May 13, 2009

Via e-mail

BDCPComments@water.ca.gov

Ms. Dolores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
State of California
P.O. Box 942836
Sacramento, CA 95814

Subject: Scoping Comments of the California Central Valley Flood Control Association, Bay-Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement

Dear Ms. Brown:

The California Central Valley Flood Control Association (Association) respectfully submits these scoping comments on the Bay-Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

The Association was established in 1926 to promote the common interests of its membership in maintaining effective flood control systems in California’s Central Valley for the protection of life, property, and the environment. Our members consist of more than 75 levee districts and other flood control entities along the Sacramento and San Joaquin Federal Project Levee system and non-Project levees within the Sacramento-San Joaquin Delta. Our members are significantly concerned with the impacts the BDCP projects and actions will have on the Central Valley flood control system; and therefore, our comments are directed at changes to the flood system anticipated under a BDCP EIR/EIS in regard to habitat improvements and conveyance of water through and around the Delta.
Sacramento River Flood Control Project

Flood protection in the Sacramento River watershed is primarily provided by the Sacramento River Flood Control Project (System). The System consists of approximately 980 miles of levees plus overflow weirs, pumping plants, and bypass channels that protect communities and agricultural lands in the Sacramento Valley and Sacramento-San Joaquin Delta. Historically, more than 40 percent of the State’s runoff flowed to the Delta via the Sacramento, San Joaquin, and Mokelumne rivers. The Yolo Bypass, as the key component of the System, carries 80% of the water at the latitude of Sacramento during extreme floods. The System was originally authorized by Congress in the Flood Control Act of 1917 and implemented throughout the first half of the 20th century with a single objective -- flood control.

The 21st century has brought with it a broad array of competing demands for the resources of the Sacramento River watershed. In order for the System to survive this century, a comprehensive, holistic, and sustainable set of solutions must be developed and implemented to transition this single objective System into a multi-objective system designed to meet the competing demands of the 21st Century.

Our Association believes that the paramount duty of the State of California in developing and implementing the Central Valley Flood Protection Plan (CVFPP) is to provide for the protection of public safety and welfare. The Department of Water Resources’ (DWR) own FloodSAFE program’s first principle for a FloodSAFE California is: “Approach flood risk management on a system-wide basis, taking into account varied land uses and flood protection needs.” The main concern of the Association is that the BDCP needs to comply with the CVFPP by making sure that flood protection and flood capacity of the System is a priority.

The concept of “flood neutral” based on current hydrology does not fully address the future potential impacts on flood control improvements and maintenance allowable under existing easements and works. This document must be consistent with the ongoing California Central Valley Flood Protection Plan. The Yolo Bypass is a critical component of the Sacramento Valley Flood Control Project. Any anticipated work within the Yolo Bypass, including the conveyance or restoration, must coordinate with and accommodate the recommendations of the CVFPP as well as future flood control improvements. It is our assertion that no BDCP projects should be allowed to preempt the paramount public safety function of the flood protection components of the System. There is no acceptable balancing or trade-offs to the flood control function in the Yolo Bypass, or anywhere else in the System, as currently operated or as required in the future. Additionally, adaptive management requirements should be included that require BDCP project modifications in the event of increases in flood risk to System facilities and public safety.

One of the main goals of the BDCP plan is to increase habitat critical to special status fish species, and also establish habitat outside of the central delta in areas currently farmed. If listed species successfully propagate in these new habitat areas, as planned, the existing levee maintaining agencies in the area will experience increased maintenance costs due to the
existence of listed species in the area. These impacts should be evaluated and mitigated in the EIR/EIS.

Central Valley Flood Protection Plan

The Federal government has reconstructed levee systems along the Sacramento and San Joaquin River systems. The individual levees within these systems act in coordination in order to provide flood benefits to all lands within the Central Valley of California. The current State plan of flood control and the Central Valley Flood Protection Plan are currently evaluating the adequacy of the existing flood control system. In addition, the plans will be looking at increasing protection to urban areas at the 200-year flood frequency level. The results of these plans may cause the Yolo Bypass and other parts of the System to be modified in order to increase their flood carrying capacity. It is imperative that the EIR/EIS evaluate impacts to flood protection when developing habitat or additional floodplains under its plan. The EIR/EIS must avoid reducing current flood capacity throughout the whole Central Valley flood control system.

Evaluation of flooding in the Sacramento and San Joaquin systems requires flood modeling from the Delta all the way up to the highest reaches of the levee systems. The State is currently developing models to perform this type of operation. The BDCP EIR/EIS must utilize these models in order to adequately evaluate the impacts that any habitat or other changes within the flood system under BDCP.

The BDCP draft documents indicate that levees may be removed in order to flood certain areas that are currently being farmed. The BDCP EIR/EIS must evaluate the process by which this could occur, and related impacts, especially for levee systems that are under the jurisdiction of the U.S. Army Corps of Engineers. Substantial public and private investments in water conveyance for irrigation and drainage are potentially at risk by seasonal flooding of levee protected areas. Construction of cross or cutoff levees could limit the extent of damage or stranded investment; however, that land base to support maintenance of such a facility will not exist. Local levee districts will not accept maintenance for such new levees. These possibilities and their physical and financial impacts must be addressed in the EIR/EIS. Breaching adjacent levees increases the potential for erosion, surface water elevation changes, and water quality changes, all to the detriment of local public and private operations and must be properly analyzed and mitigated in the EIR/EIS.

Yolo Bypass

The BDCP documents indicate that additional water will be diverted into the Yolo Bypass during periods of non-flood flow. This will be accomplished by notching, or gating, the Fremont Weir at a lower elevation than currently exists. During the scoping sessions, very little detail was given in regards to the notching or gating of the Fremont Weir in order to provide flows in the Yolo Bypass during non-flood years. It was indicated during the scoping sessions that flooding could extend 45 days, up to May 1. BDCP draft documents acknowledge that more frequent inundation of the bypass may accelerate the erosion of bypass and downstream levees without appropriate protections. The BDCP EIR/EIS should describe this project in more detail,
including how this will be accomplished and evaluate any impacts, such as seepage, erosion, and wave fetch damage to adjacent levees, that this will cause on neighboring levee systems due to increased flooding of the Bypass. The Bypass levees are designed for short term, infrequent flooding; and are typically not armored by riprap, nor are they designed to prevent seepage for a long period of time.

This change could also significantly change the vegetation regime in the Yolo Bypass; which could therefore, reduce the flood carrying capacity if a riparian forest is allowed to grow in the Bypass as has previously occurred in the Sutter and Tisdale Bypasses. Lack of vegetation maintenance for as little as one year could effectively create thick stands of habitat that would act to increase the coefficient of friction within the Yolo Bypass and change the flood carrying capacity. The BDCP EIR/EIS must describe in detail how this capacity will be maintained or improved.

Previous flood flows in the Bypass, particularly in 1986, demonstrated that flood flows at the design condition for the lower reaches of the Bypass is both higher than design stage and extended into areas not covered by flowage easement. The bypass is already incapable of passing the design flow at the design stage upstream of Liberty Island. New impacts due to additional capacity impairments will affect agricultural land and their attendant habitat values, increase erosion on existing levees, create additional road flooding, reduce local drainage capacity, and potentially allow flood flows to outflank the federal project levee at the northern end of the bypass. Rigorous modeling and monitoring criteria needs to be funded and implemented as a component of any project.

BDCP should firmly commit to flood control primacy in the Yolo Bypass and clearly and unequivocally condition any BDCP action in the floodway as being secondary to the flood control function, and further assert that flood control operations, maintenance and repairs are the foremost and primary activity on the structural section of levees and any permanent establishment of habitat must be consistent with those primary activities within the BDCP study area. An agreement should be reached with the Central Valley Flood Protection Board and the U. S. Army Corps of Engineers which specifically provides for such flood control primacy under present and future conditions. BDCP must assure flood control interests that flood control activities in and adjacent to BDCP projects, including improvements and maintenance, will not be subject to mitigation requirements as a result of the establishment of the BDCP projects or their operation. BDCP must also provide mitigation credits for the use of lands within the Yolo Bypass that would be allocated to the Sacramento River Flood Control Project, with specific reservations for those facilities in or adjacent to the Cache Slough/Yolo Bypass Restoration Opportunity Areas.

Non-Project Levees

The BDCP plan refers to a through-Delta portion of its dual conveyance facility; however, there are very few details regarding what this component will entail. The bulk of the levees that currently comprise the through-Delta corridor, and also protect water quality in the western Delta, are non-Project levees; that is, not part of the Federal flood control system. They
are currently maintained by the local reclamation districts. These levees essentially form the Delta and protect all the land-based habitat and improvements, which include thousands of acres of waterfowl habitat, State highways and county roads, gas and electrical transmission lines, railroads, and small urban populations. In addition, these levees support channel margin habitat along their slopes, and within the shallow water areas waterward of the levee. They also protect existing channel islands, which are remnants of the original Delta habitat.

Several details should be addressed in the EIR regarding non-Project levees. First, non-Project levees that are going to be deemed part of the through-Delta corridor should be identified. In addition, the document should describe the kind of rehabilitation would be accomplished on these levees to ensure that the failure risk is reduced due to Project levels. In the San Joaquin side of the Delta, of particular concern is expansion of existing floodways in the Paradise Cut area. The modification to this area will cause flows that have historically continued in the San Joaquin River towards Stockton to be diverted west and north along the non-Project levees of the south and central Delta.

In addition, the EIR/EIS should address other levees in the Delta that provide benefit to the through-Delta portion of the dual conveyance facility; in particular, the levees that provide water quality benefits. The “domino effect” should be addressed in regard to levees that may, or may not, be maintained in the future. It is a documented fact that when levees fail and islands are not reclaimed, the neighboring islands experience extensive increases in maintenance due to seepage problems and increased wind/wave fetch forces.

The EIR/EIS should address the other effects of breached levees and non-reclaimed islands. Emergency response to islands critical to the BDCP will be compromised by flooding of islands through which emergency access is required. The EIR/EIS should evaluate the change in Delta hydraulics and fish migration under several scenarios of flooded islands. Flooded islands will cause increased water loss through evaporation. This loss of water would be greater than the current consumptive use of the agricultural islands. The EIR/EIS should address where water will be obtained to offset this loss in order to meet water quality objectives. It is possible that additional control structures may be required to meet water quality objectives if multiple flooded islands are not reclaimed. Levees form the channels which are a great benefit to recreation. The document should also evaluate the impacts to recreation due to unreclaimed flooded islands.

The eastern canal alignment will be within the 100-year floodplain for its entire 49 miles. Although the entire reach is protected by existing levees, these levees do not provide 100-year protection. The EIR/EIS should address the maintenance and rehabilitation of these levees to a level of 100-year protection.

These non-Project levees are maintained by local reclamation districts. The eastern alignment of the canal, in particular, will bifurcate a number of these reclamation districts. The BDCP document should address the future of reclamation districts once a canal is built through their boundaries. The canal will affect both the operation and maintenance of existing levees, possibly cause seepage problems that would hinder the structural stability of these levees, and would also create a separation of landowners that would change the ability to drain the lands.
All existing habitat in the Delta is protected by levees. The BDCP document should address how this existing habitat will fare in the future, especially if levees should fail and islands are not reclaimed. The scoping sessions did not present any information regarding existing habitat and the future of this habitat. In addition, the BDCP document should investigate the possibility of increasing habitat, such as channel margin habitat, in conjunction with rehabilitation of existing levees that are important to the through-Delta portion of the dual conveyance facility. These multi-objective projects could provide extreme benefit to the Delta lands and habitat.

**U.S. Army Corps of Engineers’ Levee Standards and Vegetation**

The Corps of Engineers has recently restated its National Levee Inspection Standard and vegetation management guidelines, ETL 1110-2-571. These requirements reinforce its requirements that vegetation (habitat) be removed from certain levees. The California Department of Water Resources is a party to a recent agreement titled, *California Central Valley Flood System Improvement Framework* which specifically states, “New levees being added to the System (such as setback levees, backup levees, and ring levees) will also be designed, constructed, and maintained to ETL Standards.” The BDCP EIR/EIS should address how this will affect its plans. Habitat creation in the floodway can impact flood carrying capacity and other flood control benefits that currently exist. Successful habitat development in areas adjacent to levees and other water control features bring increased regulatory compliance costs and restrictions. It is essential to evaluate and compensate for these impacts. The inability to maintain habitat development in the future could cause additional problems. Under the topic of adaptive management, the BDCP should require habitat removal should it prove to negatively affect flood control, or have impacts to human health and safety.

**Adaptive Management**

The adaptive management process proposed in BDCP draft documents fails to describe how monitoring will be designed to establish cause and effect relationships between implementation of specific conservation measures or operation of new conveyance facilities and the type and magnitude of human impacts from those measures such as economic and public safety. Draft documents give examples of a tidal marsh restoration project being reduced or discontinued or water operation being modified if its providing little benefit to covered species, however it does not explain what will happen if a habitat project or water operation results in causing economic or physical harm to humans in the Delta. Due to the significant scientific uncertainties regarding the impacts from the construction and operation of new conveyance facilities and the implementation of habitat conservation measures in the Delta, the EIR/EIS must include an adaptive management process that includes modification of any conveyance or habitat project that results in human consequences, including reducing flood protection. For instance, if the Fremont Weir project mentioned earlier is implemented and funding for vegetation maintenance in the Yolo Bypass is not available and a riparian forest starts growing in the Bypass, the Plan needs to adaptively manage the habitat measure to assure flood capacity is returned. Just as there is an adaptive management process for responses by covered species to
the Plan’s implementation, there also needs to be an adaptive management process to respond to negative human impacts caused by the Plan’s implementation. Otherwise, this is not a complete adaptive management plan.

Summary

Finally, it is impossible to provide comprehensive or complete comments on the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement or evaluate the cumulative impact of various projects to be in a final EIR/EIS due to the lack of a project description or specific performance targets such as, but not limited to, bypass flows and outflows, greenhouse gas impacts, or seismic stability. The purpose of an EIR is to provide State and local agencies and the general public with detailed information on the potentially significant environmental effects which a proposed project is likely to have and to list ways which the significant environmental effects may be minimized and indicate alternatives to the project. The lack of specificity or details on the proposed project prevents the Association and its local agency members from being able to identify the significant environmental effects of the project action or how to avoid any significant environmental effects, or how to mitigate those significant environmental effects, where feasible, pursuant to the basic purpose and goals of CEQA. We therefore expect to be provided the opportunity in the future to see and comment on a detailed project description, alternatives, and proposed mitigations before a final EIR/EIS is approved.

Thank you for the opportunity to submit these scoping comments.

Sincerely,

Melinda Terry,
Executive Director

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