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April 16, 2012

SENT VIA EMAIL (achrisney@usbr.gov)

Ms. Ann Chrisney  
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Re: Bay Delta Conservation Plan Environmental Impact Report/Environmental  
Impact Statement Comments – Batches A and B

Dear Ms. Chrisney:

These comments are submitted on behalf of Reclamation Districts 3, 150, 551 and 999 regarding the draft EIR/EIS chapters in batches A and B, as referenced in Ms. Patti Idlof's letter of March 1, 2012. These local reclamation and water districts have received cooperating agency status pursuant to NEPA and provide these comments in light of their special expertise with respect to local land use and water resources issues. These comments are also informed by work with Local Agencies of the North Delta, which is a coalition of 11 reclamation/water districts.

#### Comments on Cooperation Process

While we appreciate the opportunity provided to review administrative draft chapters of the EIR/EIS, we must state some concerns with respect to the cooperating agency process thus far:

- Cooperating agency BECT meeting (2 total) have been generally unproductive and improperly staffed.
  - Federal agency representatives themselves have not meaningfully participated.
  - Chapter authors have not consistently been present for technical questions.
  - Information presented is not different or more substantive than BDCP public meetings.
- Lead Agencies have not specifically defined the content of cooperating agency meetings or the cooperating agency process in a manner that implements the purposes of the NEPA cooperation statute.

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General Comments on Draft EIR/EIS


In general, the EIR/EIS is far from complete. Though the EIR/EIS states that it analyzes implementation of "Conservation Measure 1" at a project level, the analysis appears to overlook important impacts, and the detail of mitigation is also lacking. The programmatic coverage of the remaining conservation measures also lacks sufficient detail. For purposes of our review, the lack of any sort of summary or table of contents for the impacts made it very difficult to locate information pertinent to the local agencies with which we are working. Also, the EIR/EIS references several appendices that apparently support the conclusions and analysis, but are not yet available for review.

According to the Cooperating Agency MOU, the NEPA Lead Agencies will: "Provid[e] technical analyses and information to the Cooperating Agency and solicit[] its review and comment, particularly with respect to key subject areas pertaining to issues within its jurisdiction by law or special expertise as appropriate." While we appreciate the efforts the Lead Agencies are making to involve the cooperating agencies in the process, we do not feel that the process thus far meets the letter or intent of the MOU or the cooperating agency provisions of NEPA. (See 40 C.F.R., § 1501.6.) A project of the magnitude of the BDCP must be analyzed in a methodical and detailed manner in order to ensure that all impacts are identified and mitigated as required.

To this end, we hope that the attached comments are helpful in completing a Draft EIR/EIS that thoroughly reviews the impacts of the BDCP.

Very truly yours,

**SOLURI MESERVE**  
A Law Corporation

By:   
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ORM/mre

Enclosure: EIR/EIS Comment Form

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## BDCP EIR/EIS Review Document Comment Form

Document: Administrative Draft

Comment Source: Reclamation Districts 3, 150, 551 and 999 (Cooperating Agencies)

Submittal Date: April 16, 2012

No.	Page	Line #	Comment	ICF Response
<b>Chapter 1 INTRODUCTION</b>				
1	1-7	18	If the document is going to list unscreened diversions as a stressor, it must disclose: (1) the current problem of fish kills at the South Delta SWP/CVP facilities, and (2) that CalFED included the design and construction of fish screens at these facilities. Performance testing of the new screens was required to begin by 2006. (CalFED ROD, p. 49.) The document should either explain why fish screens are not presently being proposed or include fish screens in one or more of the dual conveyance alternatives.	
2	1-21		Reclamation District 551 should be listed here as a cooperating agency. All local agencies with jurisdiction within the project area must also be listed.	
3	1-22	21-23	The brief reference to range of alternatives as a concern does not adequately reflect NOP comment concerns regarding the range and types of alternatives that should be considered.	
4	1-28		The CalFED ROD should be listed as a reference.	
<b>Chapter 2 PURPOSE AND NEED</b>				
5	2-1	35	Seismic risks do not increase over time. The analysis and citations do not match.	
6	2-1	38-39	The document should specify that it is the <u>project proponents</u> who believe that fundamental changes to the current system are necessary.	
7	2-2	1-2	The discussion of coequal goals must include the statement in the legislation explaining that: "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code, § 29072, subd. (a).)	
8	2-4	15-17	The discussion of coequal goals must include the statement in the legislation explaining that: "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place." (Wat. Code, § 29072, subd. (a).)	

9	2-4	32	The document should specify that it is the <u>project proponents</u> who believe improvements are needed to the water conveyance system to address the listed issues.	
10	2-4	33	Risks to water supply reliability are not increasing. The project proponents wish to increase their water supply reliability in the context of complex and changing hydrologic conditions.	
11	2-6	4-9	The SWRCB letter report should be listed as a reference for this chapter, if it is to be relied upon. The characterization of the content of the report as indicating that adequate flow is available for all paper water rights is erroneous. The SWRCB report actually indicated that if all of the paper water rights were exercised, the system would be oversubscribed by 8 times natural flow. Thus, the main limit on exercise of water rights and fulfillment of water contracts is water availability. This chapter should recognize that basic fact.	
12	2-13	5-6	The analysis in the later chapters does not support the assertion that design information is available at the project level for CM1.	
<b>Chapter 3 DESCRIPTION OF ALTERNATIVES</b>				
13	3-1	26	The basis for labeling CM1 as a conservation measure should be provided. Later portions of the EIR/EIS do not include CM1 as a “conservation component” of the project. If it is not a conservation component, then it would also not appear to be a conservation measure.	
14	3-4	20	Since Appendix 3A has not yet been released, it is difficult to comment on the alternatives selection process described above.	
15	3-22	1-7	The proposed forebay description is not clear. It is our understanding that the currently proposed forebay would contain 750 “water” acres and hold 5,200 acre feet of water. The footprint of the forebay would be considerably larger than 750 acres.	
<b>Chapter 4 APPROACH TO ENVIRONMENTAL ANALYSIS</b>				
16	4-4	11-40	The discussion of the <i>Sunnyvale</i> case compelling a decision not to include compliance with the Fall X2 requirement as part of baseline conditions is unconvincing. Moreover, the later chapters do not make distinctions between impact conclusions that either include or don’t include the Fall X2 requirement.	
17	4-8	7-8	It is impossible to comment on the effectiveness of mitigation without reviewing the environmental commitments in Appendix 3B. To the extent these BMPs are relied upon to reduce project impacts, they must be incorporated into the adopted MMRP.	

<b>Chapter 9 SEISMIC RISK</b>				
18	General		The data and analyses described as the bases for the Section 9.3.1.2.3 Liquefaction and Section 9.3.1.2.4 Ground Failure and Seismic-Induced Soil Instability are not provided and are necessary for review.	
19	9-18	13-14	An amplification factor of 1 to 2 was given for levees. It is not clear what this value is based on. Depending on local site conditions, a site specific ground motion hazard analysis may be required for an accurate determination of appropriate amplification factors. It is not clear that there are sufficient data to support this for any project element. A determination of accurate amplification factors is required prior to other hazard analyses such as liquefaction and slope stability analysis.	
20	9-25	39-42	The hazard resulting from a seiche was estimated to be low based on “the lack of existing and proposed (e.g. intermediate forebay) deep, narrow, and enclosed water bodies and distance from seismic sources capable of generating strong ground motion.” (sic) This statement appears incorrect. Seiches may form in wide open water bodies with seismic sources being hundreds of miles away.	
21	9-26		FEMA flood mapping designations should be listed as a federal policy here. The area proposed for the intakes and forebays will apparently be reclassified by FEMA in June 2012.	
22	9-32	5	Elsewhere in the document, it is claimed that the project would not be subject to local zoning regulations. The document should specify when a county building department would be part of reviewing engineering plans for the project. Third party independent peer review should be required for all major structures proposed.	
23	9-39 to 9-53		Potential impacts to individuals, schools and local communities in the vicinity of conveyance facilities (intakes, forebays, tunnels) must be specifically considered in the EIR/EIS. Mitigation must be required to reduce these impacts to the extent feasible. This chapter does not include that information.	
<b>Chapter 13 LAND USE</b>				
24	13-2	7-8	The analysis fails to analyze or identify that the project will impact the Primary Zone (approximately 500,000 acres [13.1.1.1]) with approximately 120,000 acres of habitat creation (given that these locations have not yet been disclosed to the relevant local agencies) and 5,785 acres would be permanently lost and 7,355 acres lost for a decade or more for the construction of	

			the project footprint (Table 13-2 Alternative 1A) for a permanent loss of prime agriculture of 24% of the Primary Zone. The conveyance impacts are all concentrated within just two or three reclamation districts, essentially destroying agricultural productivity of those areas.	
25	13-16	39	Himalayan blackberry is misspelled.	
26	13-53	35, 35	The description states that resources would be “affected and disrupted.” Do these euphemisms mean destroyed and not replaced?	
27	General		The analysis element in many, if not most cases is not evident, and the approach to the analysis cursory at best.	
28	13-49 through 53	20-24	Despite the fact that the vast majority of the permanent and temporary, direct and indirect impacts are proposed for the Primary Zone of the legal Delta, the “analysis” asserts that there would be no impacts (permanent adverse physical effects on or conflicts with land use designations) associated with the underground portions and not discussed beyond that assertion. Indeed the pipelines will require permanent right-of-ways and encroachment restrictions, there will be limitations on water well locations, oil and gas exploratory drilling, etc.	
29	13-51	18, 28, 32	The many above ground permanent feature are simply noted and their impacts deferred to other, uncited or unspecified locations in the multi-thousand page report, or ascribed as uncertain and thus speculative. Additional analysis is required to provide project level analysis of land use impacts.	
30	13-55 13-56	41, 10-12	The conclusion that the conveyance components of the project would not physically divide existing communities appears to be in error. Numerous project elements would divide communities and impair access and must be analyzed and mitigated.	
31	Table 13-2	13-50	Column totals and subtotals unclear and do not add up.	
32	13-60	38-45	This is a nonsensical section. How does this apply to existing reclamation district drainages?	
33	13-61	16-26	Again, unclear, unsubstantiated, not cross-referenced and no analysis.	
34	13-125	23-26	These critical impacts to reclamation districts are vague, and unanalyzed in sufficient detail to provide comment.	
<b>Chapter 14 AGRICULTURE</b>				
35	General		The Recreation Chapter states that grape crop values in the Delta are 25% of state’s production. (p. 15-6.) This exceptional value, and the project’s impacts on it, should be discussed in the Agriculture Chapter.	

36	14-8		Alfalfa is not an annual crop.	
37	14-25 to 14-26		The description of local policies is incomplete, and is also not complete in the Land Use chapter with respect to agricultural resources. Local requirements pertaining to agricultural land protection and mitigation must be referenced and followed. Yolo and San Joaquin County, for instance, require mitigation for conversion of agricultural land. Other counties' General Plans also contain numerous policies regarding protection of agricultural land.	
38	14-30	15	The document is incorrect that the future of agriculture in the project area is currently uncertain. Much of the delta is not subject to subsidence and already has adequate flood protection for agriculture to continue current and foreseeable future conditions. Any uncertainty as to the future of agriculture in the Delta is primarily due to the project's proposed massive conversion of agricultural land for conveyance and habitat purposes.	
39	14-41	33	<p>Purchase of agricultural easements is feasible mitigation under CEQA. Due to the high quality of farmland proposed for conversion and the cumulative effects of the project on agriculture in the Delta, the mitigation ratio of conserved lands should be at least 2 acres for every 1 acre of agricultural land converted to nonagricultural uses. Such compensatory easements should also meet the following criteria:</p> <p>(1) The soil quality of the conserved agricultural land is comparable to or better than the land that is converted to a nonagricultural use.</p> <p>(2) The conserved agricultural land has an adequate water supply for the purposes of producing irrigated crops, watering of livestock or other agricultural purposes to which the conserved agricultural land is suited. The water supply shall be comparable to, or better than, the land that is converted to nonagricultural use, and shall be sufficient to support ongoing agricultural uses on the conserved agricultural land. The water supply shall be protected through legal instrument acceptable to the city attorney or county counsel of the jurisdiction in which the project is located to ensure that water rights permanently remain with the mitigation land.</p> <p>(3) The conserved agricultural land is located within the legal Delta.</p> <p>(4) The conserved agricultural land has not been previously encumbered by other conservation easement that restricts the landowner's</p>	

			development rights.	
40	14-42	9-12	Specific mitigation will be necessary to ensure that seepage from the forebays does not cause impacts to adjacent agriculture. A 10-foot increase in groundwater level in the vicinity of the forebay proposed for the North Delta would make it impossible to grow crops. Mitigation Measure GW-5 (p. 7-45) is inadequate to reduce seepage impacts to less than significant levels. This measure also does not meet the performance standard mitigation requirements that apply when formulation of mitigation is deferred to a later date.	
41	14-43	11-13	WQ-11 (p. 8-229) does not provide specific mitigation for the issue of increased EC levels in the vicinity of the forebays from seepage.	
42	General		Potential impacts to agriculture from shading caused by the forebay embankments must be considered.	
<b>Chapter 15 RECREATION</b>				
43	15-67		The impacts of constructing CM 1, including barge traffic, are not well described elsewhere in the document. How would these activities impede reclamation district levee maintenance and flood fighting? Would districts have the ability to place new material or fix levees for this 9 year period? This information must be included in chapter 19.	
<b>Chapter 19 TRANSPORTATION</b>				
44		General	Need an analysis of traffic injury and mortality caused by project activities, boat accidents.	
45	19-20		Weight and other applicable limits should be included in Table 19-8.	
46	19-31 to 19-32		Impacts of the project on agriculture related traffic in particular needs to be analyzed. Timing of truck trips – especially during harvest – is critical.	
47	19-40	1-3	This less than significant impact conclusion is not adequately supported.	
48	19-40		The details of mitigation, including “implement[ing a] site-specific traffic management plan” are not adequately developed to constitute effective mitigation for impacts related to CM1.	
49	19-43		This information needs to be expanded as it relates to potential impacts on local traffic and districts.	