for two-thirds of all of California’s residents as well as for half of the nation’s produce.

WCA is an association of car wash owners in the twelve western states, with a large membership from California. Our conveyor operators conserve precious water by using specialized high-pressure nozzles and recycling up to 85 percent of the water used per car.

We commend the Bay Delta Conservation Plan’s collaborative effort among water agencies, environmental organizations, state and federal agencies. The Plan is key to mapping out a comprehensive conservation plan—and, a solution—for the Delta. And, the key to a reliable water system is a restored Delta ecosystem and a rebuilt water conveyance system.

WCA supports the BDCP’s environmental review process, an essential component to the success of the ultimate plan. We applaud the goal of the plan to place the environmental health of the Delta and the reliability of our state’s water system on equal footing.

All of us who live and work in California depend on a reliable water supply. We need sufficient quantity in wet years to replenish our storage systems. We need high quality water to replenish our groundwater basins and to blend with local supplies and those of the Colorado River. We need a restored Delta ecosystem and a rebuilt conveyance system. Reliability must be a cornerstone of the Bay Delta Conservation Plan.

The success of the BDCP is essential to the continued economic health of California. Thank you for the opportunity to provide input during this important scoping process.

Sincerely,

Sam Olivito
Executive Director

SO:tbc
May 30, 2008

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
Department of Water Resources  
P.O. Box 942836  
Sacramento, CA 94236  
Submitted via e-mail to: delores@water.ca.gov

Re:  Environmental Impact Report and Environmental Impact Statement for the  
Bay Delta Conservation Plan Scoping

Dear Ms. Brown:

On behalf of the members of Western Growers, I am writing in regard to the  
Environmental Impact Statement (EIR/EIS) scoping process for the Bay Delta  
Conservation Plan (BCDP). Western Growers is an agricultural trade association  
whose members from Arizona and California grow, pack, and ship ninety percent of the  
fresh fruits, nuts and vegetables grown in California and seventy five percent of those  
commodities in Arizona.

As a trade association representing roughly half of the nation's fresh fruit, vegetable and  
tree nut production, our members are heavily dependent on a reliable water supply to  
grow their high quality, nutritious crops. Therefore, Western Growers have been  
actively engaged in working collaboratively in hopes of finding consensus on a  
comprehensive, long-term solution to California's water needs.

California's natural water conditions have historically resulted in frequent uncertainty for  
California's specialty crop growers. However, the federal court decision issued in August  
2007 has heightened that level of uncertainty to a point that is no longer tolerable for the  
specialty crop industry. In anticipation of reduced Delta pumping as a result of the  
federal Wanger decision, Western Growers financed an economic impact study in  
attempt to quantify the potential impacts to California's $32 billion agriculture industry.  
The study estimated that is 2008 is a dry water year that a temporary reduction in  
pumping from the Delta would result in 4,000 to 67,000 unplanted acres resulting in $18  
to $167 million in lost agriculture production. The corresponding indirect and induced  
impact to the economy would result in total regional economic losses of $30 to $270  
million in output, 200-2,400 jobs and $15 to $140 million in personal income.
The actual impact of unreliable water conveyance to California agriculture is still unfolding and continuously worsening for farmers and rural communities dependent upon farming activities. This dynamic further underscores that time is not on our side and the need for a more sustainable water system has never been more urgent. While we believe inaction is not a viable option, we believe it is critical that the BDCP EIR/EIS scoping process fully disclose the impacts to agriculture, the state's economy and environmental quality under the 'no action' alternative.

Species are in drastic decline and California's productive open space is in jeopardy because our water system is in crisis. Western Growers believes that any 'fix' implemented must be comprehensive in nature and utilize all of the water supply management tools at our disposal including water use efficiency, water recycling, surface and groundwater storage, desalination, and other strategies. However, in order for these tools to work effectively, a comprehensive solution must also include a Delta fix that improves ecosystem conditions and water conveyance for the economy. For these reasons, Western Growers is very supportive of considering and pursuing alternative Delta conveyance options and urges further exploration of the dual, isolated and through-Delta conveyance alternatives.

Please contact me by phone at 916-446-1435 or via e-mail at efield@wga.com if you have any questions.

Sincerely,

Erin Field
California Government Affairs Manager
Kathy Hunn

From: Kenneth Wilson [Kenneth@wilsonvineyards.com]
Sent: Saturday, May 24, 2008 10:19 AM
To: Kathy Hunn
Subject: RE: ND CARES North Delta Community Area Residents for Environmental Stability

Kathy,

The points that I made were:

I found it interesting that Cal-Fed and the Delta Vision group felt so comfortable about takings of species in order to bring to our area a marsh land with both endangered as well as other animals that could simply be wiped off the map with no concern at all. Kind of like they were God with some sort of supremacy about them. Some of the animals I mentioned seeing were what appears to me to be mink. (I saw another one the other day on Jefferson), Swainsons Hawks that the environmentalist have made such a big fuss over, Cottontail rabbits that found there way back after about 30 years of almost none existance, more tree squirrels than I've ever seen, of course opposum and racoons and others including all of the animals that live underground like snakes and their prey such as gofers and mice and all theings that keep our area alive. We're literally talking about tens of thousands of animals that live just in our area.

EIR's must also take place before anything happens. Just the Old Sugar Mill took about 2 years and that was just a little over 100 acres. We're talking about over 20,000 acres with this idea. They'll have to also get EIR's for annexed lands to this project because they're going to be affected as well being attached to the flooded lands. All those critters that can run for their lives will be running for the levees provided they even know which direction to run and if they can run fast enough before drowning.

We demand a full blown EIR study of all this before any action of dirt is turned over. This will take years and years.

These were my points that I felt needed to be addressed.

Ken Wilson
President/Wilson Farms
50400 Gaffney Road
Clarksburg, Ca. 95612

916-343-6872

kenneth@wilsonvineyards.com

From: Kathy Hunn [mailto:phunn@frontiernet.net]
Sent: Friday, May 23, 2008 3:41 PM
To: mikemcgowan@yolocounty.org; mike.thompson@congressnewsletter.net; maria.wong@yolocounty.org; MSVLS@cwo.com; Kenneth Wilson; windycorners@calbroadband.net; altaramar@att.net; tim@hps.biz; awallace@wallace-kuhl.com; wilson80@msn.com; mjmspain@frontiernet.net; cavelanding@yahoo.com; peterstone@waterford.org; dja43@frontiernet.net; sfherlinger@aol.com; bohl@frontiernet.net; webberjfr@yahoo.com; halshipley@cs.com; DNFenoc@aol.com; lindavis@citlink.net; gwenapeg@aol.com; papuzabeck@gmail.com
Cc: mark@markpruner.com; wilson80@msn.com; phunn@frontiernet.net
Subject: ND CARES North Delta Community Area Residents for Environmental Stability

No virus found in this outgoing message.
Checked by AVG.
May 23, 2008

Ms. Delores Brown  
Chief, Office of Environmental Compliance  
Department of Water Resources  
PO Box 942836  
Sacramento, CA 94236

Regarding:  Letter of Comment  
The Bay Delta Conservation Plan EIR/EIS NOP Scoping

Dear Chief Brown:

The Yolo County Habitat Conservation Plan/Natural Community Conservation Plan Joint Powers Agency (“JPA”) appreciates this opportunity to provide early input into the Bay Delta Conservation Plan (“BDCP”) EIR/EIS process.

The JPA, comprised of the County of Yolo, the cities of Davis, Woodland, West Sacramento and Woodland, and the University of California at Davis, was formed for the purpose of completing a multi-species habitat conservation in Yolo County. Known as the Yolo Natural Heritage Program (“YNHP”), the plan is a Habitat Conservation Plan (“HCP”) under the federal Endangered Species Act and a Natural Community Conservation Plan (“NCCP”) under state law. A Planning Agreement among the JPA member agencies, the California Department of Fish and Game and the US Fish and Wildlife Service was executed in August 2004. Scheduled for completion in early 2010, the YNHP will provide for the preservation, conservation and recovery needs of Yolo County’s species and habitats by providing three key benefits to wildlife: 1) identify preserve areas sufficient to contribute to the recovery of multiple species, including all federally listed, proposed and candidate plant and animal species that have experienced significant decline in the County; 2) provide for the permanent protection of representative natural communities that characterize Yolo County; and 3) establish a management and monitoring program for lands set aside within the preserve.

The natural communities upon which species in Yolo County depend include riparian, woodland, wetland and grassland, all of which occur to varying degrees within the Delta. These natural communities are critical to sustaining fully functional ecosystems for the species proposed for coverage. Agriculture, a predominant landscape feature in Yolo County, is beneficial to 26 of the proposed covered species, including the Plan’s
“flagship species,” the Swainson’s hawk. The initial list of species proposed for coverage includes 17 species listed by either Federal or State government as Endangered, Threatened, or Rare, as well as 60 other sensitive species (proposed, candidate, special concern or other sensitive species) known, or reasonably expected, to occur in Yolo County.

The BDCP and YNHP planning areas overlap within Yolo County. This presents unique challenges and opportunities as both conservation plans move toward completion simultaneously. For this reason, and based on uncertainties regarding eventual implementation strategies under the BDCP, these comments are submitted under the assumption that the JPA could act in the capacity of “responsible agency” as it may have limited permitting or approval power over select BDCP activities within the joint planning area.

ADEQUACY OF THE NOP

In summary, the BDCP EIR/EIS Notice of Preparation (“NOP”) scoping process is deficient in that it failed to supply the public and interested agencies with sufficient detail to provide meaningful input (CEQA Guidelines § 15083(b)). The NOP states that the BDCP is “in the preliminary stages of development” and that the "overall approach" to the BDCP is still being refined. While CEQA encourages early input into the EIR process, Section 15082(a)(1) admonishes all parties to engage in a scoping process that allows for “meaningful” exchanges of information in order “to bring together and resolve the concerns of affected federal, state and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds” (CEQA Guidelines § 15083(b)). Despite this standard, and without the benefit of consistent, reliable and easily obtained information, participants in the BDCP scoping process have been asked to provide input on a conservation plan whose complexities and implications are unprecedented.

The Yolo JPA acknowledges the significant challenges facing the BDCP and the amount of work that has been undertaken to date. However, the lack of a well-defined project description and outcomes in the context of the NOP raises procedural concerns about the EIR/EIS scoping process. For example, a review of the and information presented in other BDCP documentation available on the California Resources Agency website calls into question the relevance of documents released prior to the EIR/EIS scoping process but absent from its proceedings. In particular, it is unclear whether or not the “Options Evaluations Report” dated 9-17-2007 is still under consideration and whether or not the BDCP planning boundaries will or will not include tributaries to the Delta. To illustrate, the probability that BDCP actions will impact the Yolo Bypass has been discussed at more than one meeting of the BDCP Steering Committee but that information was not provided in the project description or the scoping sessions. The NOP (pg 7) acknowledges the possibility that “areas upstream of the Delta” (presumably anywhere in the San Joaquin or Sacramento River watersheds) could be included in the BDCP. Without more specific guidance as to potential impacts, reviewers are faced with the daunting task of guessing where and how BDCP might impact those watersheds. Placing the burden of discovery on the public and interested agencies is not practical and certainly not in the spirit of CEQA.

The NOP includes a statement of the project's probable environmental effects; however the exhaustive list of possible impacts presented in the NOP (pg 9) clouds the issue by diluting the impact of “reasonably expected impacts.” This degree of uncertainty after several years of BDCP deliberations reinforces the Yolo JPA’s claim that the NOP process is inadequate and/or premature. More importantly, the decision to limit communication between the BDCP panel and the public at the scoping sessions to “one way streets” sharply curtailed the public’s ability to get clarification on important issues. The decision to not answer questions at the scoping sessions was unfortunate and has fueled unnecessary speculation and innuendo about what the
BDCP is and what it is not.

Prior to moving on to specific comments below the JPA requests that DWR strongly consider refining the NOP scoping process and re-engaging the public with clearer information, improved outreach and opportunities for meaningful, productive dialogue.

SPECIFIC COMMENTS

Impact on local policies or ordinances protecting biological resources

Yolo County is in the process of updating its 1983 General Plan. Both the current and proposed General Plan contain policies and goals designed to preserve and enhance biological resources throughout the county, including the BDCP planning area. The BDCP EIR/EIR must assess the impact of BDCP activities on these goals and policies.

Impact on the developing Yolo County Habitat Conservation Plan/Natural Communities Conservation Plan

As stated previously, Yolo County, the four incorporated cities, and the University of California at Davis, are committed to the development of a county-wide multi-species conservation plan. Significant federal, state and local monies and other resources have been advanced toward this goal. The BDCP EIR/EIS must consider the impact of BDCP activities on the goals and objectives of the Yolo HCP/NCCP (“YNHP”). Specifically, how will biological outcomes benefiting species of common interest to the BDCP and the YNHP be developed and then accounted for? Importantly, how will competing biological needs be resolved?

Adverse effects on candidate, sensitive or special status species and their habitats

The BDCP EIR/EIS must consider the impact of the full range of BDCP activities (including but not limited to conveyance, water transfers, restoration, mitigation and monitoring) on species that depend on areas landward of BDCP aquatic habitats. The overlap area between BDCP and YNHP covers approximately 90,927 acres including 24,358 acres of natural vegetation and 54,395 acres of agriculture. The primary natural habitat associations in this area are annual grasslands, fresh emergent wetland, saline emergent wetland, valley foothill riparian, vernal pool complex and alkali sink. The overlap area represents a significant portion of these habitats in the YNHP planning area.

Many sensitive species are known to occur in this overlap area. Documented species localities in the YNHP GIS database include the Swainson’s hawk (*Buteo swainsoni*), giant garter snake (*Thamnophis gigas*), many sensitive vernal pool plants and vernal pool invertebrates, the valley elderberry longhorn beetle (*Desmocerus californicus dimorphus*), and several other sensitive bird species. In addition, a large proportion of the potential habitat for many species is included in this Yolo-Delta overlap area including the California black rail (*Laterallus jamaicensis coturniculus*), black tern (*Chlidonias niger*), grasshopper sparrow (*Ammodramus savannarum*), delta tule pea (*Lathyrus jeppsonii var. jeppsonii*), Mason’s lilaeopsis (*Lilaeopsis masonii*), rose mallow (*Hibiscus lasiocarpus*), Solano grass (*Tuctoria mucronata*), Colusa grass (*Neostaphia colusana*), Heckard’s peppergrass (*Lepidium latipes var. heckardii*), Ferris’ milkvetch (*Astragalus tener var. ferrisiae*), brittlescale (*Atriplex depressa*), Baker’s navarretia (*Navarretia leucocephala ssp. bakeri*), alkali milk vetch (*Astragalus tener var. tener*), and San Joaquin spearscale (*Atriplex joaquiniana*).
This area is of critical importance to the overall success of the YNHP in meeting its open space and conservation goals, as well as meeting the NCCP/HCP regulatory requirements. At a minimum the BDCP EIR/EIS must consider the impact of aquatic restoration activities that displace habitats for the species outlined above.

**Effect of West Nile Vectors on human and avian populations**

One of the species proposed for coverage in the YNHP, the Yellow-billed Magpie (*Pica nuttalli*), is endemic to California’s Central Valley and Coast Ranges. Suitable Yellow-billed Magpie habitat exists in the BDCP planning area. This species has been severely impacted by West Nile Virus over the last few years. Aquatic habitat restoration, especially tidal inundation and the creation of new shallow wetlands in the Delta, has the potential to increase mosquito populations in the Delta which in turn will increase vectors for West Nile Virus. This has implications for human as well as avian populations. The BDCP EIR/EIS must consider the impact of this disease vector on remaining Yellow-billed Magpie populations and on human health.

**Effect of BDCP Actions on Yolo Bypass Wildlife Area**

The Yolo Bypass Wildlife Area (“Yolo Wildlife Area”) covers approximately 16,770 acres of managed wildlife habitat and agricultural land within the Yolo Bypass. A Management Plan was adopted for this area in July 2007 (available at www.yolobasin.org/management.cfm). The Yolo Wildlife Area supports two-hundred-eighty terrestrial vertebrate species, over 95 of which are known to breed there. Suitable habitat for 23 additional species exists in this area, although their presence has not been confirmed. The Yolo Wildlife Area supports 38 special status wildlife species, many of whom are locally rare. (Executive Summary, pg ES-6). The Yolo Wildlife Area is functionally critical to the success of the YNHP. The impact of BDCP actions on this biologically rich resource must be analyzed in the EIR/EIS. Years of coordinated work and energy has gone into the successful creation of this area, as well as many millions of dollars.

**Effect of Water Transfers on Sensitive Species and Habitat, and groundwater resources**

Actions and outcomes related to BDCP have the potential to increase water transfers in the Delta. These transfers will likely have a significant cumulative environmental effect on several species of concern including Giant Garter Snake and Swainson’s hawk. Giant Garter Snakes depend on flooded rice fields in the BDCP planning area, which will likely be fallowed if the transfer of water becomes more lucrative than farming. This outcome would amount to a reduction of habitat for Giant Garter Snake, and as such must be fully analyzed in the EIR/EIS.

Swainson’s hawks in Yolo County forage in a dynamic mosaic of crops, most of which require irrigation. If water is sold for its market value and diverted from agricultural production, the resulting decrease in crop diversity will amount to a reduction in Swainson’s hawk foraging habitat that could have a significant environmental impact on the Swainson’s hawk population in Yolo County. This is a cumulative impact that must be analyzed in the EIR/EIS.

Surface water transfers have the added potential to adversely impact local groundwater basins. Over-drafting of existing groundwater reserves could occur if water is sold for its market value and growers rely too heavily on groundwater reserves. This is a cumulative impact that should be evaluated in the EIR/EIS.
ADDITIONAL COMMENTS/CONCERNS:

1. The Yolo JPA recommends consideration of reasonable alternatives beyond the four options identified in the “Options Evaluations Report” that may be discovered through the scoping sessions. A clear discussion of each reasonable alternative should be provided as well as the reasons for the elimination of alternatives not evaluated in detail.

2. The EIR/EIS should contain full disclosure and discussion of possible funding, implementation and monitoring commitments for BDCP.

3. The BDCP should expand the list of covered activities to include known water conveyance projects (planned or in place) undertaken by local governments within the BDCP planning area. Omitting these projects from the EIR/EIS analysis has the potential to underestimate the full impact of Delta related activities.

In conclusion the Yolo Habitat JPA appreciates this opportunity to comment and looks forward to continuing to work toward shared conservation goals and outcomes.

Respectfully,

Helen M. Thomson, Chairwoman
Yolo County Habitat Conservation Plan/
Natural Community Conservation Plan
Joint Powers Agency

cc: Congressman Mike Thompson
Senator Mike Machado
Assemblymember Lois Wolk
JPA Member Agencies