

**From:** Jon Rubin <Jon.Rubin@sldmwa.org>  
**Sent:** Tuesday, July 29, 2014 2:26 PM  
**To:** BDCP.COMMENTS@NOAA.GOV  
**Cc:** Craig Manson (cmanson@westlandswater.org); Ren\_Lohofener@fws.gov; William W. Stelle (will.stelle@noaa.gov) (will.stelle@noaa.gov); Bonham, Chuck@Wildlife; Murillo, D@USBR; Cowin, Mark@DWR; Beck, Jim; jduerig@zone7water.com; bgoldie@valleywater.org; jkightlinger@mwdh2o.com  
**Subject:** Draft Bay Delta Conservation Plan and Associated Draft Environmental Impact Report/Environmental Impact Statement  
**Attachments:** Comments of SLDMWA and WWD on Draft BDCP and Draft EIR\_S (7 29 14).pdf

Mr. Wulff:

The San Luis & Delta-Mendota Water Authority and Westlands Water District attach a single document that includes a comment letter and attachments. The index and DVD referenced in Attachment 4 have not been including in this electronic transmission. Hard copies of the letter and attachments, including the index and DVD, will be hand delivered to you this afternoon.

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BDP 1665

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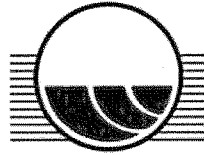
BDCP1665

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July 29, 2014

**BY EMAIL AND HAND DELIVERY**

Bay Delta Conservation Plan Comments  
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Mr. Wulff:

The San Luis & Delta-Mendota Water Authority and Westlands Water District (collectively the "Participating CVP Public Water Agencies") support the efforts to develop the Bay Delta Conservation Plan ("BDCP") and Environmental Impact Report and Environmental Impact Statement ("EIR/S") and commit to continued collaboration toward finalizing these important documents. The extraordinary efforts of the California Department of Water Resources ("DWR"), California Department of Fish and Wildlife ("Cal. DFW"), United States Bureau of Reclamation ("Reclamation"), United States Fish and Wildlife ("USFWS"), and National Marine Fisheries Service ("NMFS") to prepare these documents will help to ensure California's continued prosperity and environmental health into the 21<sup>st</sup> Century. The State's Water Action Plan adopts a comprehensive approach to meeting the critical, future water needs of both the economy and the environment. But, importantly, the timely and successful implementation of the BDCP will provide the essential infrastructure and management strategy that are necessary to make the fulfillment of those needs possible.

At the outset, the Participating CVP Public Water Agencies commend DWR for preparing the thorough Draft BDCP. Without action, the widespread, devastating adverse impacts caused by insufficient water supplies will continue to be suffered by the communities served by the Participating CVP Public Water Agencies, including those with significant minority and low-income populations. Also, without action, the health of the San Francisco Bay/Sacramento-San Joaquin River Delta ("Bay-Delta") ecosystem will continue to decline. Simply put, a comprehensive, integrated approach, like that described in the Draft BDCP and analyzed in the

Draft EIR/S, is an important step towards replacement of the current, failing water supply and environmental management strategies.

The BDCP is a multi-species conservation plan that proposes a comprehensive set of solutions at the scale of the landscape, natural communities and individual species. The BDCP's extensive series of conservation measures will ensure that the BDCP, to the maximum extent practicable, minimizes and mitigates potential take of protected species, as well as other covered species, and will not appreciably reduce the likelihood of their survival and recovery. The BDCP will also provide for the conservation of those species. While providing those protections and benefits to the covered species, the BDCP will enable projects that restore and protect water supply – provide water supplies at least to those levels projected under State Water Resources Control Board Decision 1641 (“D-1641”), if not more, and up to full contract amounts when hydrology allows, in addition to water available to the Participating CVP Public Water Agencies under transfer and exchange agreements (collectively “transfer and exchange water”) or available from Reclamation, pursuant to section 215 of the Reclamation Reform Act of October 12, 1982 (Public Law 97-293), as non-storable or unmanageable flood flows of short duration (“Section 215 water”).

The Draft BDCP is consistent with and responsive to what the California State Water Resources Control Board concluded in its 2010 Flow Criteria Report: “Best available science supports that it is important to directly address the negative effects of other stressors, including habitat, water quality, and invasive species, that contribute to higher demands for water to protect public trust resources. The flow criteria highlight the continued need for the BDCP to develop an integrated set of solutions and to implement non flow measures to protect public trust resources.” (2010 Flow Criteria Report, p. 4.)

The BDCP's comprehensive set of solutions is also consistent with recommendations of the Delta Vision Program and the Delta Reform Act, both of which recommend simultaneously: (1) restoring a healthy ecosystem in part through creating large areas of habitats within the Delta, and (2) improving the quantity and reliability of water supply to meet the needs for reasonable and beneficial use in part through new and improved infrastructure. (See, e.g., Delta Vision, Blue Ribbon Task Force, Our Vision for the California Delta, pp. 12, 14; Wat. Code, §§ 85302, 85304.)

The result – the Draft BDCP presents a plan that will benefit water supply and the health of the Bay-Delta. Its actions exceed the criteria for issuance of permits under the federal Endangered Species Act (“ESA”) and the California Natural Community Conservation Planning Act (“NCCPA”). Likewise, the Draft EIR/S thoroughly considers and adequately addresses the potential environmental concerns, as required and in satisfaction of the California Environmental Quality Act (“CEQA”) and the National Environmental Protection Act (“NEPA”). For those reasons as well as others described herein and in the attached focused comments,<sup>1</sup> the Participating CVP Public Water Agencies are proud to support the lead agencies'

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<sup>1</sup> The Participating CVP Public Water Agencies incorporate into this letter by this reference the focused comments in Exhibit 2, attached hereto.

development of the thorough and rigorous Draft BDCP and Draft EIR/S, as the next step in implementing a solution to this complex issue, and look forward to continuing to work to finalize these important documents. Below, the Participating CVP Public Water Agencies summarize the critical need to move forward on the BDCP and the thorough manner in which the Draft EIR/S takes a full and hard look at the environmental consequences.

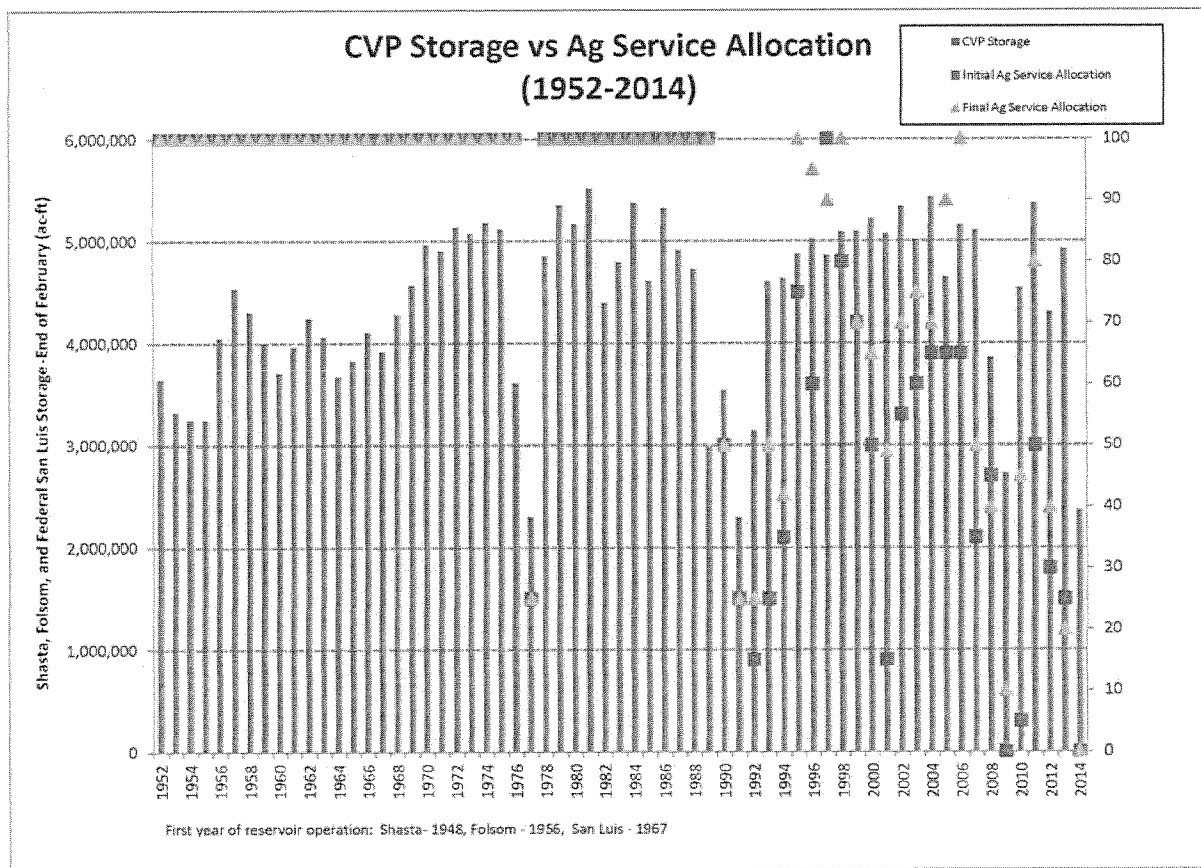
*The Planning Process For The Draft BDCP And Draft EIR/S Includes A Goal Of Advancing Projects That Restore And Protect Water Supply*

The BDCP is critical to address the long-term decline in the quantity and reliability of CVP water supplied to the Participating CVP Public Water Agencies, as well as many others.<sup>2</sup> From the time Reclamation began delivering water to the Participating CVP Public Water Agencies in 1952 until 1989, Reclamation delivered in every year the full amount allowed under contracts, except during the critically dry 1977. However, over the past twenty-five plus years, more than 3.0 million acre-feet of CVP water has been reprioritized each year from municipal, industrial, and agricultural needs to actions intended to benefit fish and wildlife. By 2006, the quantity and reliability of CVP water had been significantly eroded for Westlands and other agricultural water service contractors located south of the Delta (within the membership of the San Luis & Delta-Mendota Water Authority), and, to a lesser degree, for the members of the Water Authority that are municipal and industrial water service contractors, San Joaquin River Exchange Contractors, and wildlife refuges.

The data are stark. As reflected in the following graph, for example, not only has there been significant reductions in the quantity of water available, but the amount of water allocated by Reclamation to agricultural water service contractors has become unrelated to the amount of water Reclamation is able to appropriate to storage, and the allocation unpredictably changes during the year from initial allocation in February to final allocation in May.

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<sup>2</sup> The 2014 drought has and will likely continue to produce information that further demonstrates the harm caused by water shortages and the benefits of efforts that restore and protect ecosystem health and water supplies, benefits not only for the Participating CVP Public Water Agencies but for many others.



T. Boardman, SLDMWA  
7/28/2014

The economic, social and environmental effects resulting from reduced quantity and reliability of CVP water have been extraordinary. And yet, those harmful effects have not produced any measureable improvement in the population levels of fish or wildlife.

In recognition of the need to avoid further irreparable harm to the communities, farms, and businesses served by the Participating CVP Public Water Agencies, as well as others, and to improve the ecological health of the Bay-Delta, the CEQA and NEPA lead agencies – DWR, Reclamation, USFWS, and NMFS – established, as the fundamental purpose of the BDCP, to make physical and operational improvements in the Bay-Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP, and water quality within a stable regulatory framework. (Draft EIR/S, pp. 2-2, 2-5.) The benchmark to measure whether the BDCP will restore and protect water supplies was set in 2006, when those agencies, as well as other federal, state, and local agencies, including the Participating CVP Public Water Agencies, along with non-governmental organizations, executed the planning agreement for the BDCP (“BDCP Planning Agreement”). (BDCP Planning Agreement, § 3.) At that time, the Participating CVP Public Water Agencies made clear, and those that signed the BDCP Planning Agreement

agreed, that to meet the purpose of the BDCP, the BDCP must allow for actions that provide water supplies at least to those levels projected under D-1641, if not more, and up to full contract amounts when hydrology allows. The full contract amounts require Reclamation to appropriate for the benefit of the Participating CVP Public Water Agencies, or those they represent, approximately 3.3 million acre-feet of water. Under D-1641, their contract allocations under average hydrology were approximately 75% for the agricultural water service contractors, 95% for municipal and industrial water service contractors, 100% for San Joaquin River Exchange Contractors and 100% for wildlife refuges. Those allocations require Reclamation to appropriate approximately 2.9 million acre-feet of water. The range from 2.9 (reduced per D-1641) to 3.3 (full contract) million acre-feet is in addition to transfer and exchange water and Section 215 water. The Draft BDCP and Draft EIR/S fully consider alternatives that would meet those water supply goals and the environmental goals, thus achieving the BDCP's fundamental purpose.

*Inaction Will Have Widespread, Devastating Impacts On Communities Served By The Participating CVP Public Water Agencies, Including Those With Significant Minority And Low-Income Populations, And On The Environment*

Failure to act will have devastating consequences. Communities served by the Participating CVP Public Water Agencies, including those with significant minority and low-income populations, are suffering disproportionately from chronic water supply shortages and the resulting lack of water supply reliability. The reductions in the quantity and reliability of water have also inhibited the government's ability to act fully in the public's greatest interest. Those impacts are discussed in the Draft BDCP and Draft EIR/S, particularly in Chapter 16 – Socioeconomics and Chapter 28 – Environmental Justice. The Final EIR/S should maintain, if not strengthen, its consideration of impacts, in those Chapters and others, to the areas served by the Participating CVP Public Water Agencies.

In 2012, Dr. David Sunding presented to the State Water Resources Control Board information concerning the economic impact of changes in water supply. He concluded that the cost from reductions in CVP and SWP water conveyed through the Delta amounted to \$1,400,000,000 for every 100,000 acre-feet of water lost to urban sectors and \$300,000 for every 100,000 acre-feet of water lost to agricultural sectors. (Sunding, Modeling the Economic Impact of Changes in Delta Water Supplies (2012).)

More recently, academic research by Auffhammer, Foreman and Sunding (2014) report that, in 2009, water deliveries from the CVP were only 10% and deliveries from the SWP were 40%. The authors conclude that 9,100 jobs were lost in 2009 relative to 2005 (a year of full irrigation supplies) as a result of reduced water deliveries. Crop fallowing in these same counties in 2009 (again relative to 2005) totaled approximately 240,000 acres.

Reduced water supply and reliability within the areas served by the Participating CVP Public Water Agencies have had socioeconomic and environmental impacts, including:

1. Reduced employee hours, lost wages and jobs, loss of tax revenue to fund municipal services such as fire and police protection, and the resulting reduction

- in staffing at the local government level, thereby contributing to family disruption and dislocation;
2. Adverse impacts to local schools from the relocation of farming-dependent families, lost school revenues, and additional social costs for schools, food shortages and increased demand for public services such as food banks, and an increased incidence of crime;
  3. Loss of crops, including the destruction of permanent crops, which increases the amount of fallowed land that diminishes air quality due to dust and particulate matter;
  4. Increased groundwater pumping, resulting in decreased water quality and impacts to crops from increased soil salinity, groundwater overdraft resulting in land subsidence and associated impacts to infrastructure, increased energy demand related to pumping and associated environmental impacts, and depletion of groundwater reserves.

Those significant adverse impacts, as well as other related impacts, are discussed under the No Project/No Action Alternatives. Those impacts, as well as other related impacts, are also discussed under the Action Alternatives. To reasonably minimize and mitigate for those impacts, the restoration and protection of the water supply for the Participating CVP Public Water Agencies, as outlined in this comment letter, is necessary.

*Decades Of Study And Activities Within The Bay-Delta Support A Conservation Plan Developed Around Dual Conveyance*

The framework proposed by the BDCP is the result of years of study and consideration of alternative water supply and environmental management strategies. More recently and prior to the BDCP, efforts to improve California's water supply conveyed through and the ecological health of the Bay-Delta were focused under the CalFed program. Approved in 2000, the CalFed program provided a 30-year, multi-staged plan that was intended to allow state and federal agencies to make more informed decisions on projects to improve water supply and protect the Delta. The CalFed program was founded on a "through-Delta approach" – an approach that relied exclusively on the CVP and SWP continuing to use natural channels to convey water from the Sacramento River watershed to areas south of the Delta. (CalFed ROD, p. 48.) However, even at the time the CalFed program was developed, the twenty-five state and federal participating agencies recognized that an alternative, isolated conveyance might have allowed the CalFed program to "technically perform better." (CalFed ROD, p. 27.) However, the agencies decided against development of the CalFed program with isolated conveyance at that time but acknowledged: "If the Program purposes cannot be fully achieved with the actions proposed in the Preferred Program Alternative, additional actions including an isolated conveyance facility will need to be considered in the future." (*Id.*)

In 2006, as the CalFed program was ending its first stage, the CalFed program staff began assessing CalFed program effectiveness. (See CalFed 10-Year Action Plan; CALFED End of



Stage 1 Report.) The CalFed program staff believed there was a heightened need for the assessment because of:

1. The continued decline of populations of certain Bay-Delta fish species;
2. The continued conflict over CVP and SWP operations;
3. Research conducted since the 1989 Loma Prieta earthquake, the 2004 Upper Jones Tract levee failure, the 2005 Hurricane Katrina and its impact on levees and the subsequent impact to both communities and the environment, and the results of the Delta Risk Management Strategy, which increased the concern over the aging levee system within the Delta; and
4. Then-new scientific studies that suggested climate change would likely alter the landscape and hydrology of the Bay-Delta.

The assessment led the CalFed program staff, as well as others, to conclude that sufficient justification existed to consider alternatives to the through-Delta conveyance approach. (See Draft CalFed End of Stage 1 Staff Report, p.i.)

*The Decision To Develop A Conservation Plan With Dual Conveyance Achieves The Planning Goal Of Restoring And Protecting Water Supply, Water Quality, And Ecosystem Health Within A Stable Regulatory Framework*

Following the CalFed assessment and starting with a July 28, 2006 memorandum of agreement (“2006 MOA”), federal, state, and local agencies initiated the effort to develop the BDCP. As explained in the 2006 MOA, the need for the BDCP resulted, in part, from changes in the CalFed program. (2006 MOA, p. 1.) By October 2006, those federal, state, and local agencies, including the Participating CVP Public Water Agencies, were joined by non-governmental organizations in executing the planning agreement for the BDCP. The BDCP Planning Agreement, as subsequently amended, provides the architecture for the planning process, explaining in part that a planning goal for the BDCP is to “[a]llow for projects to proceed that restore and protect water supply, water quality, and ecosystem health within a stable regulatory framework.” (BDCP Planning Agreement, § 3.)

In November 2007, the Steering Committee formed to guide development of the BDCP agreed that “the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with ... a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta.” (The Bay Delta Conservation Plan: Points of Agreement for Continuing into the Planning Process, p. 3.) That point of agreement was reinforced by the Delta Vision Program, which recommended new facilities for conveyance, (Delta Vision, Blue Ribbon Task Force, Our Vision for the California Delta, pp. 12, 14) and the Delta Reform Act, which in part made it State policy to “improve the water conveyance system.” (Wat. Code, § 85020.)

Over the next six years, the BDCP planning process continued. DWR, Reclamation, USFWS, NMFS, and Cal. DFW recognized the significant public interest in the BDCP, the

complexity of the planning process, and the volume of information likely needed to support the Draft BDCP and Draft EIR/S. Accordingly, during the planning process, they collectively held more than 600 public meetings and stakeholder briefings. They published more than 3,000 documents, including a working draft BDCP, administrative drafts of the BDCP and EIR/S, posting all of them online, and solicited and considered input from interested parties and independent scientists. All of these actions facilitated and continue to facilitate public access, improved scientific analyses, greater government transparency, and better understanding by decision-makers and the public of the BDCP and its effects.

In October 2013, the BDCP planning process reached an important milestone, when the Participating CVP Public Water Agencies, Zone 7 of the Alameda County Flood Control and Water Conservation District, Kern County Water Agency, the Metropolitan Water District of Southern California, and the Santa Clara Valley Water District, (collectively the "Public Water Agencies"), along with DWR, applied to the USFWS and NMFS for incidental take permits under section 10 of the federal ESA and to Cal. DFW for an incidental take permit under the NCCPA. The Draft BDCP, including its draft Implementing Agreement, and the Draft EIR/S provide the necessary foundation for decisions by USFWS, NMFS, and Cal. DFW to permit and for DWR and Reclamation, along with the Public Water Agencies, to implement the BDCP.

*The Draft BDCP And Draft EIR/S Allows For Projects That Restore And Protect Ecosystem Health, Water Supplies Of The SWP And CVP, And Water Quality*

There are many reasons why the Draft BDCP and Draft EIR/S meet the core legal requirements, several of which we highlight in our Focused Comments attached to this letter. In particular:

*The Draft EIR/S Considers A Range Of Alternatives That Is Reasonable, Particularly When Considered In The Context Of California's Long History Of Water Planning And Development*

The Draft EIR/S analyzes a range of alternatives necessary to permit a reasonable choice and to foster meaningful public participation and informed decision-making. DWR, Reclamation, USFWS, and NMFS began with fifteen Action Alternatives and the No Action/Project Alternatives. Those alternatives were identified after considering approximately 3,000 comments received during the scoping process. Through a three-stage screening process, DWR, Reclamation, USFWS, and NMFS (1) eliminated from detailed analysis those alternatives that were not likely to achieve the CEQA objectives or NEPA purpose and need, and (2) maintained those alternatives that (a) were most likely to avoid or substantially lessen expected significant environmental effects and address significant issues, and (b) were most likely technically and economically feasible/practical. As a result of that screening, DWR, Reclamation, USFWS, and NMFS subjected to detailed analysis nine Action Alternatives and the No Action/No Project Alternatives. Those alternatives represent a reasonable range, as they differ in physical conveyance facility infrastructure/improvements, the locations of facilities, diversion capacities, operational criteria for water supply facilities, and the acreage of habitats that would be restored or enhanced.

