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Sent: Thursday, July 24, 2014 3:15 PM
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Subject: Sacramento Stormwater Quality Partnership Comments on BDCP and BDCP DEIR/EIS
Attachments: Sacramento Stormwater Quality Partnership - Comments on BDCP and DEIR-EIS July 2014.pdf

Dear Mr. Ryan Wulff:

Please find attached comments from the Sacramento Stormwater Quality Partnership on the Bay Delta Conservation Plan (BDCP) and BDCP DEIR/DEIS. A copy is also being hand delivered.

Please confirm receipt of this email and attachment.

Thank you.

Sincerely,

Elissa Callman
Senior Engineer
City of Sacramento Dept of Utilities
916-808-1424
ecallman@cityofsacramento.org

SACRAMENTO



STORMWATER
QUALITY
PARTNERSHIP

July 24, 2014
140250:EC

BDCP Comments
Ryan Wulff, NMFS
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
BDCP.Comments@noaa.gov

Subject: Transmittal of Sacramento Stormwater Quality Partnership Comments on BDCP
and BDCP DEIR/EIS

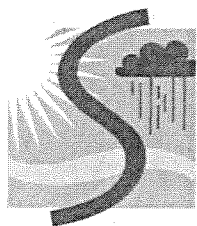
Dear Mr. Wulff:

Please find attached the Sacramento Stormwater Quality Partnership (SSQP) comments on the Bay Delta Conservation Plan (BDCP) and BDCP DEIR/EIS. If you have any questions or anything you would like to discuss, please contact Sherill Huun of the City of Sacramento at 916-808-1455 or Dana Booth of Sacramento County Department of Water Resources at 916-874-4389.

Sincerely,

Dave Brent
Director
City of Sacramento
Department of Utilities

SACRAMENTO

STORMWATER
QUALITY
PARTNERSHIP

July 18, 2014

140208:EC

BDCP Comments

Ryan Wulff, NMFS

650 Capitol Mall, Suite 5-100

Sacramento, CA 95814

BDCP.Comments@noaa.gov

Dear Mr. Wulff:

The Sacramento Stormwater Quality Partnership (Partnership) appreciates this opportunity to provide comments on the December 13, 2013 Bay Delta Conservation Plan (BDCP) Public Review Draft and the associated Draft Environmental Impact Report/Environmental Impact Study (EIR/EIS), which incorporates the BDCP (EIR/EIS, page 1-2, footnote 3). The Partnership's review and comments focus on items that will affect operation of the Partnership's stormwater management programs, including those that impact water quality and the science and governance entities that would play an important role in protecting the Sacramento River – San Joaquin River Delta (Delta).

The Partnership is comprised of the County of Sacramento and the incorporated municipalities that are co-Permittees in the municipal separate storm sewer system (MS4) National Pollutant Discharge Elimination System permit (NPDES No. CAS082597, Order No. R5-2008-0142). Many of these agencies are also submitting comments in separate letters; however, this letter specifically addresses the proposed Conservation Measure 19 (urban stormwater treatment) and other issues that would have significant impacts on our municipal stormwater programs. Comments in this letter are applicable to the BDCP document and the supporting EIR/EIS. Attachments 1 and 2 are specific comments on the BDCP and EIR/EIS, respectively, which are included and incorporated in our comments.

The high quality of the American and Sacramento Rivers is a primary reason why the proposed BDCP intakes are located in the Sacramento River, which is adjacent to the Partnership permitted area. The Partnership's management programs described in our

Stormwater Quality Improvement Plan (SQIP)¹ are highly effective in improving urban runoff quality. The partnering agencies have strong working collaborations with each other as well as with neighboring communities. Examples of this cooperative regional approach include the Partnership’s participation in the development of the region-wide municipal separate storm sewer system (MS4) permit, the Delta Regional Monitoring Program (RMP), the Central Valley Drinking Water Policy, and numerous other regional programs and information sharing. For example, the Partnership supports and participates in initiatives to address regional pesticides issues, including support of the “Our Water, Our World” program to provide integrated pest management resources to our residents and leading CASQA’s efforts to encourage USEPA Office of Pesticide Programs and the California Department of Pesticide Regulation to improve pesticide regulation and protect water quality.

While we recognize that a project of this size is complex and resource intensive, we have identified several presumptions and assertions within the BDCP and EIR/EIS documents, especially related to urban runoff and water quality, which are inaccurate or insufficiently supported. These issues could have profound effects on our stormwater management programs and local communities. The following key comments are discussed in this letter and are supported and expanded upon with the detailed attached comments:

1. Insufficient Justification for Conservation Measure 19 (CM19)
2. Insufficient Commitments for Adaptive Management and Monitoring Programs to Protect Upstream and Delta Water Quality (AM)
3. Insufficient Evaluation of Water Quality Impacts (WQ)
4. Inconsistency with Antidegradation Policy and Water Quality Regulation (WQ)
5. Lack of Meaningful Role for Local Agencies in BDCP Governance (LOCAL)
6. Technical Errors and Omissions (ERROR)

COMMENT 1 - INSUFFICIENT JUSTIFICATION FOR CONSERVATION MEASURE 19 (CM19)

CM19 is described in seven pages of the BDCP with little detail, with numerous inaccuracies on urban runoff contaminants and water quality regulations, and without any evidence that CM19 control measures could provide any measurable benefits to the covered species. Conservation Measure 19 (CM19, BDCP Section 3.4.19) intends to decrease urban runoff contaminant discharge to support Objective L2.4 to provide water quality to “help restore native fish habitat”. However, there is no technical analysis demonstrating the potential benefits of CM19 aside from incomplete descriptions of pyrethroid research in upstream urban tributaries; this research has *not* demonstrated relevance to impacts on covered species in the Delta. No technical justification is provided for the primary inclusion of urban runoff sources as a Conservation Measure over all other contaminant stressor sources that are described throughout the BDCP and EIR/EIS but are absent as Conservation Measures. As proposed, CM19 provides no new

¹ Sacramento Stormwater Quality Partnership. Stormwater Quality Improvement Plan. Submitted to Central Valley Regional Water Quality Control Board. November 2009.
http://waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/sacramento/r5-2010-0017_2009sqip.pdf

benefits to downstream covered species. Furthermore, CM19 proposes measures that are already generally implemented by stormwater management programs and local planning departments with new development requirements.

CM19 should be removed, because it is not justified as an action that would reasonably improve the covered species populations in the Delta. The proposed conservation measure fails to meet a reasonable expectation of beneficial impacts for the following reasons:

- The BDCP and EIR/EIS do not provide sufficient detail to reasonably conclude that the CM19 suggested best management practices (BMPs) would have any adverse or beneficial impact on water quality in the Delta.² Pesticides are identified as the primary “concern for fish” (BDCP page 3.4-327, lines 9-10) and as the basis for the need for CM19. The studies cited in the BDCP (Weston et al. 2005, Teh et al. 2005) do not show linkages between urban runoff and effects on covered species and therefore should not be used as justification for CM19.

Most Sacramento urban runoff does not directly enter the Delta. As such, the conclusion that actions to reduce the amount of pollution in stormwater runoff entering Delta waterways will be of high benefit to Delta smelt, white sturgeon, steelhead, and Chinook salmon (Essex Partnership, 2009) does not consider the fate and transport to points where impacts to covered species are of concern (BDCP page 3.4-332). Even if contaminant load sources are reduced, it is not established that there would be a downstream Delta benefit since contaminant degradation, dilution, adsorption to particulates, and other fate and transport processes would reduce any aquatic life effects (Werner, et al. 2008, page 32), which is consistent with pyrethroid experimental studies downstream. Urban runoff dilutes some pollutants and is only an intermittent exposure during the higher flow wet season.

- CM19 does not consider pesticide and other contaminant source control by the entities that manufacture, regulate, and control their use in urban and non-urban areas. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) gives the U.S. Environmental Protection Agency (EPA) authority to determine which pesticides can be used in the United States and how they can be used. The application and approval of pesticides are regulated by both the EPA and the California Department of Pesticide Regulation (DPR). Local agencies do not have the authority to limit the use of pesticides when applied according to these rules. If retained, CM19 should propose actions to better regulate and approve pesticide formulations and applications so that they will not have effects on covered species when used legally. The Central Valley Regional Water Quality Board recently adopted Basin Plan amendments that better acknowledge state and federal government responsibility. *The Partnership requests that references to pesticide source control acknowledge that municipalities are statutorily prohibited from regulating the use of pesticides, and that existing state and*

² Delta Stewardship Council. *Final Delta Plan. Page 230 recommendations* “WQ R2. Identify Covered Action Impacts. *Covered actions should identify any significant impacts to water quality.*”

federal statutory authority for regulation of pesticides is sufficient only when it is properly exercised to prevent water quality impacts.

- The BDCP does not acknowledge that the most effective “source control” approach to control many contaminants in urban runoff is product control by manufacturers and regulators. In particular, lead and pesticides have been controlled through product reformulation or discontinuation. Recent legislation (SB346) will phase out copper in brake pads, a significant contributor to urban runoff loads.
- The BDCP and EIR/EIS do not comprehensively evaluate all sources of contaminants and therefore cannot adequately evaluate how to control contaminants through CM19. The BDCP does not present an analysis that evaluates the downstream covered species benefit of any contaminant source controls. As discussed in the EIR/EIS (Table 5.D.2-1 ‘Land Use and Typically Associated Containment Issues’ (EIR/EIS page 5.D-2, Line 27), urban runoff is only one source of contaminants in the Delta and is an insignificant source for most of the identified contaminants of concern. However, other sources identified as significant have not been specifically included in the conservation measures. The reference documents refer to a number of other pollutants that are attributed to other sources and for which urban runoff is not known to be a significant contributor. For example, BDCP Table 3.4.19-2 references dissolved oxygen depression as a water quality impact; however, urban runoff likely does not contribute significantly to the downstream oxygen impairments. Another example is that CM19 is the only conservation measure identified with the Conservation Hatcheries Facilities covered activity for facilities construction (BDCP page 5.2-14); the role that urban stormwater (MS4) programs that are part of CM19 would have in mitigating construction of these facilities is not clear in the Effects Analysis and the referenced Appendix (5H). Only considering one of many sources without making direct connections between activities and outcomes is an imbalanced and flawed approach, especially when the relative impact of the selected source is not known or may be insignificant when compared to others. A computational model assessment of the benefits of all source control measures for all sources should be performed to examine the effect of sources on the downstream covered species. This evaluation should be conducted before determining the scope of a conservation measure on contaminant reduction.
- Contaminant sources, as a whole, and the entities that regulate and control their use and discharge, should be considered so that the most significant and cost-effective removal strategies are prioritized and addressed first. While we agree that continued reductions of discharged urban runoff contaminants is an important environmental effort (which is already underway), it is unrealistic to assume that reductions of one intermittent source would cost effectively result in significant or even measurable downstream changes. For example, the Central Valley Drinking Water Policy Workgroup evaluated urban and non-urban source control for multiple drinking water constituents of concern. The drinking water constituents of concern were then quantitatively modeled in hypothetical future conditions to evaluate the potential

impact on the municipal water supply beneficial use. Hypothetical urbanization of the Central Valley did not cause significant changes to downstream water quality.³

- The effectiveness of urban runoff BMPs in terms of specific urban runoff quality changes and Delta impacts was not evaluated. For example, typical structural control benefits vary between contaminants, and while a particular BMP may decrease urban runoff loading for one contaminant, it may increase the urban runoff loading for another contaminant. In the case of pesticides, a BMP designed to remove sediment bound pesticides might be completely ineffective for removing pesticides that remain in the dissolved phase. The BDCP should evaluate urban runoff BMPs for potential benefits to downstream Delta water quality. Without a sufficient understanding of the downstream benefits, widespread implementation of additional BMPs is not justified.
- The BDCP does not adequately define the physical area of the expected urban land use changes and the spatial extent of CM19 control strategy implementation. The BDCP refers only to restoration areas outside of the statutory Delta as included in the Plan Area and makes no references to the urban areas in the periphery outside of the statutory Delta. The control strategies listed in CM19 are generally the type of best management practices already included in new urban development, but the conservation measure does not acknowledge the legal and logistical challenges of large scale changes to already developed urban areas. The great preponderance of MS4 drainage property is not municipally owned, and it is unclear how CM19 intends to implement private land use changes.
- There is no justification provided for the cost estimate for CM19 implementation, maintenance, or monitoring. The BDCP estimates approximately \$50 million in CM19 stormwater treatment for all MS4 programs over the 50 year plan. This level of funding significantly underestimates the scope of urban stormwater treatment that would be necessary to provide detectible downstream benefits. The two rounds of Proposition 84 funding totaled approximately \$86 million in stormwater projects covering a much smaller area than the urban areas inside and upstream of the Delta. For a rough comparison, this funding covered not more than hundreds of acres of “stormwater treatment”, and the urban area in the Delta and tributary watersheds are hundreds of thousands of acres. Moreover, no funding is proposed for the BDCP required effectiveness monitoring, and this can also be costly. The BDCP states that CM19 funding would come from existing Proposition 84 or 1E bonds and future water bonds. Because CM19 is inadequately described, it is not possible to evaluate the potential financial liability to local stormwater management agencies.
- Because the area of CM19 implementation is unclear, it is not possible to accurately estimate its cost. Based on the results of previous Proposition 84 low impact development (LID) project funding and known costs of retrofit of existing development, \$50 million would only fund improvements for a small fraction of the total urban or municipal area. The Central Valley Drinking Water Policy Workgroup estimated that best management practices (BMP) “treatment” for the entire urban area

³ Central Valley Drinking Water Policy Workgroup Synthesis Report. February 2012.

within the Central Valley would cost \$14.9 billion by 2030.⁴ The discrepancy in cost and scope is significant and suggests that the proposed CM19 would be insufficient in scope and resources to demonstrate benefits to covered species. This large discrepancy in the uncertainty of benefits and cost to local agencies is indicative of the inadequate evaluation and insufficient justification for CM19.

- Additional costs imposed on local agencies by CM19 may have potentially significant impacts that should be evaluated as part of the BDCP effects analysis and EIR/EIS water quality assessment (Chapter 8). For example, to the extent that the proposed CM19 places a significant fiscal burden on local agencies, those agencies may be forced to defer or forego other improvements or programs designed to improve water quality or protect the environment.

Comprehensive Evaluation of Contaminant Sources and Prioritization of Contaminant Bases Conservation (Control) Measures

The urban runoff-focused CM19 is not justified. CM19 does not sufficiently address SMART, “specific, measurable, achievable, relevant, and time-bound,” biological objectives as stated (BDCP page 3.3-3, lines 3-8). The BDCP provides no means to assess the effectiveness of meeting the goals for CM19. Impacts to covered species from contaminant sources should be sufficiently understood to result in cost effective benefits before implementing control measures. The evaluation of contaminant-based control measures in the BDCP and EIR/EIS should include a robust evaluation through a stakeholder process with consideration to the following components:

- Technical evaluations of all reasonable contaminant control measures for all source categories, implementation methods, and their resulting water quality performance should be performed to characterize benefits and costs.
- A computational fate and transport model that incorporates the technical source evaluations should be performed to examine the effect of sources and source control on downstream water quality. The evaluation should consider downstream Delta locations of interest to the covered species and the potential water quality impacts of the examined control measures.
- An appropriate characterization of the impacts and uncertainty of impacts of all sources on the covered species should be performed. The BDCP chapter identifies pesticides as the contaminant of particular concern (page 3.4-.27, line 11) and bases its general characterization of urban runoff quality and pesticide impacts on pyrethroid pesticide research. The cited Weston research does not demonstrate that upstream urban runoff sources cause Delta covered species toxicity miles downstream from stormwater outfalls, but this research instead shows a decreasing toxicity signal from upstream sources.⁵ Once the existing and potential water quality conditions are

⁴ Geosyntec. *Urban Runoff Source Control Evaluation for Central Valley Drinking Water Policy*. Prepared for California Urban Water Agencies. March 2011. http://www.waterboards.ca.gov/rwqcb5/water_issues/drinking_water_policy/dwp_urban_sources_study.pdf

⁵ Weston DP1, Lydy MJ. *Urban and agricultural sources of pyrethroid insecticides to the Sacramento-San Joaquin Delta of California*. *Environ Sci Technol*. 2010 Mar 1;44(5):1833-40. doi: 10.1021/es9035573..

known at the downstream Delta locations of interest, an evaluation of the specific benefits to the covered species should be performed.

- Following the complete evaluation of contaminant sources and control effects on the covered species, the control measures should be prioritized based on the known benefits and costs of the control measures.

This approach would also generate alternative contaminant control measures that could be used to better perform specific evaluations in the EIR/EIS.

This evaluation of source controls and downstream benefits should be performed prior to including CMI9 within the BDCP. The BDCP should designate funding to support stakeholder research, evaluations, and modeling so that any identified contaminant conservation measures can be appropriately evaluated.

Monitoring and Assessment Cost to Local MS4 Agencies

Local agency participation in planning conservation measures and other activities is vital to successful collaboration to restore and maintain the ecological health of the Delta. Further, implementation of the conservation measures to meet the Plan's goals will undoubtedly result in increased costs to local agencies to monitor and assess the effectiveness of the water quality improvement related activities. Local agencies' ability to generate funding to conduct these additional activities is subject to potentially significant limitations, including Proposition 218 and Proposition 26. For example, the operation, maintenance, and improvement of MS4s typically is funded by storm drainage rates, and under Proposition 218, a local agency can only increase storm drainage rates after (1) conducting a notice and protest process with a protest rate below 50%, and (2) obtaining voter approval for the increase from a majority of the ratepayers subject to the rate or from two-thirds of the electorate. Thus, the BDCP should include developing relationships among agencies, mobilizing the flow of technical information, and providing sufficient funding and resources to support water quality outcomes.

The BDCP should commit to participation with, and funding for, the Delta Plan, Delta Science Plan, and the Delta Regional Monitoring Program (RMP) and provision of additional resources (e.g., funding, monitoring, modeling, technical evaluation tools, etc. for local agencies) as a required action (i.e., not an additional action) with a known schedule. Source evaluation and effectiveness monitoring requirements should also be specifically funded by the BDCP, because the assessments are specific to covered species benefits.

COMMENT 2 - INSUFFICIENT COMMITMENTS FOR ADAPTIVE MANAGEMENT AND MONITORING PROGRAMS TO PROTECT UPSTREAM AND DELTA WATER QUALITY (AM)

The BDCP will be one of the most divisive and resource intensive public policy and infrastructure projects in recent California history. Already, hundreds of millions of dollars have been spent on planning, engineering, and technical assessments. However, the Partnership believes that the BDCP and EIR/EIS do not adequately commit, in level of detail or resources, to an ongoing assessment program that will provide quantitative assessments of effectiveness and evaluate the identified uncertainties of the BDCP. The

BDCP Effects Analysis does not compute the baseline effect of the pollutant stressors that are the basis of a conservation measure; therefore, how will the Adaptive Management Team evaluate effects and effectiveness of the conservation measures?

The BDCP admits that the Plan and its conservation measures (CMs) have considerable uncertainty with regard to ecosystem benefits and likely outcomes.⁶ Adaptive management is implemented to allow conservation measure flexibility, and the focus is defined as assessing achievement in meeting the biological goals and objectives. There will be opportunity for revising conservation measures and biological objectives.⁷ This places a critical role and powerful importance on adequately monitoring and assessing the system. Much of the monitoring and modeling in the BDCP, however, is relegated to a research action that should instead be discussed explicitly within the Effects Analysis with a mandated schedule. The adaptive management approach needs to have a transparent and comprehensive monitoring, modeling, and assessment program that can adequately quantify biological and water quality changes due to changes in flows, climate change, contaminant sources, physical changes, and reasonably anticipated beneficial use impacts. This should include verification of the effects analysis and an evaluation of the identified uncertainties. This assessment framework is not provided, even for the evaluation of current conditions, and there is no monetary commitment to provide such tools, data, and resources for the Stakeholder Council. The Science Program should allow bottom-up participation from local agencies; this is important so that joint solutions can be evaluated and implemented, as well as to avoid “serial engineering” by which one ‘solution’ causes another ecological or public policy problem. Local agencies should have a clear and significant role in BDCP decisions if modifications are considered to the CMs that will impact local agencies.

The EIR/EIS also identifies significant issues and mitigation activities that rely on adaptive management. However, the EIR/EIS does not identify or commit to follow-up actions in cases where mitigation measures are not effective or water quality conditions degrade further and cause impacts to beneficial uses.

The BDCP should include a clear, expanded description of the Adaptive Management program framework and the monitoring components and tools that will be used to make assessments, address uncertainties, identify unintended consequences of the BDCP, and propose changes to system operations. For example, a decision tree should be developed for interpreting scientific information relative to the management action and evaluating the certainty of the relationships, the benefit to covered species, and information needs and priorities. Within this decision tree, local agencies should have the ability to provide input and make management decisions when the outcomes affect them. Adaptive management can then be more effectively used in the EIR/EIS to describe mitigation activities.

There has not been a clear prioritization of management actions (conservation measures) to optimize available resources and mitigate effects to the covered species or other aquatic life impairments. Also, it is not clear from the BDCP whether CM1 can proceed

⁶ BDCP, Chapter 3, 3.4.23, page 3.4-354, lines 8-12

⁷ BDCP, Chapter 3, 3.4.23, page 3.4-354, lines 21-27

