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Sent: Tuesday, July 29, 2014 2:13 PM
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Michael Tubbs; Moses Zapien; Paul Canepa; Robert Granberg; Steve Chase
Subject: Stockton's Comments on BDCP and Associated Draft EIR/EIS
Attachments: JML Final Comments BDCP & DEIR.pdf; Stockton Comments on BDCP - Exh A.pdf

Mr. Wulff,

Attached please find City of Stockton's pdf document re the above-referenced matter along with Attachment A to the document.

If you have any questions, feel free to contact our office.

Thank you,

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July 29, 2014

VIA E-MAIL ONLY

National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Attn: Ryan Wulff

Re: City of Stockton's Comments on Draft BDCP and Associated Draft EIR/EIS

Dear Mr. Wulff:

The City of Stockton (City) appreciates the opportunity to comment on the Draft Bay Delta Conservation Plan (BDCP or Plan) and associated Draft Environmental Impact Report/ Environmental Impact Statement (DEIR/EIS).

I. INTRODUCTION

The BDCP threatens to have significant impacts that would adversely affect the City and its residents. Water quality is the most significant concern that has not been adequately addressed in the DEIR/EIS. In fact, there is no analysis at all of potential changes to water quality at the location of the drinking water intake owned and operated by the City. Instead, the DEIR/EIS defers analysis of this issue to the future and even then the proposed mitigation does not avoid significant and unavoidable impacts and improperly shifts the burden to the impacted party to mitigate on their own through potential costly treatment measures. Other areas of significant concern include impacts to City roads, and economic and socioeconomic impacts, including impacts to its agricultural processing industry.

The City's Municipal Utilities Department provides potable drinking water to more than 47,000 residential, commercial, and industrial customers with a service population of more than 170,000. This accounts for approximately 55 percent of the Municipal and Industrial (M&I) potable water demand of the Stockton Metropolitan Area. One of the sources of water for treatment and delivery to City customers is the Delta Water Supply Project (DWSP) Water Treatment Plant (WTP). The DWSP WTP is a 30 million gallon per day facility that derives its source water from the Sacramento/ San Joaquin Delta at the southwest tip of Empire Tract under a water right issued by the State Water Resources Control Board (SWRCB).

In addition to providing potable drinking water, the City owns, operates, and maintains wastewater collection and treatment to the entire Stockton Metropolitan

Area population of 300,000 under a National Pollutant Discharge Elimination System (NPDES) permit issued by the Central Valley Regional Water Quality Control Board (Central Valley Regional Board). Wastewater treatment and discharge to the San Joaquin River has been, and will continue to be, an essential service to the residential, commercial, and industrial sectors of the City.

The City is greatly concerned with the current BDCP because of the uncertainty as to the future water quality and water supply impacts resulting from the yet-to-be-determined operation of the BDCP. Our review of the BDCP DEIR/EIS has revealed numerous critical flaws and omissions that must be brought to the attention of the BDCP project proponents and agencies with permitting authority or responsibility under the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). Any BDCP project alternative that could harm the City's ability to serve its customers or increase costs to City residents is of concern to the City. As such, it is critical that any and all adverse impacts affecting the City be studied, acknowledged, and avoided or mitigated consistent with applicable law.

Unfortunately, the BDCP is so convoluted and compromised by omissions of analysis, lack of relevant data, and inaccuracies in the modeling of the BDCP's impacts in key areas, that the City is unable to adequately assess the Plan's impacts to its operations or the Delta ecosystem. As set forth in detail in these comments, the City's review of the BDCP and DEIR/EIS has revealed significant problems with the documents that render them inadequate under CEQA and NEPA. The City's comments on the BDCP and DEIR/EIS focus on issues of greatest concern and most immediate impact to the City and its residents. However, given the BDCP's enormous cost to state citizens, and the many unknowns about whether it will actually achieve any of the ecosystem benefits touted by its proponents, the City also is concerned about the Plan's ability to function as a habitat conservation plan (HCP) and, as a result, whether any of the significant environmental impacts and staggering costs can be justified.

For the BDCP and DEIR/EIS we first summarize our major concerns with these documents. We then present our detailed comments on the BDCP and DEIR/EIS. Because the BDCP states that the Plan and supporting documents are incorporated in the DEIR/EIS, our comments on the BDCP should also be considered comments on the DEIR/EIS. The City further adopts and incorporates by reference comments on the BDCP and DEIR/EIS of other affected Delta communities, affected Northern California water rights holders, and publicly owned treatment works, including comments of the Central Valley Clean Water Association, the Sacramento County Regional Sanitation District, Sacramento County, and North State Water Alliance.

II. SUMMARY OF MAJOR CONCERNS

The City's review of the BDCP and DEIR/EIS is guided by several overarching principles. At a minimum, any ecosystem restoration and water supply reliability plan for the Delta and areas of the Delta must:

1. Not cause unmitigated adverse environmental, economic, or social impacts to the City;
2. Respect water rights and area-of-origin protections;
3. Have no adverse effect on the existing and future operations of the City's water supply and wastewater treatment facilities;
4. Fully mitigate any other adverse impacts of water conveyance facilities construction within the City, with City staff fully involved in the mitigation process for impacts within the City;
5. Protect the City's governmental prerogatives in the areas of its local land use authority, tax and related revenues, public health and safety, economic development, and agricultural stability;
6. Ensure voting membership for elected representatives from the City in BDCP governing bodies with decision-making authority in areas affecting City resources;
7. Be consistent with the City's land use planning and economic development;
8. Commit financial resources to maintain and enhance vital transportation, flood control infrastructure, and emergency response resources within the City and the Delta;
9. Accurately and objectively account for the multiple causes of the Delta's decline and not simply focus on one or a limited number, or rely on selective data or interpretations biased in favor of the BDCP.

To date, the BDCP and project proponents have failed to assure the City that these vital interests and concerns will be protected.

The residents and communities in the Delta will bear a disproportionate burden of the BDCP's numerous significant environmental and economic impacts. Substantial questions have been raised by many others about the BDCP's ability to meet any of the required standards for protecting listed species, and the BDCP depends on uncertain and speculative funding sources, which may result in those not benefiting

from BDCP's assurances having to shoulder some of the costs of the BDCP. As such, it does not meet any of the essential criteria for approval of an HCP or Natural Communities Conservation Plan (NCCP).

The DEIR/EIS fails to summarize and convey information essential to the understanding of project impacts in a manner reasonably calculated to inform the readers and decision-makers, in violation of NEPA's readability requirement and in violation of CEQA's requirement that the document adequately inform the public of the scope and potential impacts of a proposed project. The DEIR/EIS fails to provide sufficient, meaningful information about many of the project's adverse effects and it omits consideration of many impacts of concern to the residents of the City. The DEIR/EIS also fails to adequately address or answer basic questions regarding short- and long-term mitigation for many impacts of the BDCP. The most significant issues to the City include the following:

A. Effects on the City's Water Supply

Despite the fact that the City provided detailed comments on the Notice of Preparation (NOP) requesting evaluation of the BDCP effects on the DWSP WTP, the DEIR/EIS omits any analysis of the effects on this critical drinking water source for the City's residents. (See May 30, 2008 letter from City of Stockton to Delores Brown re: City of Stockton Comments on Notice of Preparation of an EIR/S for the Bay Delta Conservation Plan (attached hereto as Exhibit A).) As noted in our comments on the NOP, the City is concerned about the BDCP's effect on flows in the San Joaquin River and water quality. Information in the DEIR/EIS indicates the BDCP will substantially reduce flows in the San Joaquin River in the area of the City's intake and wastewater discharges. Reduced flows could adversely affect the quality of the City's drinking water supply.

The DEIR/EIS fails to recognize the City as a major diverter of water for municipal and industrial uses whose supply could be at risk by the BDCP. Because of the DEIR/EIS's lack of water quality analysis in the vicinity of the City's drinking water intake on the San Joaquin River, it is clear that the Department of Water Resources (DWR) and BDCP proponents cannot adequately predict the impacts of the BDCP to the City's drinking water supply.

The state policy regarding the Delta, as set forth in the Delta Reform Act of 2009, states, "it is the intent of the Legislature . . . to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (Wat. Code, § 85001(c).) The state's co-equal goals for the Delta call for "providing a more reliable water supply for California." (Wat. Code, § 85054.) This includes areas in the Delta, and reliable water supplies for all beneficial uses, including cities and farmlands. The BDCP and

DEIR/EIS fail to demonstrate the protection or enhancement of the quality of water supply from the Delta for users other than the BDCP proponents. It appears that rather than provide a thorough assessment of impacts and meaningful mitigation, the proponents have elected to declare impacts significant and unavoidable, with the intent of relying on a statement of overriding considerations, and leave impacted users to deal with the consequences. It is clear from the DEIR/EIS that the preferred project alternative serves only to satisfy the needs of the project proponents.

The DEIR/EIS states: "DWR's fundamental purpose in proposing the BDCP is to make necessary physical and operational improvements to the SWP system in the Delta to restore and protect ecosystem health, water supplies of the SWP and CVP south-of-Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligations." What defines water quality within a stable regulatory framework? Is this water quality in the water supplies of the State Water Project (SWP) and Central Valley Project (CVP) south-of-Delta? What about existing in-Delta users? Viability of the City's DWSP was due in part to demonstrating through the CEQA process that its Delta diversion would not significantly impact other Delta users and to provide mitigation to protect the ecosystem. The BDCP and DEIR/EIS fail to provide a similar demonstration.

The DEIR/EIS also acknowledges:

The water rights of the SWP and CVP are conditioned by the State Water Board to protect the beneficial uses of water within the Delta under each respective project's water rights. In addition, under the Coordinated Operations Agreement, DWR and the United States Bureau of Reclamation (USBR) coordinate their reservoir releases and Delta exports to enable each project to achieve benefit from their water supplies and to operate in a manner protective of beneficial uses as required by their water right permits. It is the responsibility of the SWP and CVP to meet these obligations regardless of hydrologic conditions.

The Governor, Secretary of Interior, and policy leaders in the BDCP process have emphasized that the BDCP will not redirect any impacts to those in the Delta watershed. In their July 25, 2012 statement, the Governor and Secretaries confirmed that "State and U.S. governments will make sure implementation of BDCP will not result in adverse effects on the water rights of those in the watershed of the Delta, nor will it impose any obligations on water users upstream of the Delta to supplement flows in and through the Delta." The City is neither a party to nor a direct beneficiary of the BDCP, thus there must be no resultant impacts to its water supplies, economy, and environment.

For all these reasons, it is imperative the analysis of BDCP impacts demonstrates that beneficial uses have been protected. The DEIR/EIS fails to meet this objective.

The BDCP has the potential to affect the City's water supply and make it less reliable, but the DEIR/EIS does not provide information sufficient to evaluate this critical impact.

As noted, the water required to meet more than half of the Stockton Metropolitan Area's M&I potable water demand is supplied by two primary sources: (1) the City's DWSP WTP, which derives its source water from the Sacramento/San Joaquin Delta at the southwest tip of Empire Tract, and (2) contracted surface water and groundwater supplied by the City as well as the California Water Service Company (CalWater) and San Joaquin County (County). As stated above, the BDCP's potential to degrade the quality of the City's Delta drinking water source most certainly will have a significant negative effect on the ability of the City, CalWater, and the County to meet the potable water needs of Stockton residents and businesses. The only likely source alternative will be groundwater pumping from a state-declared critically overdrafted basin that also has elevated levels of Total Dissolved Solids (TDS).

The reason the City pursued contracted surface supplies and the DWSP was to protect the groundwater basin from further overdraft and reduce the amount of TDS that eventually is discharged to the Delta. If the DWSP supply water is decreased, the resulting TDS increases at the City's wastewater treatment facility will impact strides made in pollution prevention measures to limit salt discharged to the Delta. The impact could be far reaching by decreasing allocations of salt loading provided to industry thus reducing the City's ability to attract, grow, and encourage industry.

Groundwater has and will continue to be an integral part of the City's drought water supply. Efforts to protect the groundwater basin over the past 30 years have resulted in increases in groundwater levels on the order of 30 feet. If groundwater becomes a major source of supply to mitigate the project's impacts, then the Stockton Metropolitan Area will once again be negatively impacted by declining groundwater levels, saline intrusion, and increased TDS discharges to the Delta.

B. Effects on the City's Wastewater Treatment Facility Operation

Reduced San Joaquin River flows also could have a significant impact on the City's operation of its wastewater treatment facility if flows necessitate higher levels of treatment. Many of the City's NPDES permit requirements are tied to San Joaquin River conditions and the Delta ecosystem. Changes in those conditions can affect the City adversely by leading to modifications of the permit that impose costs on its residents that would not otherwise occur. In addition, significant environmental effects can result from construction and operation of new or modified facilities to meet permit requirements. The DEIR/EIS fails to adequately characterize water quality impacts to the City and suggests that any future impacts will have to be dealt with by the injured party within its own treatment plant process. This approach improperly

defers analysis of possibly significant adverse effects caused by the BDCP, and shifts the burden of mitigating them to the City and other non-BDCP participants.

C. Other Significant Impacts

Any adverse effects that require new water treatment processes or facilities, or new water supplies, will have an adverse economic impact on the City and its residents. The BDCP's significant adverse effect on Delta agriculture will also have substantial adverse socioeconomic impacts within the City, due to the resulting impact on agricultural processing jobs, and overall economic impacts from loss of farmworker jobs, farm income, and impacts on City businesses that depend on spending resulting from the Delta agricultural economy. Reduced economic activity will result in empty buildings, decreased investment, reduced tax revenues (which will further constrain the City's ability to maintain public infrastructure), and therefore physical blight through deterioration of physical and aesthetic conditions within the City.

The City also is concerned that the BDCP intends to shift the costs of mitigating adverse impacts of the existing South Delta and massive new North Delta diversions to the general public, instead of the water exporters and south of Delta residents whose diversions have contributed to the decline of aquatic species in the Delta and who, exclusively, will benefit from the water supply. Last, but not least, BDCP construction is likely to have significant adverse effects on City roads that are not adequately mitigated in the DEIR/EIS. Despite these impacts, the BDCP's governing framework does not give a meaningful voice to affected local governments, including the City.

As summarized above and discussed in more detail below, the proposed BDCP would have significant adverse effects on the City and its environment. The City therefore cannot and does not support the proposed BDCP.

III. COMMENTS ON THE BDCP

A. The BDCP Fails to Satisfy HCP and NCCP Requirements

The overwhelming evidence demonstrates the BDCP does not meet the criteria for issuance of incidental take authorization under the federal Endangered Species Act (ESA) or NCCPA because it will not adequately protect listed and threatened species and may, in fact, reduce the likelihood of their survival and recovery in the wild.¹

¹ See, e.g., May 15, 2014 Comments on BDCP of Delta Independent Science Board; February 26, 2014, letter to Charlton H. Bonham, Director, California Department of Fish and Wildlife, from California Advisory Committee on Salmon and Steelhead Trout Re: Recommendation to Deny Incidental Take Permit and Natural Communities Conservation Plan for Bay Delta Conservation Plan;

Further, despite the myriad of financial sources discussed in the BDCP, it is clear that there is not adequate funding available to implement its terms and conditions as required by the ESA.

1. The BDCP Does Not Contain Sufficient Information About Necessary Conservation Measures

In order for incidental take coverage to be authorized under the federal ESA, United States Fish and Wildlife Service (USFWS) and National Marine Fisheries Service (NMFS) both (as applicable) must find that a HCP will: (1) "to the maximum extent practicable, minimize and mitigate" the impacts of the taking; and (2) "not appreciably reduce the likelihood of the survival and recovery of the species in the wild." (16 U.S.C. §§ 1539(a)(2)(B)(ii), (a)(2)(B)(iv).) Similarly, for the California Department of Fish and Wildlife (CDFW) to approve an NCCP, the NCCPA requires, among other things, that:

- "The plan contains specific conservation measures that meet the biological needs of covered species and that are based on the best available scientific information regarding the status of the covered species and the impacts of the permitted activities on those species." (Fish & G. Code, § 2820(a)(6).)
- "The plan provides for the protection of habitat, natural communities, and species diversity on a landscape or ecosystem level through the creation and long-term management of habitat reserves or other measures that provide equivalent conservation of covered species appropriate for land, aquatic, and marine habitats within the plan area." (Fish & G. Code, § 2820(a)(3).)

These standards necessarily require that a proposed HCP/NCCP contain well-defined and specific conservation actions. Similarly, NEPA and CEQA require that the project analyzed in an environmental document be sufficiently well-defined to inform the public of what is proposed and of the projected environmental effects of implementing that project. Yet the BDCP and DEIR/EIS project description do not provide enough information about the project or its operations to satisfy ESA, NCCPA, or CEQA and NEPA standards, let alone to allow the City to evaluate effects on the City's operations or the environment. For example, nearly every project element other than the North Delta intake and tunnels is subject to further development following later EIRs, more studies, or uncertain adaptive management. There is no description of how SWP and CVP facilities upstream of the Delta actually would operate with the proposed tunnels. The "high outflow" scenario not only relies

on speculative water transfers, but also assumes that the CVP would accrue undefined obligations to the SWP under the Coordinated Operations Agreement. (BDCP, p. 3.4-19.) On the critical issue of what streamflows will be required for the BDCP to be permitted, the studies that would drive the decision tree's results "have not yet been determined." (BDCP, p. 3.4-32.) The structure and operation of the proposed Implementation Office and related groups, councils, and teams is unclear. (BDCP, ch. 7.) Moreover, Conservation Measures (CMs) 2 through 22 are discussed only at a programmatic level, leaving the City to guess at what the impacts of those measures might be.

This lack of information prevents the BDCP from being adequate to support the issuance of any permits under the ESA and NCCPA. The available information about the decision tree would not support USFWS, NMFS, or CDFW making the specific determinations concerning the effect of the BDCP on the covered species under section 10 of the ESA and Fish and Game Code section 2820 that would be required for these agencies to issue the necessary permits for the North Delta diversions. For example, given that even the studies to support the decision tree are not defined, CDFW could not determine that the outcome of the decision tree would be a "specific conservation measure that meets the biological needs of the covered species and that is based on the best available scientific information," as required by Fish and Game Code section 2820(a)(6).

Similarly, the fact that the BDCP does not even identify the studies that will be necessary to resolve the decision tree causes the DEIR/EIS to be inadequate under NEPA and CEQA. The DEIR/EIS indicates that not even the hypotheses that would drive the decision tree studies have been determined, stating that the decision tree's first step would be as follows: "Clearly articulate scientific hypotheses designed to reduce uncertainty about what outflow criteria are needed" (DEIR/EIS, p. 3-207.)

The DEIR/EIS attempts to navigate the decision tree's uncertainties by including an analysis for each of the decision tree's four possible outcomes. This expansion of the possible proposed-project scenarios only creates confusion, however, because the DEIR/EIS also says that the four decision-tree/Scenario H outflow regimes could be combined with any of the project alternatives, not just the proposed-project Alternative 4, to create a "hybrid alternative." (DEIR/EIS, p. 3-202.) The DEIR/EIS therefore presents a range of 36 different possible action alternatives, many of which are only addressed by the DEIR/EIS as being within "the bookends created by the entire range of alternatives addressed in the EIR/EIS." (DEIR/EIS, p. 3-202.) This application of the decision tree to expand the DEIR/EIS's scope means that the document actually does not identify for the public what project may actually be implemented.

Based on the information in the BDCP and DEIR/EIS, the City can only assume the ESA and NCCP permits for the BDCP will include the operational and flow criteria related to the high-outflow scenario in the application of the H4/high outflow standards as the default terms for BDCP operations, subject to possible change under the decision tree. (BDCP, p. 3.4-24.) The BDCP contains no meaningful description of how the H4/high outflow scenario would be implemented. Concerning the Delta outflow criteria that would be implemented in the H4/high outflow scenario, the BDCP states only the following:

March-May outflow targets are achieved using flow supplementation provided through an approved water transfer, by limiting CVP and SWP Delta exports to a total of 1,500 cfs, and finally, if these two water sources have been utilized, through releases from Oroville, with subsequent appropriate accounting adjustments between the SWP and the CVP. (BDCP, p. 3.4-19.)

Other than the 1,500 cfs limitation that could be imposed on CVP/SWP Delta exports, none of these key means of implementing the H4/high outflow scenario appears to be defined anywhere in the BDCP documents. Those documents do not identify the source and amounts of any transfer water that would contribute to meeting the H4/high outflow requirements. It is impossible to determine what resources could be affected by the water transfers that apparently would be necessary to implement the decision tree variant that is the most likely to be reflected in any ESA or NCCPA permits that would be issued in the near term.

Finally, even if it were possible for the decision tree to support adequate environmental analysis at this time, the BDCP appears to indicate that the decision tree's results could be substantially revised as a result of periodic review. (BDCP, pp. 3.4-354 to 3.4-355.) "Every 5 years, water facility operating criteria will be comprehensively reevaluated as part of the program-level assessment conducted by the Implementation Office, as described in Chapter 6, Section 6.3.5, Five-Year Comprehensive Review." (BDCP, p. 3.4-354.) While this portion of the BDCP points to Section 6.3.5 as explaining how this comprehensive review of operating criteria would occur, Section 6.3.5 actually contains no detail on that subject. (BDCP, p. 6-27.) Moreover, it is unclear what role stakeholders such as the City will have in the process of reviewing and adopting any revised operating criteria. The BDCP must be revised to ensure that any revised operating criteria are subject to public review and comment pursuant to NEPA and CEQA.

