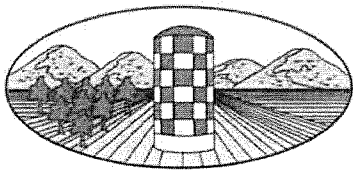


From: rkunde@wrmwsd.com
Sent: Tuesday, July 29, 2014 4:33 PM
To: BDCP.comments@noaa.gov
Cc: bwalthall@kcwa.com; George Cappello
Subject: Comments on draft BDCP from Wheeler Ridge-Maricopa Water Storage District
Attachments: BDCP Comment Letter WRMWSD 07.29.2014.pdf

Mr. Wulff:

Attached find the District's comments on the draft BDCP.

Robert J. Kunde, P.E.
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Water Storage District
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July 29, 2014

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By email only – BDCP.comments@noaa.gov

Bay Delta Conservation Plan Comments
Mr. Ryan Wulff
National Marine Fisheries Service
Sacramento, CA 95814

Subject: Comments on Draft Bay Delta Conservation Plan

Dear Mr. Wulff:

Wheeler Ridge-Maricopa Water Storage District (“District”) is a public agency providing irrigation water service to 78,000 acres (122 square miles) of farms at the south end of the San Joaquin Valley. The District also corrects groundwater overdraft for an additional 32,000 acres of farms (59 square miles). The District’s farmers grow healthy and affordable food for people to eat while also providing jobs and economic benefits for the residents of Kern County, California, and the United States.

The District’s primary water supply is provided from a 197,088 acre-feet annual entitlement from the State Water Project (SWP) via contract with the Kern County Water Agency. If the District had its own contract with the SWP, it would be the third largest water agency participating in the SWP with 5% of the SWP Table A contractual water supplies.

SWP water supplies delivered through the Delta are irreplaceable in providing a sustainable water supply for the 110,000 acres (172 square miles) of farmlands and underlying groundwater basin within the District, and for even larger areas in Kern County. Due to fishery declines in the Sacramento-San Joaquin Delta and watershed, and the resulting regulatory restrictions on SWP water supply conveyance imposed by the USFWS and NMFS, the District’s average annual SWP Table A contract allocation has been cut from 80% in 2004 to 60% since then, and Article 21 flood flows used for groundwater replenishment and banking have been cut even more severely. The result is the District’s SWP water supply, which was previously sufficient to correct severe local groundwater overdraft and provide a long-term sustainable water source for food production, is no longer sufficient or sustainable for these purposes. The regulatory restrictions have increased the frequency and magnitude of water supply shortages (regulatory droughts), and thereby also significantly increased water supply and food production costs.

The Bay Delta Conservation Plan (BDCP) proposes a comprehensive solution intended to achieve California’s co-equal goals of a reliable water supply and improved Delta ecosystem for the benefit of all water users. The District supports the co-equal goals. If properly permitted and implemented, the BDCP would be the critical element necessary to both restore fishery populations in the Delta and watersheds, restore water supplies to their sustainable levels of ten years ago, and prevent substantial reduction in food production within the District. Such reduction has not yet occurred (due to substantial investments by the District and its customers in groundwater banking projects and local groundwater

development), but will occur in the near term.

Therefore, the District has a critical interest in the success of the BDCP, and hereby provides comments on the draft BDCP as released on December 13, 2013.

Unfortunately, despite several years of diligent effort on the part of federal, state and local public resource agencies (including the State Water Contractors, Kern County Water Agency, and this District), the BDCP as currently drafted would not accomplish the co-equal goals and would not provide the required water supplies and assurances necessary to justify the District's financial participation therein. The District's investment in the BDCP would exceed \$1 billion over the 50 year permit term (including debt service but excluding O&M expenses). The District's farming customers demand that such expenditures be justified by benefits. The improvements to the BDCP identified below are required in order for the BDCP to accomplish its goals and justify District participation.

A particular impediment to accomplishing the co-equal goals and providing adequate assurances to justify BDCP investment has been the unreasonable positions of the NMFS and USFWS. These positions have been that it is somehow acceptable, once public agencies with public monies from their customers have invested \$16 billion in new conveyance (ignoring interest costs and assuming no capital cost overruns), to limit the SWP yield to no more than current conditions (average annual SWP allocation of 60%). The unreasonable nature of this view is illustrated as follows. Suppose it were proposed that the public provide \$16 billion for habitat improvements in the Delta, but only to maintain current critically low fishery populations with a prohibition against restoration or increase in said populations. Such a position is obviously unacceptable, yet it is directly analogous to the BDCP position advocated by the federal fishery agencies with respect to SWP water supplies. Remedies to this impediment, as reflected in the current BDCP draft, are described below.

The Kern County Water Agency (Agency), of which the District is a member unit, has identified several critical issues related to the yield, cost and assurances of the BDCP. Most notably, the yield of the completed project must not be lower than the pre-2006 historical yield of the combined SWP and CVP, and must provide an assured water supply to all participating public water agencies. The costs of the project must not exceed the estimates in the draft BDCP (Chapter 8) and must be allocated following a "beneficiary pays" methodology, with Public Water Agencies (PWAs) covering the costs of the water conveyance infrastructure and public funds covering the cost of conservation measures providing public goods. Lastly, the PWAs must have assurances that the BDCP will minimize risks of additional regulatory requirements that would reduce future yield from the Projects.

Key decisions remain relating to BDCP specifics on cost allocations, operations, outflow range, financing and other issues. While the draft BDCP provides an important framework for developing a range of operational outcomes that will provide a level of certainty that merits investment by participating public water agencies and by the state and federal governments, the current draft is not yet an acceptable solution to the challenges facing California's water resources and the Delta.

BDCP Yield.

1. *Conveyance Operations.* In order to provide water supply reliability consistent with restoration of SWP water supplies to their pre-2006 conditions, the proposed conveyance must operate in such a way that additional water required for fish and wildlife will be made up with no net loss to the SWP and CVP contractors.

The Real Time Operations proposed in the BDCP and draft Implementing Agreement (IA) are designed with the "purpose of maximizing conservation benefits to covered fish species and maximizing water supplies. (IA pg. 27)" However, it is unclear how the dual maximization will be achieved. Therefore, the BDCP and IA must include specific language

stating conservation benefits cannot be increased at the expense of water supply.

The Decision Tree described in the BDCP, in addition to being based on an incomplete understanding of the connection between smelt abundance and salinity levels, has the potential to decrease water supplies from the SWP to the point where the proposed conveyance is not financially feasible. Though there are measures still under consideration that could alleviate the risk of water supplies falling below the point of affordability, no specific plan has yet been proposed. The BDCP must include a floor below which water supplies could not fall. This floor would be a minimum 75% average annual Table A water supply, plus restoration of pre-2006 conditions for SWP Article 21 high flow water supplies critical for replenishing overdrafted groundwater basins in Kern County.

2. *Flexible Pumping Operations in a Dynamic Fishery Environment.* Water supply conveyance options must allow the greatest flexibility in meeting water demands by allowing the diversion of water where and when it is least harmful to migrating salmon and in-Delta fish species. The new screened intakes proposed by the draft BDCP in the northern, rather than southern, Delta would substantially reduce reverse flow conditions caused when water is pumped from the south and would lead to a more natural flow pattern in the estuary. In this respect, the draft BDCP meets the co-equal goals of improving water supply reliability and enhancing the Delta ecosystem.

3. *Climate Change Risks.* Conveyance options must reduce long-term risks associated with rising sea levels and salinity intrusion. Intake locations should be able to withstand an estimated 1- to 3-foot sea-level rise in the next 100 years. The proposed intakes in the northern Delta are upstream of predicted climate change driven salinity intrusion. This location will protect water supplies from the effects of levee breach, as well as sea level rise. Impacts to the Delta ecosystem from climate change-related salinity intrusion are not mitigated by moving the intakes to the northern Delta; however, other conservation measures in the draft BDCP are intended to mitigate climate change-related risks to the Delta ecosystem. In this respect, the draft BDCP meets the co-equal goals of improving water supply reliability and enhancing the Delta ecosystem.

BDCP Costs.

1. *Cost Allocation.* The “beneficiary pays” model is the most equitable way to allocate costs for the BDCP between PWAs and the state and federal governments, between the CVP and SWP contractors, and among the SWP contractors. Costs for each portion of the BDCP must be allocated to the parties benefitting from that portion of the project. In the case of the conveyance facilities, those PWAs participating in the project should bear the full cost of those facilities. Costs for habitat restoration and other conservation measures providing public goods should be paid from public funds. Chapter 8 of the draft BDCP outlines costs for various conservation measures and allocates to PWAs costs for design, construction, maintenance and mitigation of the proposed conveyance. Sufficient restoration of pre-2006 water supplies is required in order to make the costs even marginally affordable for agriculture, and the District cannot afford to pay more than these allocated costs. The BDCP should clearly state that the project is contingent upon commitment of state and federal funding for the remaining costs.

2. *Design and Construction Oversight.* Management of the design and construction phases of the conveyance portion of the BDCP must involve PWA oversight to ensure budgets and schedules are met. The draft BDCP outlines involvement of the Authorized Entities Group, of which some PWAs may be a part, in the Implementation Office, but lacks clear definition of the management of the design and construction phases of the proposed conveyance. The BDCP and supporting documents must clearly define involvement of the PWAs in managing the budgets and schedules for design and construction of the proposed conveyance.

3. *Public Funding Shortfall.* All funding sources should be based on firm commitments that are clearly defined in

order for the BDCP to move forward. The draft BDCP is structured in a way that allows for cooperative funding from several agencies at various governmental levels. However, the project is contingent upon receiving funding from all of these sources in order to provide the desired results. Funding from bonds or appropriations is less certain than the funding provided by the PWAs. The BDCP must clearly state that a commitment to funding from the state and federal agencies is required for the project to move forward.

BDCP Assurances.

1. *Regulatory Stability.* Conveyance options should minimize risks of additional regulatory requirements that could reduce yield from the Projects. As a Habitat Conservation Plan under Section 10 of the federal Endangered Species Act (ESA) and a Natural Community Conservation Plan under Fish and Game Code Section 2800 et seq., the BDCP offers a path of regulatory stability for both the PWAs and wildlife agencies. The BDCP should define and describe this regulatory stability and offer a clearer explanation of how this approach differs from the current species-by-species approach to regulation and ESA enforcement.

2. *Permittees.* The PWAs should be eligible for permittee status. In particular, the Kern County Water Agency **must** be among the project permittees in order to assure its active participation in governance of the BDCP. Some PWAs, including the Agency, have applied to become permittees and the language in the BDCP is favorable but unclear. The BDCP must clearly state that PWAs are eligible for permittee status equal to the California Department of Water Resources.

3. *Rough Proportionality.* The IA states that if the BDCP is implemented as designed, the California Department of Fish and Wildlife (CDFW) will consider the project in compliance with applicable “rough proportionality” requirements under California’s Natural Community Conservation Plan. However, many of the restoration and other conservation measures are to be paid for with public funds. A shortfall of public funds could therefore put the project in jeopardy. The BDCP must include a provision stating the permits would remain in effect provided the permittees are fulfilling their obligations, even if there is a lack of public funding.

4. *Biological Goals and Objectives.* The biological goals and objectives of the project should be determined on the basis of the best available scientific information regarding the covered species, habitats and natural communities. Biological objective DTSM2.1 in the draft BDCP is not based on the best available scientific information and should be deleted or changed. Whereas the stated intent of DTSM2.1 is to improve delta smelt habitat, it fails to do so by defaulting to the use of salinity as a proxy for delta smelt habitat. Recent scientific information demonstrates that salinity is one characteristic element of delta smelt habitat, but that the species inhabit water with a wide range of salinity, and that other biotic and physical factors must be considered when defining delta smelt habitat.

5. *Adaptive Management Plan.* Operational changes implemented through the Adaptive Management Plan and other adaptive measures have the ability to impact yield from the Projects. The BDCP mentions a fund through which water could be purchased to meet those operational changes. Details regarding this fund, including its sources, are not clearly defined. The BDCP should clearly state that the Adaptive Management Plan and other adaptive measures will not cause a net loss of water from the Projects. It should also define the Supplemental Adaptive Management Fund as a resource funded by the state and federal government to be used to offset any water costs resulting from implementation of the Adaptive Management Plan.

6. *Permit Term.* The BDCP is intended to result in a 50-year incidental take permit that cannot be changed beyond the limits of the Adaptive Management Plan, unless the regulatory agencies determine that the species are in jeopardy. However, the permit term is not clearly defined in the draft BDCP, and will not be firm until the permits are issued. The

BDCP must clearly state that it is intended to result in permits with a 50 -year term.

The District has purchased water from the SWP for more than four decades, and have undertaken efforts to increase regional storage and conveyance to allow Kern County to capture water when it is plentiful and reduce demands on imported supplies during dry and critically dry years. These efforts, including significant financial investment, will be diminished if water deliveries from the SWP continue to degrade.

The SWP provides essential water supply benefits to Kern County and helps the County achieve other water resource development objectives. For example, the SWP facilitates groundwater replenishment. Since the 1970s, this District, the Kern County Water Agency and its other member units have developed groundwater recharge projects, providing below ground storage of water captured in wet years and allowing that water to be recovered in dry years.

Conclusion. You are urged to revise the BDCP to address the concerns described above. This is necessary in order to improve Delta fisheries, ensure broad public agency participation in the BDCP, and restore PWA water supplies to pre-2006 conditions with adequate assurances. Such revisions are required to justify the necessary monetary investment by the District's customers.

Sincerely,



Robert J. Kunde, P.E.
Engineer-Manager

cc: Brent Walthall, Kern County Water Agency
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