May 5, 2009

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: Comments on the Proposed EIR/EIS for the Bay Delta Conservation Plan
Response to February 13, 2009 Notice of Preparation

Dear Ms. Brown:

The County of Yolo ("County") submits the following comments in response to the Notice of Preparation ("NOP") of an EIR/EIS for the Bay Delta Conservation Plan ("BDCP"), issued on February 13, 2009.

As an initial matter, the NOP is the second such document issued by the Department of Water Resources ("DWR") in connection with the BDCP. The first NOP, issued on March 17, 2008, was legally inadequate in a number of respects. The County provided comments addressing these deficiencies in a letter dated May 30, 2008 (Attachment A hereto). Many other local agencies, concerned citizens, and others with an interest in BDCP provided similar comments. DWR has acknowledged these problems (see 74 Fed. Reg. 7257 (Feb. 13, 2009)), and the latest NOP is presumably intended to cure the shortcomings of the initial NOP.

In this regard, however, it fails. The result is yet another factually bereft and legally inadequate NOP. Like the first NOP, the latest NOP is (a) premature, and lacks an adequate project description, (b) does not properly describe the geographic location or scope of the project, and (c) does not properly identify the potential environmental effects of the project. In fact, the County’s initial comments on the legal shortcomings of the first NOP apply with equal force to the latest NOP. Accordingly, the County offers the comments set forth on pages 1-5 of its May 30, 2008 comment letter as its comments on the latest NOP.

In that letter, the County also stated its environmental and similar concerns with the proposed project. Those comments are set forth on pages 5-10 of that letter. More recently, on March 10, 2009, the County sent another letter expressing similar comments and concerns (Attachment B hereto). All of these comments and concerns should be considered in the preparation of an EIS/EIR for the proposed project, and they are incorporated herein by this reference.
The County has also reviewed two other recent comment letters in connection with its evaluation of the latest NOP: a March 18, 2009 comment letter from the Yolo Basin Foundation; and a March 20, 2009 comment letter by the Yolo Habitat JPA. Copies of these letters are enclosed herewith as Attachments C and D. Like prior comments by the County, these letters raise important environmental concerns that should be evaluated in the EIS/EIR and otherwise considered in the process of developing the BDCP. The County believes those concerns are valid and incorporates them herein by reference.

In particular, both letters express significant concern about proposed Floodplain Habitat Restoration Conservation Measure (FLOO1.1). That measure proposes the modification of the Fremont Weir and Yolo Bypass to “provide for a higher frequency and duration of inundation.” The County shares the concerns of the Yolo Basin Foundation and the Yolo Habitat JPA with this measure. If implemented, this measure could convert thousands of acres of high-quality farmland and wildlife habitat in the Vic Fazio Wildlife Area and the Bypass to man-made aquatic habitat. The value of this artificial habitat is unknown. Indeed, it may later prove to be of little or no value to the species covered by the BDCP (as acknowledged in the January 12, 2009 “Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan”).

This is only one set of the significant environmental issues that must carefully evaluated in the EIS/EIR with respect to proposals affecting the Yolo Bypass. Other issues of great concern to the County include potential effects on agricultural production within the Bypass, impacts to levees, and the deterioration of its floodway function. These and other similar issues have all been previously discussed in the prior comment letters included as Attachments A and B hereto.

Similarly, the County remains very concerned about the possible construction of new water supply infrastructure—including new conveyance and intake facilities—within Yolo County. The NOP appears to suggest that this remains a possibility, referring generally to a “new conveyance facility . . . located either to the west or east of the Sacramento River.” Presumably, the “west” alignment would be in the Clarksburg area.

For good reason, there is strong public opposition to locating new infrastructure near Clarksburg. The County shares the concerns that underlie this opposition. It previously advised DWR of these concerns in its May 30, 2008 comment letter on the original NOP (see pages 5-7). These matters remain of significant importance to the County and its residents, and the County intends to take all reasonable steps to protect its interests as the BDCP process moves ahead. We therefore urge DWR to closely scrutinize all environmental issues in the EIR/EIS process, including but not limited to those issues previously raised by the County and its residents, which relate to the potential implementation of any component of the BDCP near Clarksburg. And as you know, the County will remain very involved in all other aspects of the BDCP process to ensure that its interests are respected.

As a final matter, the County has previously advised you that it may be a “responsible agency” with regard to the BDCP, as it may have permitting authority or approval power over aspects of the project. So far as the County is aware, this remains the case. Despite that, however, the February 13, 2009 NOP was not sent to the County as required by CEQA. The County is thus not bound by the “deadline” for responsible agency comments set forth in the NOP.
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For the reasons set forth above, just as it requested in its comments on the March 17, 2008 NOP, the County asks that DWR issue a legally adequate NOP and conduct additional scoping meetings once a draft BDCP is available for public review. If the Department elects not to do so, then the County nonetheless asks the Department to consider the comments included in this letter and in those portions of the attachments that are incorporated herein by reference. The County appreciates the opportunity to comment on the latest NOP.

Sincerely,

[Signature]

Mike McGowan, Chair  
Yolo County Board of Supervisors

Enclosures

cc: Senator Lois Wolk  
Assemblymember Mariko Yamada  
Assemblymember Jim Nielson  
Secretary Mike Chrisman, California Natural Resources Agency  
Sacramento County  
Solano County  
San Joaquin County  
Contra Costa County  
Maria Wong, Executive Director, Yolo Natural Heritage Program

All via e-mail only