May 14, 2009

Via email (BDCPcomments@water.ca.gov) and Certified Mail

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P. Street, Bonderson BLDG, 4th Fl.
PO Box 942836
Sacramento, CA 95814

Re: Comments on BDCP Notice of Preparation (State Clearinghouse No. 2008032062)

Dear Ms. Brown:

This letter provides the Suisun Resource Conservation District’s (SRCD) comments on the Revised Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP). SRCD is a special district created by the California legislature with the primary local responsibility for promoting conservation of the Suisun Marsh through regulation and improvement of water management practices on private lands within the Suisun Marsh. (See Public Resources Code § 9962.) As a resource conservation district, SRCD is empowered to coordinate resource management efforts for purposes of watershed restoration and enhancement. (See Public Resources Code § 9001(b)(1) and (3).) SRCD is a party to the Revised Suisun Marsh Preservation Agreement (RSMPA), and is actively engaged, along with DWR and other parties, in preparing the Habitat Management, Preservation, and Restoration Plan for the Suisun Marsh Programmatic Environmental Impact Statement/Environmental Impact Report (Suisun Marsh Plan). By virtue of its regulatory authority in the Suisun Marsh under Public Resources Code section 9962, SRCD is a responsible agency for the BDCP under the California Environmental Quality Act (“CEQA,” the provisions of which are found at Public Resources Code sections 21000 et seq.).

The California Department of Water Resources (DWR), which is serving as lead agency for the environmental review of the BDCP, has a long history of cooperation with SRCD to preserve, protect and enhance the Suisun Marsh. DWR is a party to the SMPA and is actively involved in developing the Suisun Marsh Plan. This history is important and relevant to understanding SRCD’s comments and concerns regarding the NOP and, more generally, the BDCP process to date. In reviewing the NOP and following various BDCP processes and publications, it appears to SRCD as if much of this history has been forgotten.
Long before the BDCP process began, or CalFed before it, SRCD was protecting the environment of the Suisun Marsh. For decades, SRCD, Solano County and the San Francisco Bay Conservation and Development Commission (BCDC) worked together on this mission. In the 1970’s, legislation was enacted to protect the Suisun Marsh. (See Public Resources Code sections 29000 et seq.). This legislation, called the Suisun Marsh Preservation Act, found that the approximately 55,000 acres of managed wetlands in the Marsh comprises almost 10% of the remaining natural wetlands in California. (Public Resource Code, § 29002.) These wetlands provide wintering habitat for migrating waterfowl, and are particularly important during years of drought because such habitats become scarce in the Central Valley. The Suisun Marsh is also habitat for many protected or rare species, such as peregrine falcons, white-tailed kite, golden eagle, California clapper rail, black rail, salt-marsh harvest mouse and Suisun shrew. The Suisun Marsh Preservation Act makes clear that these habitats are dependent upon maintaining adequate water quality, but that water quality in the Suisun Marsh is lowered by “numerous upstream storage facilities, together with diversions of water from the delta and tributary streams of the delta....” (Public Resource Code, § 29010(a)(3)).

Following Water Rights Decision 1485, which established salinity water quality objectives in the Suisun Marsh, SRCD began a long relationship with DWR, the United States Bureau of Reclamation (USBR) and the California Department of Fish & Game (DFG) focused on addressing the impacts to Suisun Marsh water salinities from the DWR and USBR water projects. In 1987, these parties entered the Suisun Marsh Preservation Agreement (SMPA). The SMPA has been amended several times since then, with the most recent amendment occurring in 2006. The RSMPA contains several contractual commitments on the part of DWR and the USBR related to Suisun Marsh water quality. As set forth below, SRCD seeks assurance from DWR that the BDCP will not conflict with DWR’s obligations under the SMPA.

Most recently, the SMPA parties have been working on the Suisun Marsh Plan. Like the BDCP, the Suisun Marsh Plan is a habitat conservation plan under the federal and state endangered species acts. The Suisun Marsh Plan project area is the primary and secondary Suisun Marsh, as defined in Public Resources Code section 29101.

This cursory summary of the broad efforts to protect the environment of the Suisun Marsh is provided because SRCD is becoming increasingly concerned that the BDCP process is heading in a direction that will benefit Delta water exporters at the expense of the Suisun Marsh environment. SRCD is concerned about enormous estimates being discussed of how many acres within the Suisun Marsh may be converted from managed wetlands to tidal marsh. Doing so would alter, most likely permanently, the waterfowl habitat that is declared so important by the Legislature in the Suisun Marsh Preservation Act, and would be totally inconsistent with more than thirty years of Suisun Marsh preservation efforts.

SRCD is also concerned about long-term impacts to water quality associated with the BDCP. Although not clearly or directly discussed in the NOP, it is believed that the primary purpose of the BDCP is to address environmental impacts caused by current export practices and the construction of a new peripheral canal. SRCD understands the challenges facing the water exporters and wants to cooperate in solving those issues.
SRCD will not, however, support a BDCP that degrades Suisun Marsh water quality in any significant manner.

As set forth in more detail below, the NOP fails to satisfy the most basic requirements of CEQA. The three key elements of a NOP are: (1) a description of the project; (2) identifying the location of the project; and (3) identifying the project’s probable environmental effects. (14 C.C.R., § 15082(a)(1).) The NOP fails to meet CEQA’s standards in all three areas, and SRCD requests that DWR consider all comments submitted hereon and prepare a new NOP.

Specific Comments/Questions.

SRCD respectfully requests that DWR respond in writing to each comment or question posed below.

1. The NOP fails to adequately identify the project. On page 2, the NOP states that the BDCP is to address “covered activities.” A list of 9 “covered activities” is provided on page 4 of the NOP, but this list is so cursory that it does not provide SRCD or a reasonable reader of the NOP with an understanding of what projects are actually “covered activities.” For instance, item 1 of the list on page 9 is “existing Delta conveyance elements and operations of the CVP and SWP.” What does this mean? The NOP should describe what are the existing Delta conveyance elements and operations, and why those elements/operations require preparation of a habitat conservation plan.

Item 2 is “New Delta conveyance facilities,” which the NOP claims are described in the November 2007 Points of Agreement. The new conveyance facilities description found in that document reads:

The Steering Committee agrees that the most promising approach for achieving the BDCP conservation and water supply goals involves a conveyance system with new points of diversion, the ultimate acceptability of which will turn on important design, operational and institutional arrangements that the Steering Committee will develop and evaluate through the planning process. The main new physical feature of this conveyance system includes the construction and operation of a new point (or points) of diversion in the north Delta on the Sacramento River and an isolated conveyance facility around the Delta. Modifications to existing south Delta facilities to reduce entrainment and otherwise improve the State Water Project’s (SWP) and Central Valley Project’s (CVP) ability to convey water through the Delta while contributing to near and long-term conservation and water supply goals will also be evaluated. This approach may provide enhanced operational flexibility and greater opportunities for habitat improvements and fishery protection. During the BDCP process, the Steering Committee will evaluate the ability of a full range of design and operational scenarios to achieve BDCP conservation and planning objectives over the near and long term, from full reliance on the new facilities to use of the new facilities in conjunction with existing facilities.

This one-paragraph description of what is commonly called the “Peripheral Canal”
is too vague to allow educated comment on how to scope the project. In particular, there should be information regarding the possible changes in operation of the state and federal water projects that may occur in relation to the Peripheral Canal (e.g. how much water may be diverted in the North Delta; when may diversions occur; what impacts will these diversions have on downstream water users and water quality, etc.)

2. The NOP fails to adequately identify the location of the project. The “Project Area” description on page 6 states that the BDCP will occur in the Statutory Delta, as well as Suisun Marsh, Suisun Bay, “and areas upstream of the Delta.” Figure 1 is a map labeled “Legal Delta Boundary,” and which delineates the area that is statutorily defined as the Delta. This map fails to delineate, however, the Suisun Marsh or “areas upstream of the Delta.” A revised map that clearly shows the project area should be included in the revised NOP.

3. The NOP fails to provide a reasonable description of the project’s probable environmental effects. The fact that a primary objective of the BDCP is to address existing CVP and SWP operations means that it should be reasonably straightforward to at least explain the environmental effects from operation of those projects. Recent court proceedings should provide a good basis from which to identify environmental impacts from the CVP and SWP.

Of particular concern to SRCD are the vaguely discussed plans to convert tens of thousands of acres of managed wetlands to tidal marsh. These types of conversions, while benefitting certain species, are detrimental to others. The Suisun Marsh is an area where tidal restoration is contemplated. The NOP fails to reasonably describe where and in what acreages tidal restoration will occur, or to discuss probable environmental effects associated with such tidal restoration.

4. The NOP fails to reasonably discuss possible impacts to downstream water rights holders associated with the BDCP. Again, if part of the BDCP project is to change the point where the SWP and CVP divert water from the south Delta to the north Delta, then the NOP should address how this will affect downstream water rights holders – including specifically those water users in the Suisun Marsh.

5. Of equal interest is how the change in point of diversion will affect downstream water quality? Will the BDCP project increase salinities in the Suisun Marsh?

6. Will tidal restoration efforts in the Suisun Marsh increase salinity in remaining managed wetlands?

7. The NOP indicates that the BDCP is focused on habitat and conservation measures aimed at restoring certain fish populations. Yet, the project area shown on Figure 1 appears limited to the Delta and Suisun Marsh areas. Why have other areas, such as upstream in the Central Valley river systems, been excluded from the BDCP’s fish restoration efforts?

8. What impact will the Suisun Marsh tidal restoration efforts have on remaining interior levees of the managed wetlands? In other words, if exterior levees are breached to effect tidal restoration, what impacts will occur to the interior levees that will
then be subject to direct tidal action? Will BDCP be paying for and performing upgrades to affected levees?

9. How will the BDCP relate to the SMPA and the Suisun Marsh Plan? Will they be consistent?

Alternatives/Mitigation Measures.

As a responsible agency, SRCD is required to comment on project alternatives and potential mitigation measures. The NOP is currently too vague, however, to allow meaningful comment on such matters. For instance, the NOP contains no direct information regarding the project impacts to the Suisun Marsh, nor enough indirect information regarding the project’s parameters and impacts for SRCD to reasonably infer impacts to the Suisun Marsh. For this reason, many of SRCD’s concerns are phrased in the form of questions, above. Answers to these questions would assist SRCD in providing meaningful comment on a revised NOP.

SRCD requests that all project alternatives be consistent with the Suisun Marsh Preservation Act, RSMPA, Suisun Marsh Plan, and regulations of BCDC and Solano County, including the Suisun Marsh Local Plan of Protection. Again, SRCD and DWR have worked together on these Suisun Marsh conservation efforts for decades, and this work should not be reversed because of the impacts of water export operations. DWR and SRCD, along with the USBR, BCDC, Solano County and DFG have cooperatively developed a Suisun Marsh conservation strategy that balances the needs of species. The vague tidal restoration figures being released to the public, such as those found in the May 8, 2009 Habitat Restoration and Enhancement Recommendations, Handout #3, suggest that BDCP may attempt to convert tens of thousands of acres of Suisun Marsh managed wetlands into tidal marsh. This would be an unbalanced habitat conservation strategy, and one that would run afoul of all the plans and legal authorities cited above.

SRCD is ready and willing to answer any questions from DWR or respond to specific comments related to the Suisun Marsh. In particular, it may be helpful for SRCD staff to meet with DWR staff to review the history of Suisun Marsh conservation efforts and, in particular, to discuss how BDCP relates to the SMPA and Suisun Marsh Plan, and to confirm that BDCP tidal restoration efforts will parallel those proposed for the Suisun Marsh Plan.

Please do not hesitate to call SRCD at the number listed above.

Sincerely,

[Signature]

Steven Chappell, Executive Director