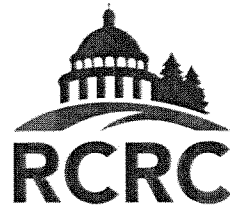


From: Kathy Mannion <kmannion@rcrcnet.org>
Sent: Tuesday, July 29, 2014 12:15 PM
To: BDCP.comments@noaa.gov
Cc: Kathy Mannion
Subject: RCRC BDCP DEIR EIS & IA Comment Letter
Attachments: 2014_BDCP_EIR_EIS Comment_Ltr_07292014.pdf

Attached please find the Rural County Representatives of California (RCRC) comment letter on the BDCP, DEIR/EIS, and the Implementing Agreement.

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BDCP1652



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

July 29, 2014

Mr. Ryan Wulff
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
Transmit via Email: BDCP.comments@noaa.gov

Secretary Sally Jewell
U.S. Department of the Interior
1849 C Street, N.W.
Washington, D.C. 20240

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

RE: Draft Bay Delta Conservation Plan (BDCP), Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and Implementing Agreement (IA)

Dear Mr. Wulff and Secretaries Jewell and Laird:

On behalf of the thirty-four member counties of the Rural County Representatives of California (RCRC), I appreciate the opportunity to provide comments on selected sections of the public review draft of the proposed Bay Delta Conservation Plan (BDCP), the draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS), and the recently released draft Implementing Agreement (IA) for the BDCP.

The draft BDCP has been developed to support issuance of long-term incidental take permits that meet the requirements of Section 10(a)(1)(B) of the federal Endangered Species Act, as well as Section 2800 *et seq.* of the California Fish and Game Code, for certain actions proposed within the statutorily defined Sacramento-San Joaquin Delta (Delta) for the term of fifty years. The BDCP proposes to make physical and operational

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changes to the State Water Project (SWP) including the placement of underground twin tunnels to convey water south of the Delta.

Comment Deadline Extension

In mid-May, RCRC requested a minimum extension of 60 days for responding to the draft BDCP and the DEIR/EIS. The primary reason for this request was the unavailability of the IA. RCRC was therefore appreciative that the comment deadline was extended to July 29 and that the draft IA, also with a July 29 comment deadline, was made available for review. RCRC's comments on the IA can be found in the latter portion of this comment letter.

DEIR/DEIS

RCRC has reviewed the Delta Independent Science Board (DIS Board) comments on the DEIR/EIS for the BDCP dated May 15, 2014. The DIS Board comments can be accessed at: <http://deltacouncil.ca.gov/sites/default/files/documents/files/Attachment-1-Final-BDCP-comments.pdf>

RCRC commends the DIS Board for their work and agrees with many of the Board's observations.

Of particular note are the following DIS Board findings:

- Many of the impact assessments hinge on overly optimistic expectations about the feasibility, effectiveness, or timing of the proposed conservation actions, especially habitat restoration.
- The project is encumbered by uncertainties that are considered inconsistently and incompletely; modeling has not been used effectively to bracket a range of uncertainties or to explore how uncertainties may propagate.
- The potential effects of climate change and sea-level rise on the implementation and outcomes of BDCP actions are not adequately evaluated.
- Insufficient attention is given to linkages and interactions among species, landscapes, and the proposed actions themselves.
- The analyses largely neglect the influences of downstream effects on San Francisco Bay, levee failures, and environmental effects of increased water availability for agriculture and its environmental impacts in the San Joaquin Valley and downstream.
- Details of how adaptive management will be implemented are left to a future management team without explicit prior consideration of (a) situations where adaptive management may be inappropriate or impossible to use, (b) contingency plans in case things do not work as planned, or (c) specific thresholds for actions.
- Available tools of risk assessment and decision support have not been used to assess the individual and combined risks associated with BDCP actions.

These identified flaws get to the heart of RCRC's primary concern – the 50-year permit term, the guarantees proposed to be afforded to the beneficiaries of Conservation Measure 1 (CM1) (Water Facilities and Operation), and the lack of assurances for areas upstream of the Delta and in-Delta as it relates to regional water sustainability, water rights protections, and no negative redirected impacts to the water supply, economy and environment of those areas of the state not party to the BDCP. Please see RCRC's more specific comments elsewhere in this document on this topic.

The DIS Board states:

- Assuming that CMs 2 - 22 will produce the anticipated benefits needed to offset any impacts of BDCP actions is an implausible standard of perfection for such a complex problem and plan (Chapters 11 and 12, Appendix B). RCRC agrees with the DIS Board recommendation to begin with more realistic expectations that include contingency or back-up plans.
- That uncertainties accompany every action and consequence discussed in the DEIR/EIS, and that when combined these uncertainties will be compounded and propagate. The DIS Board has also noted the DEIR/EIS in some instances argues that uncertainty is sufficient reason not to address the issue of uncertainty at all (Chapter 11, Appendix B). RCRC agrees with the DIS Board that if uncertainties are acknowledged the expected outcomes and benefits of BDCP actions will be more realistic. This in turn would provide a more reasoned assessment. Additionally, RCRC agrees with the DIS Board that CMs 2 - 22 should be treated as hypotheses to be tested, or perhaps broadly defined adaptive-management experiments.
- The potential effects of climate change and sea-level rise are underestimated or not adequately considered, and that similar comments could be made about the treatment of other disrupting factors such as floods, levee failure, earthquakes, or invasive species (Chapter 29/Chapter 12, Appendix B). Any one or more of these factors could profoundly alter the desired outcomes of BDCP actions. RCRC believes that all factors that may substantially alter the outcomes of the project must be considered.
- That much of the DEIR/EIS is focused on individual species, particular places, or specific actions that are considered in isolation from other species, places or actions. As a result, potential predator-prey interactions and competition between covered and non-covered fish species are not fully recognized (Chapters 11 and 12, Appendix B). RCRC agrees with the DIS Board that failing to treat the Delta as a fully functioning and integrated ecosystem may well result in overlooking interactions that may enhance or undermine the effectiveness of BDCP actions.

- Although the consequences of BDCP actions undertaken within the Plan Area will extend downstream to affect San Pablo Bay and San Francisco Bay, the draft BDCP and DEIR/EIS do not analyze these potential environmental impacts. Similarly, the draft BDCP and DEIR/EIS do not consider the consequences of levee failures on the effectiveness of BDCP actions or the financial implications of demands for levee maintenance on BDCP implementation (Appendix A). RCRC agrees with the DIS Board that these potential effects merit careful consideration.
- That adaptive management is the key to addressing uncertainties and successfully implementing the BDCP, but details about how it will be designed and implemented are left to a future Adaptive Management Team. The DIS Board also notes that because BDCP CMs will not likely play out as planned, it would be prudent to have contingency plans generally outlined before discovering that actions are not working as expected (Appendix A). RCRC, like the DIS Board, has substantial misgivings about how the proposed adaptive management process, as proposed, will actually function as a key component of the BDCP. As others have commented, the BDCP's monitoring and adaptive management program is at best a plan to have a plan.
- It found no indication that the available scientific approaches to risk assessment were used to any great extent in the development of the BDCP (Appendix A). RCRC agrees with the DIS Board that given the concerns over uncertainty and the proposed adaptive management plan, consideration should be given to incorporating structured decision-making into the process.

Chapter 2. Project Description

The draft BDCP and DEIR/EIS leaves to future EIR's nearly every project element other than CM 1. The decision to perform a project-level analysis of CM 1, but only a program-level analysis of CMs 2 – 22, means that meaningful environmental review and evaluation of CMs 2 - 22 are not available for public review. As a result, the state and federal agencies responsible for approving or disapproving the BDCP and members of the public are unable to evaluate the potential effectiveness and potential impacts.

RCRC agrees with the Yolo County comment letter that projects necessary to implement the BDCP and related environmental effects should receive full environmental review at the outset rather than in separate documents that may follow years or even decades later. In particular, Yolo County notes that CM 2 should be analyzed given the defined nature of certain biological objectives in the BDCP, and the fact that more than enough information exists for the DEIR/EIS to include specific information about potential impacts using the acreage data, modeling, and other presently available information regarding the seasonal floodplain restoration element of CM 2.

The DEIR/EIS states that it generally uses a baseline tied to the 2009 date of publication of the Notice of Preparation (NOP). RCRC agrees with Yolo County that the use of an outdated “existing conditions” baseline is not reasonable for a project like BDCP given its lengthy and complex planning and environmental review process, as well as the overall timeframe for implementation.

The conclusion of the DEIR/EIS that the impacts of CMs 2 - 22 could be “significant and unavoidable” paves the way for BDCP proponents in the future to find that impacts of these CM’s, once they are fleshed out, are “within the scope” of the BDCP program EIR/EIS and thus conclude that meaningful environmental review is not needed. RCRC believes that the state and federal agencies must make a public commitment in the final BDCP and EIR/EIS that this scenario will not occur. The agencies also should pledge that all future EIRs and EISs on individual projects will include a cumulative and synergistic effects analysis to ensure that the potential environmental impacts of the individual projects will be evaluated as integral components of the entire BDCP.

RCRC agrees with the report recently prepared by ARCADIS (ARCADIS Report) for the Delta Stewardship Council (DSC) that states “The presentation of conservation measures 2-22 at the programmatic level contributes to uncertainty in benefits and impacts”, “More detailed planning and design of habitat restoration measures is needed to reduce uncertainties in the plan” and that the “...specific location and design details of restored areas with the ROAs are critical to determination of the ability of these actions to support the ecosystem goals of Water Code 85302(e).” The ARCADIS Report, which is referenced throughout this document, can be accessed at: <http://deltacouncil.ca.gov/sites/default/files/documents/files/Item 9 Attach 1 10.pdf>

Chapter 5. Water Supply

RCRC has significant concerns relating to the potential impacts of the BDCP on the water supply of the Delta counties and areas upstream of the Delta.

As noted in the ARCADIS Report, “Although the BDCP improves water supply reliability for contractors downstream of the Delta, it does not improve reliability for in-Delta users.” RCRC agrees with the ARCADIS Report conclusion that impacts on in-Delta water supplies should be better mitigated.

CM 1 implementation modeling shows that there will be significant operational changes at upstream reservoirs, including Central Valley Project (CVP) owned and operated reservoirs. The BDCP must discuss in detail the nature of these changes and the impacts associated with those changes. Failure to do so prevents adequate consideration of the environmental impacts in the DEIR/EIS.

As this drought year has shown, the approach to the operations of the CVP and the SWP needs to be modified to ensure a stable supply of water is maintained in the reservoirs that feed into the CVP and SWP in order to meet the needs of Northern

California while also serving export interests and meeting requirements in the Delta. A commitment by state and federal agencies that operations will be modernized to accomplish this balance is vital.

The ARCADIS Report notes in the Key Findings “While the BDCP can contribute to a more reliable water supply for south-of-Delta contractors, the combined diversions of the BDCP’s tunnels and the re-operated south Delta diversions are insufficient to fully meet demand. Because Delta diversions will not fully meet existing and future demands, it will be necessary for Delta water users to promote statewide water conservation, diversify their local water supplies, and to improve water use efficiency.”

The DEIR/EIS does not consider future water demands of water users north of the Delta. This is a major flaw as population is expected to increase in a number of counties north of the Delta during the proposed 50-year permit term. (See California Department of Finance population projections July 1, 2010-2060 at: <http://www.dof.ca.gov/research/demographic/reports/projections/P-1/>) RCRC believes that it is therefore reasonably foreseeable (changed circumstance) that water demand will increase north of the Delta as a result of this population growth.

California water law specifically recognizes the prior right of communities in the areas of origin/counties of origin to water currently being exported when needed to adequately supply the beneficial needs of those areas (See Water Code Sections 10505, 10505.5, 11460, 11463, 11128, and 12200-12220). The ARCADIS Report comment noted above highlights the importance of the DEIR/EIS analyzing future water demands in the areas of origin and evaluating the BDCP’s potential effects on the future water supply and water reliability of upstream water users. This key analysis must not be deferred as an indirect project impact. The BDCP must also clearly state that future BDCP implementation and CVP and SWP operations will not negatively impact upstream and in-Delta senior water rights and area-of-origin water rights.

Please also see RCRC’s comments elsewhere dealing with this specific subject.

Chapter 6. Surface Water

The construction of the facilities proposed by the draft BDCP will change SWP and CVP operations, which in turn will affect flow in the Delta and areas upstream of the Delta. The DEIR/EIS appears to assume that the changed operations of the SWP and CVP will not impact the operation of facilities owned and operated by other water right holders, and that the surface waters of other water rights holders will also be unaffected. RCRC believes that this assumption is likely to be incorrect and that the DEIR/EIS should analyze this very real potential.

Comments on the BDCP and DEIR/EIS submitted by the Central Valley Flood Protection Board (CVFPB) point out that BDCP documents should properly reference

the CVFPB as the non-federal sponsor for any project proposed to modify a State Plan of Flood Control (SPFC) facility. RCRC supports the CVFPB recommendations that:

1. Any proposed project that can affect a SPFC facility should be approved by the CVFPB either under its permitting authority or in conjunction with its duties as the non-federal sponsor for levee modification projects submitted to the U.S Army Corps of Engineers (USACE).
2. Implementation of the BDCP should include CVFPB review and concurrence in BDCP project plans.
3. CVFPB staff should be part of any design review or peer review panel that may be assembled to discuss design criteria for conveyance facilities.

While Chapter 6 of the DEIR/EIS discusses how the BDCP and the Alternatives may affect levees, and levees are discussed in other parts of the DEIR/EIS, RCRC believes that levees are of such importance that a chapter devoted to levees would greatly improve the DEIR/EIS.

Chapter 7. Groundwater

The Delta counties are rightly concerned about the impact of construction activities on both municipal and agricultural water supplies. RCRC does not believe that a proposed impact of ten years or more should be characterized as “temporary”.

The DEIR/EIS described groundwater impacts are primarily due to construction dewatering activities. The DEIR/EIS notes that some well yields may be affected substantially and shallow agricultural or domestic wells “may not be able to support existing land uses” while dewatering is occurring. The effects are likely to vary depending on aquifer and location. RCRC believes that the potential impacts should be more specifically described on that basis.

The development of mitigation measures for the loss of municipal and agricultural water supplies should be jointly developed with the impacted individuals and entities to ensure all issues are addressed.

Chapter 8. Water Quality

The DEIR/EIS states that water quality conditions will be degraded in the western and central Delta. This is inconsistent with the Delta Reform Act which calls for the improvement of water quality and the protection of beneficial uses (Water Code Section 85302 (d)(3)).

RCRC notes that the ARCADIS Report lists as a Key Concern that “Water quality impacts are compared to SWRCB water quality objectives with little regard to specific water quality needs of aquatic species of concern” and “Water quality impacts to in-

Delta users from a variety of causes (e.g., impacts from restoration measures, altered mixing, and new constituents of concern) are not adequately mitigated.”

RCRC concurs with the ARCADIS Report recommendation that specific, feasible and enforceable mitigation measures are merited for significant impacts to water quality.

Chapter 11. Fish and Aquatic Resources

Habitat restoration is being heavily relied upon to compensate for a variety of negative impacts related to CM 1, but it must be acknowledged that any positive benefits of habitat restoration are highly uncertain. Construction and flow operations will have immediate impacts, while habitat restoration benefits, if any, may not become evident for a decade or more.

Please see RCRC’s comments pertaining to Sacramento River Winter Run and Spring Run Chinook Salmon under Chapter 5, Effects Analysis.

Chapter 13. Land Use

Delta counties are concerned about the impact the BDCP will have on existing Delta communities. This impact goes beyond the creation of the physical structures (CM 1) as proposed, and includes the proposed habitat creation and restoration measures. The BDCP would permanently alter the rural/agricultural land use pattern for which the Delta is known, yet there is no analysis of the potential impact of the BDCP on existing city and county General Plans and potential constraints on future local government projects and activities.

CM 1 construction would have numerous negative impacts on Delta residents and visitors from construction activities including construction noise, traffic, road relocations, effects on utilities, and an increase in safety hazards and visual impacts, among other impacts noted elsewhere.

RCRC agrees with the comments of the Delta Protection Commission (DPC) that the draft BDCP overwhelmingly focuses on one of the co-equal goals (a more reliable water supply) with only a distant secondary focus on the other co-equal goal (protect, restore and enhance the Delta ecosystem) and that the draft BDCP manifests an almost complete disregard for “the protection and enhancement of the unique cultural, recreational, natural resource and agricultural values of the Delta as an evolving place” as required by the Delta Reform Act (Water Code Section 85020).

The ARCADIS Report states “The BDCP does not adequately address its contribution (conveyance and ecosystem restoration) to cumulative impacts to agriculture, recreation, community character, and historical and archaeological resources in the Delta.” RCRC agrees with the ARCADIS Report recommendation that “the BDCP should more thoroughly identify impacts to agriculture, recreation, community character,

and historical and archaeological resources in the Delta, and offer specific, feasible, and enforceable mitigation measures.”

The DPC has suggested that for community and regional impacts the BDCP proponents could utilize the existing Delta Investment Fund established by the Delta Reform Act (Public Resources Code Section 29778.5) to advance regional economic sustainability and enhance Delta communities. Additionally, the DPC suggests that for individuals directly impacted by BDCP construction, there be established a simple claims process to address economic damages related to tunnel construction activity modeled after the British Petroleum Deepwater Horizon Disaster Victim Compensation Fund. The proposed “Delta Compensation Fund”, funded by the BDCP proponents, would be administered by an impartial and independent third party. RCRC urges serious consideration of the DPC suggestions on mitigation.

Chapter 14. Agricultural Resources

The DIS Board noted in its review of Chapter 14 that the analysis in the DEIR/EIS is “mostly an acreage analysis, and omits most relevant economic analysis.” The DIS Board goes on to state that “Quite a bit of economic analysis capability is available for agricultural land and economic issues in the Delta, Yolo Bypass, and the Central Valley – very little of it has been used in the DEIR/EIS” and “Even though specific locations for habitat restoration have not been specified, it is still possible to come up with a reasonable range of likely agricultural and agricultural economic impacts.” Given that farming drives the economic engine of the Delta, RCRC advocates that the analysis of CM 2 and other CMs that will impact agriculture not be deferred for consideration to some uncertain time in the future.

The draft BDCP proposed mitigation to reduce the effects of BDCP implementation on agricultural resources in the Delta is inadequate. A three part mitigation measure (Mitigation Measure AB-1) is proposed as follows:

- Develop an Agricultural Lands Stewardship Plan (ALSP) to Maintain Agricultural Productivity and Mitigate for Loss of Important Farmland and Land Subject to Williamson Act Contracts or in Farmland Security Zones;
- BDCP proponents to comply with applicable provisions of Government Code Sections 51290-51295 with regard to acquiring land subject to Williamson Act contracts; and,
- Consideration of an Optional Agricultural Land Stewardship Approach or Conventional Mitigation Approach.

The estimated land required for the BDCP with a breakdown of the estimated Important Farmland follows. The DEIR/EIS Important Farmland includes Agricultural Land, as defined in CEQA, plus Farmland of Local Importance. It does not include grazing land as Important Farmland.

Estimated Land Required for BDCP:

CM 1: 5,000 acres (permanent); 1,300 acres (temporary)
CM 2: 17,000 acres (periodic inundation) (Yolo Bypass)
CM 3: 70,000 acres (permanent restrictions)
CM 4-CM 10: 83,800 acres (permanent)

Estimated Important Farmland Required for BDCP:

CM 1: 5,000 acres (permanent); 1,300 acres (temporary)
CM 2: 17,000 acres (periodic inundation) (Yolo Bypass)
CM 3: 43,200 acres (permanent restrictions)
CM 4-CM 10: 40,000 acres (permanent conversion)

In addition to the conversion of agricultural land to habitat, other impacts on agricultural activities in the Delta include: disruption of necessary infrastructure such as irrigation and drainage facilities, as well as access roads and electrical facilities; changes in groundwater elevation; changes in water quality; reduction in agricultural employment; and, a decrease in total agricultural production in the Delta.

Identified shortcomings in the DEIR/EIS include the fact that the DEIR/EIS does not propose agricultural mitigation measures for temporary and short-term effects or for periodic effects. As noted elsewhere, impacts that may last 10 or more years are not "temporary". This deficiency must be remedied.

As part of the proposed mitigation strategy, BDCP proponents propose to work with counties to expand Williamson Act authorized uses to include open spaces and habitat lands. State Williamson Act subvention payments to local governments were suspended in the 2009-10 State Budget and Williamson Act counties are now bearing 100% of the financial burden of Williamson Act and Farmland Security Act contracts. Many of the impacted counties are struggling financially and no longer accept new contracts, while others are considering cancelling existing contracts. What, if anything, is being proposed to defray Delta county costs should they agree to the proposed expansion of Williamson Act authorized uses?

The DEIR/EIS concludes that the environmental impacts on agricultural resources will remain significant and unavoidable because:

- The BDCP would require the conversion of substantial amounts of Important Farmland and land subject to Williamson Act contracts or in Farmland Security Zones;
- Conversion or preservation by means of acquiring agricultural land conservation interests may not avoid a net loss of Important Farmland and land subject to Williamson Act contracts or in Farmland Security Zones; and,
- The proposed Optional Agricultural Land Stewardship Approach does not focus principally on physical effects.

