

# Marin Audubon Society

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July 28, 2014

Ryan Wulff, National Marin Fisheries Service  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

JUL 29 2014

RE: Comments on the Bay Delta Conservation Plan Draft Programmatic EIR/S

Dear Mr. Wulff:

The Marin Audubon Society appreciates the opportunity to submit comments on the BDCP and its Draft Programmatic Environmental Impact Report/Environmental Impact Statement (DPEIR/S). This massive project with its twin tunnels and complex operating system has the clear potential to result in significant and long-term adverse impacts to the largest estuary on the west coast of our continent and the many species that depend on it, exacerbating existing adverse conditions caused by existing diversions. Although the DPEIR/S is lengthy, there are numerous gaps and deficiencies in the information provided, resulting in the failure to provide decision-makers with adequate information to make informed decisions on the project.

The BDCP also has numerous flaws including: the failure to improve environmental conditions in the Delta, to conserve native species, and to reduce reliance on Delta water and the South Delta facility, all of which are required by various Plans and laws including the Endangered Species Act.

Additionally, the DPEIR/S also has numerous significant flaws. The most obvious fatal flaw is the failure to accurately define the project scope to include San Francisco Bay as an area that would be impacted by the project. Another is the failure to address the potential further loss of fresh water from the estuary as a potentially significant impact. Other deficiencies include the failure to address avoidance of impacts which the CEQA Guidelines calls out as the first mitigation to be considered; inadequate identification and analysis of impacts; highly uncertain feasibility and effectiveness of the proposed mitigation measures; failure to address ongoing impacts; and inaccurate analysis and discussion of the significance of impacts.

We request additional analysis of the following specific issues in the DPEIR/S:

## **Potential for additional loss of fresh water to the estuary**

Increased diversions are a real potential if the proposed North Delta tunnel facility is built. There is concern that because the North Delta facility would make it easier to divert water, it would eventually lead to even more water exported from the estuary water than anticipated and than addressed in the DPEIR/S.

The potential for increased water export must be identified and discussed as an adverse impact, particularly on a cumulative basis. Significant adverse impacts to fish and aquatic habitats of increased diversions should be expected and should be identified and addressed in the DPEIR/S.. Are there any measures that could avoid the potential for ongoing increases in water export over time?

**Failure to include San Francisco/San Pablo Bays as areas of impact.**

The EIR/s excludes San Francisco/San Pablo Bays from the project boundaries, thereby enabling adverse impacts of the project on Bay resources to be ignored. Existing water rights, the water projects and numerous approvals of multiple diversions have allowed the piecemeal reduction of water diversions over many years, causing fresh water flows through the estuary to be a fraction of historic levels. The BDCP would be yet another project that would or could divert what appears to be small amounts of water, contributing to the cumulative fresh water loss, and hence contribute to the cumulatively significant degradation of the estuary.

Fresh water flows from the Delta through San Pablo and San Francisco Bays provide numerous essential functions for the ecosystem and the species that depend on it, and are essential components of estuarine ecosystems. Fresh water flows are critical to maintaining species, maintaining water quality, and estuary functions. Ecological functions include trigger for anadromous fish migration to the Bay and ocean, transport nutrients to maintain productivity, transport larvae and juvenile fish, maintain fresh/brackish habitat for estuarine species, movement and distributing nutrients and sediments through the estuary, ensuring habitat diversity (i.e. the location of brackish marshes), and the flushing of pollutants. Fresh water flows are important for many species that depend on the Bay including Dungeness crab, Bay shrimp, and California black rail and in particular pulses of fresh water are important for Chinook salmon.

Failing to include San Francisco/San Pablo Bays in the area of impact, enables the DPEIR/S to avoid discussing a whole range of individual and cumulative significant adverse impacts that would occur with the current proposed project under all scenarios. To address this omission, the DPEIR/S should:

- extend the project area to include San Francisco and San Pablo Bays
- discuss the importance of and functions, as discussed above, provided by fresh water to the ecosystem. The discussion should address the value and importance of high and low flows through the estuarine system as occurs in high, normal and low rainfall years.
- address how past diversions have adversely impacted the estuary and the specific functions noted above, and discuss how possible future diversions would or could further cumulatively impact the downstream segments of the estuary. As stated earlier, once tunnels are constructed, the door will be opened to diverting yet more fresh water from the system.
- This impact on the Bay resources should be evaluated as potentially significant, and measures to mitigate them, including reduced fresh water flows, should be identified and recommended.

## **Availability of Fresh Water**

Fresh water is a finite resource while the quantities in any given year can vary significantly in our Mediterranean climate. In addition, current exports severely reduce the quantity of fresh water flowing through the estuary in all years. The current state of the estuary ecosystem, and the degraded status of the species that comprise and depend on it, demonstrate that the estuary is in extreme stress. The greatly reduced flow of fresh water through the estuary is a primary reason for the decline.

The DPEIR/S should address whether there is actually sufficient water in the system in most years (normal and dry) to supply the water projects and existing water rights holders with their contracted amount while maintaining estuarine resources in accord with the goal of the BDCP “to restore and protect ecosystem health, water supply and water quality with a stable regulatory framework.”

Do the current exports from the water projects, current contractors and additional contracted amounts already exceed the available fresh water available in most years? Is there sufficient water available to provide for existing contract holders in normal and dry years and achieve the BDCP’s stated goal? Is the estuary water already over-allocated?

There are no new sources of fresh water, only ways that people’s actions can extend the limited amounts. The EIR/S should provide a comprehensive discussion of measures and actions that could be taken to minimize water diversions and avoid, if possible, and increased diversions, before building the massive facilities proposed by this project.

The discussion should address water conservation measures and efficiency actions that could extend the limited water supply. This discussion should including statewide metering, uniform statewide limits on water use, management of groundwater, water banking, and agricultural practices such as growing crops that require less water.

The DEIR should also address the adverse impacts of each of the conservation/efficiency actions. For example, taking more groundwater can cause land subsidence and collapse. What agencies would be responsible for enacting and implementing these activities? Is the BDCP in control of any of these measures? Identify regulations that would ensure the actions can and would take place?

Finally, the discussion should address how much water could realistically be obtained using these actions? Is the achievable water saving sufficient to maintain the resources of the estuary? What measures can be used to ensure the conserved water stays in the estuary to benefit its species?

## **Analysis of wildlife/habitat impacts inadequate**

Potential adverse impacts on aquatic resources are not adequately addressed. At least six federal and state wildlife agencies have stated in their evaluations that even existing flows from the Delta are not sufficient to protect downstream aquatic resources. The DPEIR/S should address this

central issue: that the current inadequate flows through the estuary are inadequate and what additional losses would mean to anadromous and resident fish species along with a multitude of Bay species.

It is highly unlikely that the BDCP goal “to restore and protect ecosystem health” would be achieved by the project. At best the DPEIR/S evaluates most impacts on fish species as having no change, however, this assessment is disputed by scientists. Discuss how the proposed project would restore and protect ecosystem health given the extensive uncertainties and failure to address all impacts.

Impacts on the endangered Chinook Salmon and Delta smelt are of particular concern. Some scientists predict significant adverse impacts by impingement and predation to some Chinook salmon runs with a North Delta facility. The DPEIR/S should discuss and evaluate the potential adverse impacts on each run of Chinook salmon and the potential for them to become extinct with any further reduction in fresh water flows. What measures, if any, would or could effectively mitigate the impact of reduced water flows on this species?

The South Delta pumps would still operate with the North Delta facility, thereby causing continued destruction of species at the pumps. Would or could management of the pumps change in any way so as to modify or reduce impacts to fish at the pumps? Describe how the management would change, if there would be change, and how that is anticipated to benefit fish. It is unlikely there would be any change in the existing pump impacts if management of the pumps does not change.

Delta smelt are also at risk of extinction. Discuss how the project would impact Delta smelt both by water diversions, habitat loss or possible gain, and continued pumping activity.

Further diversions would result in the movement of X2 upstream. What would movement of X2 further upstream mean to the aquatic resources dependent on those habitats? What effect would the upstream movement of X2 have on the estuary marshes, including Suisun Marsh and San Pablo Bay marshes? Which marshes would be expected to change from brackish to salt, or brackish to saline over time? What would impact would a change in marsh habitat type have on the species that depend on these marshes?

#### **Adequacy, effectiveness, and feasibility of mitigation measures**

To be effective and adequate, mitigation measures must be feasible, i.e. able to be implemented, reduce or compensate for the adverse impact, and have reasonable certainty that the mitigations would be effective. While various state and federal plans and laws exist and are cited as assuring that various mitigation measures will occur to protect and replace resources lost or adversely impacted by the project, the permanence and effectiveness and even the certainty that these mitigations would be implemented are uncertain at best. Even if they are enacted, the likelihood that they will effectively mitigate the impacts of the project is uncertain. The following uncertainties should be addressed in the DPEIR/S:

**Regulatory:** The various state and federal plans and laws that are in place are presented as providing sufficient certainty that the management of the new facility would not be changed or so compromised so as to cause significant further species and habitat losses. It is far from certain that these laws will remain in place as they exist today and not be weakened. For example, right now there are efforts in Congress to weaken the ESA.

The DPEIR/S should discuss and evaluate the stability and certainty of the current regulatory system and how a weakening in the regulations would affect the management of the project. Would the project be held to original requirements or change if the regulations/laws are weakened? Unless the operation of the system along with mitigations can be relied upon to avoid, reduce or compensate for impacts, the mitigation measures cannot be considered to be effective or certain, and therefore, they must be considered significant.

**Biological:** The effectiveness of the proposed habitat restorations that are proposed to mitigate the impacts of the project is highly uncertain. It is not even clear that loss of fresh water is considered an adverse impact. Wetland/habitat restoration is the primary mitigation for the adverse impacts of the project to species and habitats. Wetland habitat restoration is appropriate and suitable mitigation for wetland habitats that would be destroyed by construction of the project. One of the major potential adverse impacts of the project, however, is the cumulative loss of fresh water from the estuary due to additional diversions. This cumulative loss of fresh water will adversely impact fish and other species, as well as the habitats themselves, resulting in increased movement of X2 further up the estuary. There are no effective mitigation measures recommended for the loss of fresh water.

The DEIR needs to address how further reductions in fresh water would be mitigated by the proposed habitat restoration proposals. Why and how would increased acreage of saline or brackish wetlands, in the event there would be sufficient funding to construct these mitigation wetlands, mitigate for the loss of fresh water wetlands and the loss of fresh water flows to the estuary, particularly to San Francisco/San Pablo Bay habitats?

Unless it can be shown that the restoration projects would effectively and functionally compensate for the loss of fresh water throughout the estuary and related habitats and species, the restoration mitigations cannot be considered effective or adequate, and the cumulative loss of fresh water must be evaluated as a significant impact.

**Funding:** Actually whether the mitigations would be implemented at all is highly uncertain due to the lack of assurance that there would be sufficient, or any, funding to ensure implementation of the promised mitigations. Funding the habitat restoration mitigations depends primarily on the public's passing bond measures and other government funding. So not only is it uncertain that the proposed mitigation measures would actually mitigate for the adverse impacts of the project to habitats, these restorations could not even be implemented if voters reject proposed bond measures and federal funding and other sources do not materialize. There is no committed funding for the mitigation measures.

The DPEIR/S should address the funding uncertainties and how they would affect the implementation of the project mitigations. An option should be recommended that specifies that

construction of any facility would not take place until all funding is in place that would guarantee implementation of effective mitigation measures. Unless funding for the mitigations is certain, their feasibility and effectiveness must be considered highly uncertain, and the impact must be evaluated as being significant.

**On-going decision-making:** A decision tree process is proposed to address and assure that standards that will protect natural resources are implemented. Such a process has the potential for positive and negative results. It would provide for modifying management actions to benefit the estuary but also allow for decisions to be made that would have adverse impacts on estuary resources. Of particular concern, is that it appears all of the operational scenarios that are proposed to guide decisions decrease total outflows from the Delta.

The DPEIR/S should address why there is such limited range of operational scenarios and how it will be assured, using this process, that there would be adequate outflows from the Delta to sustain the estuary resources, particularly in view of the regulatory and other uncertainties noted above. For these reasons, the potential adverse impacts of the project must be considered significant.

### **Proposed life of the project**

The proposed lifetime of 50 years is far too long. Many major changes and uncertainties could arise within the estuary related to the further decline of its resources as well as political and economic factors that could influence decisions on water releases. The lifetime should not exceed 20 years and there should be periodic reviews during that period.

### **Conclusion:**

The already degraded condition of the estuary, due in large part to the current diversions of water, should not be exacerbated by this project. The estuary's condition should be improved as called for by the BDCP. Considering the degraded state of the estuary and the biological and economic uncertainties discussed above, the lack of effectiveness and feasibility of the proposed mitigation measures, there is no certainty that the project would do anything but worsen environmental conditions. The BDCP should be revised to ensure the goal "to restore and protect ecosystem health" is achieved.

Thank you for responding to our comments.

Sincerely,



Phil Peterson, Co-chair  
Conservation Committee

**From:** GET-GreenTech Save Money <lldenney@gmail.com>  
**Sent:** Wednesday, July 23, 2014 10:03 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** "Conservation Plan"? with the Twin Tunnels = Oxymoron

Surely, you jest saying that the Twin Tunnels, can be any part of a "Conservation Plan"! Is that another CONservARTIST's way of redefining "Conservation"?

The twin tunnels will ONLY conserve money into private hands, while further destroying a part of the ecosystem of the California Delta. Then as they steal MORE water than they were SUPPOSED to get... as they were recently found doing... It'l make it harder and MORE expensive to reverse the effects of creeping salt water and high pollution levels. It's a QUICK fix to a ridiculous problem. "BUILD it.. They will come"... and have to steal what they need to live there.

The Delta water is already POISONED to the effect we can't drink it or eat the fish that live in it... Stealing a CLEAN WATER supply from it, would only make it THAT MUCH MORE WORSE!

How about using all those PRIVATES\$ and government eminent domain \$, to pay for a reusable renewable water system for the Southern 1/4 of the State???

LA already CLEANS used water to a higher purity that before they used it, but then they pump it out to the sea! HOW EFFING STUPID is THAT?

Sincerely,

**Lance Denney**

President

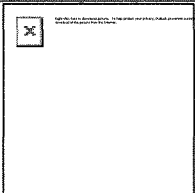
CA Organizing for Democrats

President

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**From:** Claire Joaquin <cjoaquin@comcast.net>  
**Sent:** Thursday, July 24, 2014 12:27 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Protect the Delta, Deny Twin Tunnels Permit

Dear Mr. Ryan Wulff,

I am writing to strongly oppose the "Twin Tunnels" project (aka Bay Delta Conservation Plan) that threatens to dewater the Sacramento-San Joaquin Delta for the benefit of a few water contractors and agribusinesses.

These tunnels would sharply reduce water flow throughout the delta and harm thousands of sensitive aquatic species, including chinook salmon, steelhead trout, smelt, and green and white sturgeon. The tunnels would also wipe out food sources and habitat for migratory birds and other wildlife that depend on a functioning delta ecosystem to survive.

The project's heads justify this killing by proposing future habitat restoration even as they readily admit uncertainty about where and how to make such a plan work. Further, the \$25-\$60 billion tunnels will rely on taxpayers to fund most of this restoration. Water is a public trust resource, and taxpayers shouldn't have to shoulder the burden of this project while water contractors turn a profit from exporting the delta's water.

The originator of this project has not thought through the incredible problems it will create, the many farmers it will bankrupt, the blind arrogance of a crudely devised monstrosity. One good earthquake and our \$60 billion dollars are down the proverbial toilet.

California's water crisis is best solved by adopting a combination of water conservation, efficiency, reuse and desalination strategies for both cities and farms. The state and nation should invest in these proven strategies, instead of wasting tax dollars and sacrificing our precious natural resources. Please -- protect the delta and deny this project's permit.

Sincerely,

Claire Joaquin  
6278 Bucktail Ln  
Pollock Pines, CA 95726  
US



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**From:** Lesley Hunt <ldhunt@astound.net>  
**Sent:** Friday, July 25, 2014 10:40 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Protect the Delta, Deny Twin Tunnels Permit

Dear Mr. Ryan Wulff,

I am writing to strongly oppose the "Twin Tunnels" project (aka Bay Delta Conservation Plan) that threatens to dewater the Sacramento-San Joaquin Delta for the benefit of a few water contractors and agribusinesses.

These tunnels would sharply reduce water flow throughout the delta and harm thousands of sensitive aquatic species, including chinook salmon, steelhead trout, smelt, and green and white sturgeon. The tunnels would also wipe out food sources and habitat for migratory birds and other wildlife that depend on a functioning delta ecosystem to survive.

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California's water crisis is best solved by adopting a combination of water conservation, efficiency, reuse and desalination strategies for both cities and farms. The state and nation should invest in these proven strategies, instead of wasting tax dollars and sacrificing our precious natural resources. Please -- protect the delta and deny this project's permit.

[ I do restoration, and I know that you can never replace what you destroy. The only way to keep our delta ecosystem and our salmon is not to allow any project to destroy the delta. ]

Sincerely,

Lesley Hunt  
236 Warwick Dr.  
Walnut Creek, CA 94598  
US

**From:** CRAIG Luchin <craigsluchin@me.com>  
**Sent:** Sunday, July 27, 2014 7:23 PM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Delta Tunnels...

One more ruining move for California.

**From:** Brian Enbom <b.enbom@icloud.com>  
**Sent:** Sunday, July 27, 2014 7:13 PM  
**To:** BDCP.comments@noaa.gov  
**Subject:** Comment on the twin tunnels

Stupid idea. Let LA build desalination plants so we can grow crops to feed the world.

Brian Enbom  
Sent from my iPad

**From:** bob <bobca@surewest.net>  
**Sent:** Friday, July 25, 2014 5:22 PM  
**To:** BDCP.Comments@noaa.gov  
**Cc:** bob  
**Subject:** Twin Tunnels

Stop the insanity. I have friends down south and they don't even know there is a water problem. The city of Granite Bay manages to water all of it's landscaping every night. WTF

**From:** Barbara teal <teelb@comcast.net>  
**Sent:** Saturday, July 26, 2014 8:24 AM  
**To:** BDCP.Comments@noaa.gov  
**Subject:** Folsom water supply.

Please find a way to protect the water supply in Folsom dam for use in cities who use this as their source of water.

**From:** Eric Bergh <EBergh@calleguas.com>  
**Sent:** Friday, July 25, 2014 6:47 AM  
**To:** 'BDCP.comments@noaa.gov'  
**Subject:** Ventura County Coalition Letter in Support of the BDCP  
**Attachments:** Final BDCP support letter - CMWD service area SIGNED.pdf

To whom it may concern,

On behalf of 26 cities, agencies, and organizations in Ventura County, California, it is our pleasure to submit the attached coalition letter expressing regional support for the Bay Delta Conservation Plan.

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*Eric Bergh*  
*Manager of Resources*  
Calleguas MWD  
805-579-7128  
[www.calleguas.com](http://www.calleguas.com)

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