

From: Bob Wright <BWright@friendsoftheriver.org>
Sent: Tuesday, July 29, 2014 8:40 AM
To: BDCP.Comments@noaa.gov
Subject: comments on BDCP
Attachments: 7 29 14 FOR Final Comment Letter.pdf

Dear BDCP. Comments@noaa.gov:

Attached here on July 29, 2014, please find the final comments of Friends of the River (a 131 page letter) on the BDCP Drafts that were issued in December 2013. Please confirm receipt by reply message. Thank you.

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July 29, 2014

Dear BDCP.Comments@noaa.gov (via email)

Re: Comment Letter on BDCP Plan, EIR/EIS, and Implementing Agreement Including Violations of NEPA, CEQA and the ESA

Friends of the River (FOR) objects to approval of the Bay Delta Conservation Plan (BDCP). Our 12 prior comment letters of: January 14, 2014 including our earlier comment letters of June 4, August 13, September 25, and November 18, 2013 that were attached to the January 14, 2014 letter; January 28, 2014; March 6, 2014; May 15, 2014; May 21, 2014; May 28, 2014 (joint letter with the Environmental Water Caucus); June 11, 2014 (Environmental Water Caucus) and July 24, 2014 are repeated, adopted and incorporated herein by FOR by this reference. In addition, FOR adopts and incorporates by this reference all comments by other organizations, public agencies, and individuals submitted by the close of the BDCP comment period on July 29, 2014, including but not limited to the three comment letters submitted July 28, 2014 on behalf of the California Sportfishing Protection Alliance (CSPA), that do not support approval of new upstream conveyance and that are not in conflict with FOR's comments.

On the one hand, the 40,000 pages of BDCP drafts violate the NEPA regulation, 40 C.F.R. 1502.7, specifying that Draft EIS text shall normally not exceed 150 pages and "for proposals of unusual scope or complexity shall normally be less than 300 pages." Here, the volume was calculated to overwhelm the public.

On the other hand, and more importantly, there was silence on the profound issue of whether to increase the capacity to divert more water from the Sacramento River, sloughs, and the San Francisco Bay Delta or instead begin to reduce exports. The BDCP agencies ignored and refused to consider any alternatives that would reduce exports. Consequently, there was no alternatives section "sharply" defining the issues as required by 40 C.F.R. 1502.14, and no rigorous exploration and objective evaluation of "all reasonable alternatives" required by that regulation.

Our detailed comments follow.

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INTRODUCTION

Friends of the River (FOR) objects to the approval of the Bay Delta Conservation Plan (BDCP) including the Delta Water Tunnels, Preferred Alternative 4, of the Draft Environmental Impact Report/Environmental Impact Statement EIR/EIS. (EIR/EIS, 3-3). That alternative is referred to as the BDCP “Proposed Action” in Chapter 9 of the Plan. FOR also objects to the approval of any other existing, revised, or new alternative that would include new, upstream conveyance from the Delta.

The Water Tunnels would divert enormous quantities of water from the Sacramento River near Clarksburg, California. The water would be shipped south through two giant, 40-mile long Tunnels for diversion to the Central Valley and State Water Projects. As a result of this massive diversion, enormous quantities of water that presently flow through the Sacramento River and sloughs to and through the Sacramento-San Joaquin Delta would not reach the Delta, and flows would be reduced in the Sacramento River and sloughs. There would also be adverse cumulative effects, ranging from rising sea levels and reduced snowpack and runoff due to climate change to changes in upstream reservoir operations and current preservation of flows for fishery purposes all the way upstream to the Shasta, Trinity, Oroville, and Folsom reservoirs.

FOR objects to preparation, approval, or issuance of a BDCP Final EIR, Final EIS, Final EIR/EIS, Final Plan, and/or Final Implementing Agreement (IA) for the BDCP. The Draft EIR/EIS and Plan issued for public review in December 2013 and the Draft IA issued in May 2014 are so inadequate for the purpose of providing meaningful public and decision-maker review that a new Draft EIR/EIS, Draft Plan, and Draft IA must be prepared and issued to provide an adequate basis for such review pursuant to the requirements of the National Environmental Policy Act (NEPA), California Environmental Quality Act (CEQA), and the Endangered Species Act (ESA). The 40,000 pages of project advocacy and speculation making up the BDCP Plan, Draft EIR/EIS, appendices and IA are worthless for the purpose of providing informed public and decision-maker review.

**VIOLATIONS OF ALTERNATIVES REQUIREMENTS UNDER NEPA,
CEQA, and ESA**

**I) THERE IS NO LEGALLY SUFFICIENT DEVELOPMENT AND ASSESSMENT OF
BDCP ALTERNATIVES**

Development and evaluation of a range of reasonable alternatives are the declared “heart” of both the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) required EISs and EIRs. Despite that, the alternatives section (Chapter 3) of the Draft EIR/EIS and the Endangered Species Act (ESA) required Alternatives to Take section (Chapter 9) of the BDCP Draft Plan fail to include even one, let alone the CEQA, NEPA and ESA required range of, reasonable alternatives that would increase water flows in the San Francisco Bay-Delta by reducing exports. These serious violations of law require corrective action by developing and including the required range of reasonable alternatives in a new Draft EIR/EIS and Alternatives to Take Chapter in the BDCP Plan. A new public review and comment period is necessary so the public can evaluate and comment on a range of reasonable alternatives.

“The overall goal of the BDCP is to restore and protect ecosystem health, water supply, and water quality with a stable regulatory framework.” (Plan, 5. 1-1, all citations to BDCP Plan chapter and page number unless otherwise indicated). “The BDCP will contribute to the restoration of Sacramento-San Joaquin River Delta (Delta) ecosystems largely by addressing ecological functions and processes on a broad landscape scale. Proposed actions will result in fundamental, systemic, long-term physical changes to the Delta. These changes include substantial alterations to water conveyance and management and extensive restoration of tidal, floodplain, and terrestrial natural communities.” (*Id.*)

“The complexity [of chapter 5] is inevitable because of the large size of the Plan Area, the large number of natural communities and covered species addressed, the scale of the covered activities, the long-term horizon of the Plan, the intrinsic and often highly variable properties of the Bay-Delta environment (e.g., salinity gradients, hydrology, projected effects of climate change) and the confounding effects that climate change may have on ecosystems and species in the Plan Area.” (Plan, 5. 1-2).

The BDCP omission of alternatives reducing exports to increase flows is deliberate. A claimed purpose of the BDCP Plan is “reducing the adverse effects on certain listed [fish] species due to diverting water.” (BDCP Draft EIR/EIS Executive Summary, p. ES-10, all citations to Draft EIR/EIS chapter and page number unless otherwise indicated). “There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta.” (*Id.*). The omission of a range of reasonable alternatives reducing exports to increase flows violates CEQA, NEPA and the ESA. The failure to include even one alternative reducing exports to increase flows is incomprehensible. Alternatives reducing the exporting/diversion of water are the obvious direct response to the claimed BDCP purpose of “reducing the adverse effects on certain listed [fish] species due to diverting water.” (*Id.*)

The BDCP agencies have been marching along for at least three years in the face of “red flags flying” in their deliberate refusal to develop and evaluate a range of reasonable alternatives, or indeed, any alternatives that would increase flows by reducing exports. Three years ago the National Academy of Sciences declared in reviewing the then-current version of the draft BDCP that: “[c]hoosing the alternative project before evaluating alternative ways to reach a preferred outcome would be post hoc rationalization—in other words, putting the cart before the horse. Scientific reasons for not considering alternative actions are not presented in the plan.” (National Academy of Sciences, Report in Brief at p. 2, May 5, 2011).

More than two years ago, on April 16, 2012, the Co-Facilitators of the EWC transmitted a short, 1 ½ page letter to Gerald Meral, Deputy Secretary of the California Resources Agency, sharing “concerns with the current approach and direction of the [BDCP] project and we would like to share those concerns with you.” (Letter, p. 1). Most of the paragraphs in the letter dealt with the types of issues involving consideration of alternatives. The penultimate paragraph of the letter specifically pointed out:

The absence of a full range of alternatives, including an alternative which would reduce exports from the Delta. It is understandable that the exporters, who are driving the project, are not interested in this kind of alternative; however, in order to be a truly permissible project, an examination of a full range of alternatives, including ones that would reduce exports, needs to be included and needs to incorporate a public trust balancing of alternatives.

(Letter, p. 2). We have already attached (for BDCP.Comments@noaa.gov) and incorporated by reference a copy of the April 16, 2012, EWC letter. (FOR/EWC comment letter May 28, 2014).

On December 15, 2012 by email, and December 17, 2012 by letter, Nick Di Croce, Co-Facilitator of the EWC transmitted the EWC's Reduced Exports Plan to the California Resources Agency Deputy Secretary and requested "that you include it among the alternatives to be included in the BDCP." On November 18, 2013, FOR submitted a comment letter in the BDCP process urging those carrying out the BDCP to review the "Responsible Exports Plan [a later, more detailed version of the Reduced Exports Plan]" proposed by the EWC:

as an alternative to the preferred tunnel project. This Plan calls for reducing exports from the Delta, implementing stringent conservation measures but no new upstream conveyance. This Plan additionally prioritizes the need for a water availability analysis and protection of public trust resources rather than a mere continuation of the status quo that has led the Delta into these dire circumstances. Only that alternative is consistent with the EPA statements indicating that more outflow is needed to protect aquatic resources and fish populations. The EWC Responsible Exports Plan is feasible and accomplishes project objectives and therefore should be fully analyzed in a Draft EIS/EIR."(FOR November 18, 2013 comment letter at p. 3, Attachment 4 to FOR January 14, 2014 comment letter).

FOR specifically pointed out (at p. 3, fn. 1) that the plan was online at <http://www.ewccalifornia.org/reports/resonsibleexpltspanmay2013.pdf>.

By this letter, we repeat the demand for consideration of the "Responsible Exports Plan" (2013) alternative (attached to FOR May 21, 2014 comment letter) and reasonable variants on that alternative. This demand follows up EWC's similar requests from April 16, 2012 and FOR's requests that have to date been ignored in the BDCP process. Obvious variants on the Responsible Exports Plan alternative creating a range of reasonable alternatives will include reducing exports to both more and less than the 3,000,000 acre-feet limit on exports called for by the Responsible Exports Plan alternative as well as phasing in reductions in exports over time.

The BDCP agencies have failed to produce an alternatives section that "sharply" defines the issues and provides a clear basis for choice among options as required by NEPA Regulations. 40 C.F.R. § 1502.14. The choices presented should include increasing flows by reducing exports, not just reducing flows by increasing the capacity for exports as is called for by *all* of the so-called "alternatives" presented in the BDCP Draft Plan and EIR/EIS. No matter how badly

the BDCP proponents do not want to reduce exports and increase flows, during the Draft CEQA, NEPA and ESA processes inclusion of such alternatives as part of a range of reasonable alternatives is mandatory.

By way of brief summary, actions called for by the Responsible Exports Plan alternative include no development of new upstream conveyance; reducing exports to no more than 3,000,000 acre-feet in all years in keeping with State Water Resources Control Board (SWRCB) flow criteria; water efficiency and demand reduction programs including urban and agricultural water conservation, recycling, storm water recapture and reuse; reinforced levees above PL 84-99 standards; installation of improved fish screens at existing Delta pumps; elimination of irrigation water on drainage-impaired farmlands south of the Bay-Delta; return the Kern Water Bank to State control; restore Article 18 urban preference; restore the original intent of Article 21 surplus water in SWP contracts; conduct feasibility study for Tulare Basin water storage; provide fish passage above and below Central Valley rim dams for species of concern; and retain cold water for fish in reservoirs.

The Responsible Exports Plan alternative calls for a statewide benefit-cost analysis to determine economic desirability of any plan or alternative; water availability analysis to align water needs with availability; protecting the Delta ecosystem pursuant to public trust obligations; and meeting NCCP recovery standards for listed fish species. Other obvious alternatives would include actions ranging from meeting ESA recovery standards for listed fish species, to halting the planting of almond orchards that cannot be fallowed in dry years on desert lands receiving export waters, to consideration of the development of desalinated water supplies as is being done in the San Diego County Water Authority. (Plan, 9-43).

A) THE FAILURE OF THE BDCP AGENCIES TO EVEN CONSIDER THE RESPONSIBLE EXPORTS ALTERNATIVE IS INEXPLICABLE GIVEN THAT THE ALTERNATIVE WAS CONSIDERED, ALBEIT INADEQUATELY, BY THE DELTA STEWARDSHIP COUNCIL AND FOUND TO BE ENVIRONMENTALLY SUPERIOR IN MANY RESPECTS

The Delta Stewardship Council (DSC) issued the Recirculated Draft Program Environmental Impact Report (RDEIR) for the Draft Delta Plan back on November 30, 2012. Included was Delta Plan Alternative 2. (RDEIR 25-4). The RDEIR stated that “Development of Alternative 2 was informed by proposals from environmental organizations led by the

Environmental Water Caucus. It involves sharply decreased water exports from the Delta and its watershed to areas that receive Delta water (limited to a maximum of 3,000,000 acre-feet/year).” (*Id.*)

The RDEIR conceded that “Overall, Alternative 2 would have less water quality impacts than the revised Project, because it involves fewer facilities and less diversions of water from the Delta and Delta watershed.” (RDEIR 25-6). The RDEIR also conceded that “Alternative 2 contributes more to improving conditions for biological resources and arresting ecosystem decline than the Revised Project.” (RDEIR 25-7). Finally, it was conceded that the EWC Alternative “would also eliminate the water quality impacts associated with agricultural runoff water from Tulare Late Basin agriculture and areas with drainage constraints in the San Luis Drainage Area. It is thus environmentally superior to the Revised Project with respect to these types of impacts.” (RDEIR Executive Summary, ES-10; 25-18). Ultimately, the DSC did not adopt Alternative 2, claiming that it was “slightly environmentally inferior to the Revised Project primarily because of its impacts on water supply reliability.” (RDEIR 25-17, 18).

The lawfulness of the DSC Delta Plan and the compliance of the Delta Plan EIR are presently in litigation in the Sacramento County Superior Court. FOR is one of the plaintiffs challenging the DSC’s actions under CEQA and the Delta Reform Act. Whether or not the DSC proceeded in the manner required by law when it did not adopt the EWC Alternative is one subject of that litigation. Here, it is inexplicable that the BDCP agencies did not even consider or disclose the EWC Alternative or develop any other alternatives reducing exports for inclusion in the BDCP Draft EIR/EIS and in the draft alternatives to take chapter of the BDCP Draft Plan.

Instead of enthusiastically embracing the duties mandated by our environmental laws to develop and consider a range of reasonable alternatives, the BDCP proponents have concealed or misrepresented reasonable alternatives presented to them. The EWC Responsible Exports Plan has been concealed and ignored. It is excluded from the alternatives chapters in the BDCP Plan and Draft EIR/EIS.

