

IRRIGATION



DRAINAGE

RECLAMATION DISTRICT NO. 2068

May 14, 2009

Via e-mail

BDCPComments@water.ca.gov

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RE: Notice of Preparation and Notice of Intent for the Bay Delta Conservation Plan
EIR/EIS

Dear Ms Brown:

The Reclamation District No. 2068 (RD2068) has reviewed the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report / Environmental Impact Statement (EIR/EIS) issued by the California Department of Water Resources and the Notice of Intent (NOI) for the BDCP EIR/EIS issued by the US Fish and Wildlife Service (FWS), the Bureau of Reclamation (Reclamation) and the National Marine Fisheries Service (NMFS). Under the California Environmental Quality Act (CEQA), In response to the NOI/NOP, RD2068 submits the following comments for consideration in preparation of the EIR/EIS for the BDCP.

RD2068 provides retail water supply to agricultural producers in Solano and Yolo Counties, maintains portions of the Sacramento River Flood Control Project (SRFCP) levees in and adjacent to the Yolo Bypass, and has agricultural and storm water drainage management responsibilities. The water users within the service area of RD2068 are protected by the terms of the *Contract Between State of California Department of Water Resources and North Delta Water Agency for the Assurance of a Dependable Water Supply of Suitable Quality (NDWA Agreement)*. The BDCP will have direct and indirect impacts on the service area of RD2068 and on our operations.

General Comment

The Draft Conservation Strategy for the BDCP has no quantification of any parameters that are being described as water operations except, a tentative size for an isolated facility and target diversions of pre-regulatory quantities. The conclusion to be drawn is that a canal and its size has been determined, but operations criteria, location and collateral in-delta modifications will be determined by the measures that are not readily identifiable in the document: outflow, bypass flows, Rio Vista flows, salinity standards, including the ability to comply with existing delta water agreements.

The NOP/NOI fails to provide sufficient information and specificity making it effectively impossible to determine what exactly is proposed for a plan and thus the scope of an EIR/EIS.

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 RD2068 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.

Note: References to Reclamation District No. 2098 (RD2098)

These comments are those of Reclamation District No. 2068. Many of our comments include reference to RD2098. RD 2068 is *not* commenting on behalf of Rd2098, but the two agencies are immediately adjacent to each other and are protected by a common federal levee component. This condition makes each agency co-dependent on the performance of the other for protection from Yolo Bypass and Cache Slough flood events. The mutual interest in this common feature of the SRFCP provides a clear nexus for our including RD2098 in these comments where RD2068 recognizes an issue in RD2098 also affecting RD2068.

Incorporation By Reference

We concur with comments submitted by the County of Solano, North Delta Water Agency and the California Central Valley Flood Control Association on the NOP/NOI and hereby incorporate those by reference.

Federal Project Levees, Local Flood Management and Drainage

RD2068 operates and maintains federal levees defining the western Yolo Bypass and Cache Slough regions. These levees function primarily to provide flood protection in Solano County from the operation of the SRFCP and to a lesser degree from normal tide cycles in the lower lying grounds of RD2068 and RD2098. These facilities serve to provide flood conveyance benefits all lands within the Sacramento Valley watershed above the lower Yolo Bypass. The Yolo Bypass, as the key component of the SRFCP system, carries 80% of the water at the latitude of Sacramento during extreme floods. The State of California is currently working on the Central Valley Flood Protection Plan, which will evaluate the current system and recommend implementation of certain flood control improvement projects. A principle concern of RD2068 is that the BDCP will not act in accordance with nor incorporate the ongoing work of the State under the Central Valley Flood Protection Plan. The BDCP EIR/EIS needs to address the incorporation of the Central Valley Flood Protection Plan into the proposed action of the BDCP.

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, or some other location, to increase flooding of the Bypass. 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 conditions. It was indicated during the scoping sessions that flooding could extend 45 days, up to May 1. This change to the Yolo Bypass operation would essentially render farming infeasible in the bypass due to the uncertainty, or inability, to adequately work the soil in time to plant crops. This change in land use could significantly change the vegetation regime in the Yolo Bypass, which could thereby, affect the bypass flood carrying capacity. BDCP documents also acknowledge that more frequent inundation of the bypass may accelerate the erosion of bypass and downstream levees without appropriate protections. These concerns require consideration.

Previous flood flows in the Bypass, particularly 1986, demonstrated that flood flows at the design condition for the lower reaches of the Bypass is both higher than design stage and encroached into areas not covered by flowage easement. The bypass is already incapable of passing the design flow at the design stage up-stream of Liberty Island. New impacts due to 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 right levee in Reclamation District No. 2068, Unit

109, Mile 0.00 to 0.5, West Levee of Yolo Bypass. Rigorous modeling and monitoring criteria needs to be funded and implemented as a component of any project.

Currently, as a byproduct of farming operations, the lands within farming areas and hunting clubs are maintained to favorable flood flow conditions by the farmers and hunters. The lack of continuing and ongoing maintenance to restored lands could 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 if flood capacity improvement is part of the Central Valley Flood Protection Plan.

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 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 ROA.

The BDCP should describe more specifically how additional flooding will be accomplished and evaluate any impacts that this will cause on adjacent levee systems, changes to farming activity, changes to hydraulic capacity, changes to vegetation types and patterns and enhancement or introduction of special status species. The Bypass levees are designed for short term, infrequent flooding; and are typically not armored, nor are they designed to prevent seepage for extended periods of time.

The concept of “flood neutral” based on current hydrology does not adequately 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 Bypass, including the conveyance or restoration, must coordinate with and accommodate the recommendations of the California Central Valley Flood Protection Plan as well as future flood control improvements. It is our assertion that no projects should be allowed to preempt the paramount public safety function of the components of the SRFCP. There is no acceptable balancing or trade-offs to the flood control function in the Yolo Bypass 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 SRFCP operations and facilities, both inside and outside the Bypass, and public safety.

The BDCP plans indicate that levees may be removed in order to flood certain areas that are currently being farmed. The BDCP 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. Breaching of levees in areas adjacent to Cache Slough in RD2098 would have effects in both RD 2098 and RD2068 potentially extending northward to the area south of Putah Creek. 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. RD2068 District will not accept maintenance for such new levees. These possibilities and their physical and financial impacts must be addressed. Breaching adjacent levees increase the potential for erosion, surface water elevation changes, and water quality changes, all to the detriment of local public and private operations.

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 BDCP 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. The inability to maintain habitat development in the future could cause additional problems. Under the topic of adaptive management, will BDCP needs to consider habitat removal should it prove to negatively affect flood control, or have impacts to human health and safety.

The project levees and water conveyance facilities of RD2068 and RD2098 currently service some 20,000 acres of production agriculture and in excess of 35,000 acres of flood and storm drainage, including the City of Dixon and several thousand acres of conservation lands for avian and terrestrial species. Other agencies utilizing these reclamation works include the Dixon Regional Watershed Joint Powers Authority, Dixon Resource Conservation District, the Maine Prairie Water District, City of Dixon and the Solano and Yolo County Transportation Departments. Alterations to the Yolo Bypass and Cache Slough areas have the possibility of affecting lands at distances beyond fifteen miles away from those geographic areas. RD2068 and our cooperating agencies, operate and maintain flood management and drainage facilities that drain into the Cache Slough/Lower Yolo Bypass area. The EIR/EIS must evaluate the impacts of point and non-point runoff from sources upstream of this area on new habitats that are created. If there are impacts to habitats and the species using these habitats, there could be increased regulation of point and non-point discharges upstream of these areas. These increased regulations may have operational, financial and socio-economic impacts that need to be analyzed in the EIR/EIS.

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.

Water Quality and Supply Impacts

Potential adverse water quality impacts are significantly highlighted in the “Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan”. The Cache Slough region is the principle water supply for much of eastern Solano and southern Yolo Counties as well as the urban water supply for over 400,000 people in Solano and Napa Counties.

The EIR/EIS must analyze the water quality impacts of all the projects and programs associated with the BDCP on the Cache Slough region. Implementation of the BDCP may cause adverse changes in water quality at the intakes of agricultural and urban water users from habitat restoration projects and changes in Delta hydrodynamics. RD2068 is particularly concerned about increases in salinity from new tidal marsh habitat projects. Higher salinity directly correlates with reduced agricultural crop choices and production yield. This agricultural and economic impact requires evaluation.

The lands within and adjacent to RD2068 are covered by the protections of the NDWA Agreement. That agreement’s water quality requirement is the controlling standard in the north delta during portions of the year. We can find no evidence that the modeling completed to date has used the more restrictive NDWA Agreement requirements in developing salinity projections. Proposed north delta intakes have the capacity to decrease flows in the Sacramento River and downstream distributaries. This capability has significant potential to alter fresh water supplies flowing into the Cache Slough/Yolo Bypass region. This modeling using the contractually required water quality standard is an essential component of a defensible EIR/EIS.

RD2068 operates an extensive recapture and reuse system in its agricultural water supply system. Irrigation reuse can supply some or all the water demand by direct application of up 30% of District lands. Increased salinity reduces the opportunity for recapture and reuse of water supplies once diverted. The result is an increased direct diversion from the Cache Slough region along with increased release of agricultural return flows. The EIR/EIS must evaluate these water quality, diversion and financial impacts.

A clear and accurate understanding of issues related to methylation of mercury and mercury transport throughout the Cache Slough/Yolo Bypass region is essential prior to implementation of any wetland development.

The stated purpose of the BDCP is increasing the populations of specific aquatic species that are listed or candidate species for the Federal and state Endangered Species Act. One proposal to increase populations by the BDCP is the creation of tidal marsh habitat in the Cache Slough/Lower Yolo Bypass area. This is an area with numerous agricultural

intakes, including this agency's, as well as the urban North Bay Aqueduct water supply intakes. The EIR/EIS must analyze the impacts of the take of covered species as a result of these habitat modifications in the vicinity of existing facilities. RD2068 is concerned that potential increased take will result in restrictions on the use of these intakes. The EIR/EIS must also examine the impacts of providing alternative sources of water supply or protective equipment if the use of existing pumping facilities is restricted. (See also, Solano County Comments: *Water Intakes, Irrigation and Drainage Systems*)

Water consumption for certain types of wetland may be higher on a per-acre basis than for a comparable acreage of irrigated pasture or cropland. It is necessary to address the consumptive water demands of proposed wetland development, identify the source of the water used, and determination that wetland development will not lead to a decrease in water availability or quality for existing regional water users. The document does not indicate how this might be done nor whether such increased water use will be taken from current local supplies, SWP or Bureau of Reclamation supplies or by reduced usage on adjacent restoration lands.

District Revenues

The conversion of large tracks of private land from agriculture to permanent habitat under State or Federal ownership resulting in the loss of local property tax and assessments will significantly impact the ability of RD2068 and RD2098 to continue providing mutual flood protection, necessary public safety services, and water related services. This impacts not only affect the Districts but also local school and special districts such as fire protection districts, Dixon Resource Conservation District and the two regional Mosquito Abatement Districts, and the North Delta Water Agency. In rural areas general purpose and special purpose government are co-dependent in providing a robust mix of essential public services. Fiscal impacts to either the County or local agencies have clear consequences to other agencies, these impacts should be thoroughly analyzed in the environmental document and fully mitigated.

Agriculture

The very existence of RD2068 and RD 2098 is wholly dependent on the presence of an active, healthy and self sustaining agricultural community.

The proposed conservation strategies and water conveyance improvements will have a direct impact on agricultural land within and around RD2068. Eastern Solano County's regional agriculture is essential to the RD2068 and RD 2098 financial ability to sustain operations, and to the economies-of-scale that ensure a healthy agricultural community. Those operations and local producers support local agricultural production, wildlife habitats, migration corridors, and provides flood protection, storm and agricultural drainage, regional water reuse opportunities, open space and access to recreational amenities.

Because of the importance of agriculture to the District and Solano County within the Delta area, the following impacts should be thoroughly reviewed and analyzed in the EIR/EIS and fully mitigated.

Direct loss of Agricultural Land in Solano and Yolo Counties from conversion to habitat and construction of water conveyance facilities.

The BDCP has identified a general area around Cache Slough/Yolo Bypass of approximately 21,000 to 25,000 acres that may be considered for conversion to habitat. The Conservation Strategy identified 5,000 to 10,000 acres to be converted from agriculture to tidal wetlands. An additional 8,000 acres may be converted under the USFWS OCAP biological opinion. It is unclear what the total area of tidal wetland and upland restoration will be over the time period of the BDCP. Under the Conceptual Approach to Tidal Marsh Restoration Targets presented to the BDCP Steering Committee Meeting on March 27, 2009, anywhere from 55,000 to 80,000 acres of tidal marsh restoration have been targeted over the 50 year BDCP plan term. Given these targets, it is likely that far more than the 5,000 -10,000 acres identified for tidal marsh restoration in the “Draft Conservation Strategy for the Bay Delta Conservation Plan” will be restored under the BDCP within the Cache Slough/Yolo Bypass region. We assume that the targets presented DO NOT include acreage incidental to restoration areas, such as buffers and excess lands acquired as part of a property transaction. These incidental land acquisitions need to be estimated and included in the analysis of impacts. The EIR/EIS must fully analyze the impacts of the whole of the project including long term restoration targets on the conversion or idling of agricultural land in the Solano and Yolo Counties.

Additional loss of agricultural land will occur if the western alignment for the water conveyance improvements is constructed. The precise location and amount of land that would be impacted by the construction of the western alignment is unknown at this time and needs to be analyzed. Any loss of agricultural land from either conversion to habitat, construction of water conveyance facilities or taken incidental to those activities must be analyzed in the EIR/EIS and fully mitigated.

Indirect loss of Agricultural Land

Habitat restoration activities will result in indirect impacts on adjoining and upland agricultural lands and must be analyzed in the EIR/EIR. This will include the loss of agricultural land that may not be converted to habitat within a habitat area or to create buffer areas between restored habitat areas and continued agricultural operations other land uses. There is no discussion in the BDCP of how much land would be needed to provide adequate buffers for water quality and/or invasive species protection between habitat restoration areas and adjoining agricultural lands. All buffer areas should be incorporated as part of the habitat conservation area and maintained as part of the conservation area and in a fashion that does not further impact adjoining agricultural

lands. Realistic estimations of the acreage of these indirect losses need to be provided and the impacts identified.

Restrictions on Adjoining Agricultural Practices

The establishment of habitat conservation areas will potentially impact adjoining or regionally imbedded agricultural facilities, operations and activities. Such impacts may include alterations to water management, increased vector impacts, introduction of invasive species and agricultural pests; avian impacts on agricultural crops and operations; increased potential for take of listed species as a result of existing activities proximate to restored habitat areas, and restrictions on pesticide/herbicide usage and discharge limits that are more restrictive than normal agricultural practices due to adjacent wetlands and aquatic habitat area protection requirements. These impacts may limit the types of crops, pesticide use and other agricultural practices and must be fully analyzed in the EIR/EIS.

The EIR/EIS must also analyze the impact of the loss of agricultural land and agricultural production on the county's overall agricultural economy including direct, indirect and induced impacts. This includes the impact to third party activity such as agricultural support activities, processing and industries from the loss of agricultural production to BDCP actions.

Project Alternatives

While the BDCP project encompasses three major components, alternatives identified in the NOP only address one component, water conveyance. The EIR/EIS should fully identify the water conveyance alternatives including an alternative that does not include the establishment of a canal/pipeline system and alternatives for water sources including desalination as an alternative.

Alternatives for habitat restoration and reduction of stressors were not identified in the NOP. Alternatives must be developed and analyzed in the EIR/EIS for these components of the project as well.

As part of the EIR/EIS alternative analyses, there should be an identification of alternative water supplies for agencies receiving exported Delta water..

Future Actions and Impacts not Previously Identified

Depending on future changes to the project to meet management goals and to the extent these future actions have not been analyzed in this environmental document, future environmental review will be required.

RD2068 expects 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. RD2068 will be reviewing and commenting on the Draft EIR/EIS for BDCP and further expects that these comments on the NOP/NOI will be used in preparing the EIR/EIS.

RD2068 appreciates the opportunity to provide these comments.

Questions may be addressed to Mike Hardesty at (707) 678-5412 or at rd2068@cal.net.

Sincerely,
RECLAMATION DISTRICT No. 2068

Clifford Detar, President
Board of Trustees

North Delta Water Agency Comments Incorporated with RD2068 Comments

[NDWA Letterhead]

May 13, 2009

Via E-mail:
BDCPcomments@water.ca.gov

Ms. Delores Brown, Chief
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State of California
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**Re: SCOPING COMMENTS OF NORTH DELTA WATER AGENCY
BAY DELTA CONSERVATION PLAN ENVIRONMENTAL IMPACT
REPORT/ENVIRONMENTAL IMPACT STATEMENT**

Dear Ms. Brown:

The North Delta Water Agency (“NDWA”) respectfully submits these scoping comments on the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact Statement (EIR/EIS).

HISTORY OF THE NORTH DELTA WATER AGENCY

NDWA was formed by a special act of the Legislature in 1973. (North Delta Water Agency Act, Chapter 283, Statutes of 1973). Its boundaries encompass approximately 277,000 acres including all of that portion of the Sacramento-San Joaquin Delta, as defined in Water Code Section 12220, that is situated within Sacramento, Yolo and Solano Counties. Also included within NDWA’s boundaries are certain lands in northeastern San Joaquin County comprising New Hope Tract, Canal Ranch and Staten Island.

Beginning approximately 160 years ago, farmers within the area now comprising NDWA began reclaiming lands from flooding, appropriating water to beneficial use and establishing vibrant agricultural communities. The Bureau of Reclamation (Bureau) began constructing the Central Valley Project (CVP) in the late 1930s, damming the major tributaries on the Sacramento River and holding back substantial quantities of the Delta water supply. As it did with landowners along the Sacramento River, the United States conducted extensive studies and negotiations to ensure a sufficient supply for water right holders in the northern Delta. Discussions with Delta landowners were protracted, however, due to the complex issues of both water quantity and quality, and the issues only intensified with the construction of the State Water Project by the California Department of Water Resources (DWR).

Against this backdrop, NDWA was formed to represent northern Delta interests in negotiating a contract with both the Bureau and DWR in order to mitigate the water rights impacts of the Projects. From 1974 to 1979, North Delta, the Bureau and DWR determined the outflow necessary to meet water quality standards for irrigated agriculture and reviewed the paramount water rights of landowners within North Delta's boundaries. The agencies also evaluated the Delta channels' historical function as natural seasonal storage. Before the Projects began withholding much of the Sacramento River system's high winter flows, the Delta channels stored sufficient fresh water to sustain water quality in the northern Delta throughout and often beyond the irrigation season. Since the Projects commenced, however, the Delta functions more like a flowing stream and, as a result, relatively minor decreases in outflow can have a serious impact on northern Delta water quality.

In 1981, DWR and NDWA executed a Contract for the Assurance of a Dependable Water Supply of Suitable Quality (1981 Contract), a copy of which is enclosed. The crux of the 1981 Contract is a guarantee by the State of California that, on an ongoing basis, it will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. The 1981 Contract requires DWR to operate the State Water Project to meet specified water quality criteria while providing enough water to satisfy all reasonable and beneficial uses of water within NDWA's boundaries. (1981 Contract, Art. 2) In return, North Delta makes an annual payment to DWR. (*Id.* Art. 10). The 1981 Contract remains in full force and effect.¹

Although the two signatories are public agencies, the 1981 Contract also extends to individual landowners who, under the terms of the Contract, have executed Subcontracts guaranteeing that their lands will receive all the benefits and protections of the 1981 Contract. (*Id.* Art. 18) Many of these Subcontracts have been signed and recorded, enabling the subcontractors to enforce the terms of the 1981 Contract.

The 1981 Contract contains provisions that expressly protect NDWA and its landowners from harm caused by changes in State Water Project (SWP) water conveyance infrastructure. For example, Article 6 of the 1981 Contract provides:

“The State shall not convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency. If lands, levees, embankments, or revetments adjacent to Delta channels within the Agency incur seepage or erosion damage or if diversion facilities must be modified as a result of altered water surface elevations as a result of the conveyance of water from the SWP to lands outside the Agency after the date of this contract, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be

¹ In connection with the hearings that preceded the State Water Resources Control Board's adoption of Water Right Decision 1641, DWR and NDWA entered into a memorandum of understanding dated May 26, 1998 (MOU), which provides that DWR is responsible for any obligation imposed on NDWA to provide water to meet Bay-Delta flow objectives, so long as the 1981 Contract remains in effect. In Decision 1641, the State Water Board made the following findings and determinations: “Based on the agreement, the SWRCB finds that the DWR will provide the backstop for any water assigned to the parties within the NDWA as specified in the MOU. This decision assigns responsibility for any obligations of the NDWA to the DWR consistent with the MOU.” (Decision 1641 at 66). The latter findings and determinations were upheld by the trial and appellate courts that subsequently reviewed Decision 1641.

responsible for all diversion facility modifications required.” (emphasis added)

NDWA will take all steps necessary to ensure that the protections embodied in Article 6 and the other provisions of the 1981 Contract are adhered to in connection with the BDCP process and any subsequent processes, proceedings or activities undertaken by the State of California.

SCOPING COMMENTS OF NORTH DELTA WATER AGENCY

1. Any Delta solution must include guarantees that lands within NDWA will continue to receive both the quantity and quality of water guaranteed under the 1981 Contract and under other applicable law, including but not limited to the Delta Protection Act, Cal. Water Code §§ 12201-12204 and the area of origin laws, Cal. Water Code §§ 11460-11465. Accordingly, the EIR/EIS must: (A) include a comprehensive description of the 1981 Contract including but not limited to its water quality requirements and the Article 6 protections quoted above; (B) identify the 1981 Contract as a significant legal constraint on the discretion of the State to implement any project involving the modification of SWP water conveyance infrastructure within the northern Delta; and (C) identify in the EIR/EIS how all BDCP projects and actions will assure water supply reliability, availability, and quality for all North Delta water users.
2. Consistent with Comment 1 above, all hydrologic and hydraulic modeling undertaken as part of the BDCP process must assume, as the “baseline” condition, that the terms and conditions of the 1981 Contract, including but not limited to its water quality requirements, will remain in full force and effect. NDWA is informed and believes that the modeling work undertaken to date in support of the BDCP process does not utilize the water quality and water supply provisions of the 1981 Contract as the baseline for analysis of environmental impacts; instead the modeling work utilizes the water quality objectives contained in the current Water Quality Control Plan for the Delta as the baseline condition. The latter objectives differ in certain key respects from the water quality requirements of the 1981 Contract particularly the period from mid-August through March where the 1981 Contract requirements are more stringent from a water quality standpoint. Use of the wrong environmental baseline would skew the analysis of environmental impacts associated with the proposed project(s) and render the EIR/EIS vulnerable to attack. In addition, the hydrologic and hydraulic modeling undertaken as part of the BDCP process should fully analyze all water quality impacts relating to the proposed creation of fishery habitat areas within the Yolo Bypass and Cache Slough areas. In order to provide the baseline data referenced above and to analyze the impacts from all projects and operational actions identified in a final EIR/EIS, the proposed project EIR/EIS must include the installation of salinity and hydrodynamic monitoring stations in the Yolo Bypass and Cache Slough as well as other sloughs and canals throughout the North Delta to guide future adaptive management of BDCP actions that may result in violating the provisions of the 1981 Contract.
3. Consistent with Comments 1 and 2 above, changes in the water surface elevations, natural flows and flow directions within the NDWA would potentially result in violation of Article 6 of the 1981 Contract. All hydrologic and hydraulic modeling should include an analysis of the changes identified in the preceding sentence as well as the potential for seepage and erosion within the NDWA related to any isolated water conveyance facility and associated diversion facilities, proposed changes in water operations and new habitat measures. The EIR/EIS should address not only the potential impacts to water surface elevations, flows and flow

direction, increased seepage and erosion resulting from various alternatives, but also the costs associated with these changes including but not limited to repairs, modifications, or replacement of existing diversion facilities and levees and added operating costs, as required under Article 6 of the 1981 Contract.

4. Also consistent with Comment 1 above, the discussion of alternatives in the EIR/EIS must focus on alternatives that are potentially feasible in light of the requirements of the 1981 Contract. Inclusion of an alternative in the EIR/EIS that would result in a violation of the 1981 Contract's water quality, Article 6 or other obligations would violate the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA). "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly." (CEQA Guidelines § 15126.6(b)). In the present context these requirements clearly indicate that the EIR/EIS must consider, as one alternative, a project that involves the improvement of through-Delta water conveyance capacity coupled with continued adherence to the water quality and other requirements of the 1981 Contract, with no so-called "isolated facility."

5. To the extent that any of the project alternatives analyzed in the EIR/EIS would cause productive agricultural land within NDWA to be taken out of production, or would cause environmental problems to be re-directed into the NDWA, CEQA and NEPA impose an obligation to analyze the effects (direct and indirect) associated with such changes, and to mitigate for significant effects. The following comments examine the nature and extent of this obligation in further detail.

(a) It is well-established that NEPA is focused not just on physical impacts but on "human" impacts as well. For example, the definition of "effects" contained in NEPA refers to "economic, social or health" effects. 40 C.F.R. § 1508.8. NEPA's focus on the human consequences of environmental effects derives from the statutory reference to the "*human* environment." 42 U.S.C. § 4332(C)(emphasis added). Accordingly, the EIR/EIS must include an analysis of the direct and indirect economic, social, public safety and health effects of the proposed action(s) on the Delta residents and economy and such effects in the Delta must be mitigated in accordance with applicable law.

(b) In the present context, NDWA is concerned that the massive new water conveyance infrastructure being considered by BDCP for the northern Delta will not only have the obvious effect of taking large tracts of agricultural land out of production; it will also have the more insidious, long-term effect of eroding the economic viability of the agricultural economy of the north Delta region and the social and economic viability of north Delta communities. In a similar vein, current BDCP proposals would, in effect, dissect certain of the reclamation districts within the northern Delta that provide flood protection to Delta lands and communities, potentially eliminating vital flood protection. All of these in-Delta "human" impacts must be thoroughly analyzed in the EIR/EIS. Moreover, to the extent that implementation of a Delta project causes harm within NDWA in the form of a diminution in the value of land or business assets, the State of California will be subject to liability under state and federal law for inverse condemnation damages. It is essential that BDCP, in determining the full cost of any Delta project(s), take these additional costs and liabilities into account. The core principle which BDCP should apply and follow throughout its process is that landowners and residents within NDWA

must be made whole for all harm (direct and indirect) associated with the implementation of any particular Delta infrastructure project.

(c) Landowners and water users within NDWA should be protected from short-term and long-term “collateral damage” arising from BDCP habitat restoration efforts. This includes, but is not limited to, regulatory actions that may affect the right to divert (i.e. fish screen requirements) and the timing of diversions. Any Delta solution must include robust and secure “take” authorization for existing, in-Delta covered activities. Assurances must be flexible and open-ended, and must not shift the risk for changed conditions away from the State of California.

(d) In order to comply with CEQA and NEPA, any project must include adequate, reliable, and permanent financing mechanisms (i.e. an endowment, annuity, or dedicated stream of revenue), especially for maintaining project-related properties and habitat so that they do not impact neighboring land uses and land values. In a similar vein, existing local taxes and assessments must be maintained so that northern Delta cities, counties and special districts (including reclamation districts, fire protection districts and NDWA) will remain economically viable. Removing even a small part of the local funding for these agencies would compromise their ability to execute critical roles in community governance. NDWA is concerned that BDCP’s proposals to convert massive tracts of land within NDWA from private ownership to public ownership for water conveyance and habitat purposes may seriously erode NDWA’s assessment base. Even assuming, for the sake of discussion, that arrangements could be made to reduce NDWA payments to DWR under the 1981 Contract for lands taken out of private ownership, the remaining private landowners within NDWA would be left with a proportionately higher share of NDWA fixed and administrative costs. Over time, this cost burden would undermine the viability of the agricultural economy within NDWA, so must be avoided.

(e) The EIR/EIS must consider public health and safety effects associated with the proposed project including (i) mosquito-borne diseases such as malaria or West Nile virus associated with new water impoundments, and (ii) flood risks.

6. The EIR/EIS must avoid the tendency, evident in other BDCP planning documents, to overstate the presumed benefits to migratory and pelagic fish species arising from the implementation of specific projects or project elements (including conservation measures) and to underestimate potential detrimental effects. Presumed benefits of conservation measures are impossible to evaluate in the absence of specific performance targets. The EIR/EIS may not, consistent with applicable law, presume benefits to migratory or pelagic fish species based on assumptions regarding underlying biological mechanisms that are untested or poorly supported.

7. The EIR/EIS must avoid the tendency, evident in other BDCP planning documents, to assume that the populations of covered species are limited principally by food resources available in the Delta. There is no support for this assumption.

8. The EIR/EIS must be based on the best available science. Given the accelerated BDCP schedule, it is perhaps not surprising that the best available science has not always been adequately considered during the course of the BDCP process. However, NEPA and CEQA require that the best available science be considered and incorporated into the analysis contained in the EIR/EIS.

9. The EIR/EIS must contain a comprehensive discussion of the various options regarding size and configuration of Delta conveyance facilities and the impacts associated with each option.

Size of facilities cannot be properly evaluated without some range of operating parameters.

10. The EIR/EIS must avoid the tendency, evident in other BDCP planning documents, to assume that the historic reclamation of much of the Delta for agriculture and ongoing agricultural operations within the Delta amount to a “stressor” on covered species. This is not the case and there is no scientific evidence supporting this assumption. The operation of the export facilities cause or exacerbate nearly every problem impacting the covered species in the Delta and the EIS/EIR should so state.

It is unclear from a scientific standpoint whether diverting water from locations north of the Delta will improve overall ecosystem functioning. The new North Delta diversion facilities may in fact result in harm to pelagic and anadromous fish species due to entrainment or predation. The EIR/EIS should so state. Based on the limited scientific support validating species benefits from new North Delta diversions, all assumptions regarding the ecosystem benefits of north of Delta diversions should be removed from BDCP draft documents and not included in the EIR/EIS if they cannot be clearly identified and supported by published scientific data or peer-reviewed scientific research and reports.

12. 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 gives 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. In addition, actions proposed in BDCP draft documents could also result in violating assurances and provisions included in the NDWA 1981 Contract. 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 result in violating the provisions of the 1981 Contract and the human consequences mentioned in number 5 above. 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.

13. NDWA agrees with previous commenters that water quality considerations in relation to Delta Cross Channel operations and a potential Three-Mile Slough gate are important in evaluating the benefits and impacts of water export operations in the Delta. The EIR/EIS must include a comprehensive discussion of water quality, hydrodynamics and the water quality impacts associated with the various project alternatives. As noted above, the EIR/EIS should evaluate such impacts in light of, among other things, the water quality requirements of the 1981 NDWA-DWR Contract.

Finally, it is impossible to provide comprehensive or complete comments on the Bay Delta Conservation Plan Environmental Impact Report/Environmental Impact State 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 NDWA as a local agency 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 effect, 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.

Very truly yours,

Melinda Terry
General Manager

*California Central Valley Flood Control Association Comments Incorporated with
RD2068 Comments*



Serving the Flood Control Community Since 1926

CALIFORNIA CENTRAL VALLEY FLOOD CONTROL ASSOCIATION

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May 13, 2009

Via e-mail

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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 up stream 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 water fowl 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 gives 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 State 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,

A handwritten signature in black ink, appearing to read "Melinda Terry". The signature is fluid and cursive, with the first name "Melinda" written in a larger, more prominent script than the last name "Terry".

Melinda Terry,
Executive Director

GC/pp
2350/DOLORES BROWN 2009-05-13.DOC

Solano County Comments Incorporated with RD2068 Comments

COUNTY ADMINISTRATOR'S OFFICE

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May 11, 2009

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RE: Notice of Preparation and Notice of Intent for the Bay Delta Conservation Plan EIR/EIS

Dear Ms. Brown:

The County of Solano (County) has reviewed the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report / Environmental Impact Statement (EIR/EIS) issued by the California Department of Water Resources and the Notice of Intent (NOI) for the BDCP EIR/EIS issued by the US Fish and Wildlife Service (USFWS), the Bureau of Reclamation (Reclamation) and the National Marine Fisheries Service (NMFS). Under the California Environmental Quality Act (CEQA), the County may be a "responsible agency" with respect to the BDCP in that the County may have permitting or approval authority of certain aspects of the project.¹

In response to the NOP and NOI, the County submits the following comments for consideration in preparation of the EIR/EIS for the BDCP.²

¹ Although responsible agencies are required to respond within 30 days of receipt of the NOP, the County was not sent the NOP as required by CEQA. (14 Cal. Code. Regs. ("CEQA Guidelines") § 15103.) Therefore, the County is not bound by this timeframe and these written comments are timely made.

² This analysis tends to refer to the NOP, but as the NOP and NOI are exceedingly similar, such analysis may apply to the NOI as well.

1. PROJECT DESCRIPTION

The NOP and NOI provide a very limited description of the project.³ Among other things, the NOP identifies the project purpose and three basic project objectives, the BDCP planning goals, and an open-ended list of covered activities and covered species. The NOP makes reference to the January 12, 2009 document “An Overview of the Draft Conservation Strategy for the Bay Delta Conservation Plan” (“Draft Conservation Strategy”). This document only provides a broad overview of the conservation strategy elements and does not describe the water conveyance components of the project. Other BDCP documents provide a very general description of the water conveyance alternatives being considered as part of this project. Consequently, our comments address the broad aspects of the project as we understand them today. As provided under CEQA Guidelines section 15124, the Draft EIR/EIS should have a clear and full project description clearly identifying the preferred project including all restoration measures. As the BDCP project description is further developed and refined, we may identify additional issues that must be addressed in the environmental evaluation.

The following components of the project will have a direct impact on Solano County.

Conservation Strategy

The Draft Conservation Strategy identifies ten core elements of the BDCP conservation strategy. Four of these elements have direct impacts on Solano County:

- *Strategy No. 1. Modify Fremont Weir and Yolo Bypass to provide higher frequency and duration of inundation.* This will impact the lower Yolo Bypass area including areas within Solano County.
- *Strategy No. 6. Large-scale tidal marsh restoration in the Cache Slough.* This includes restoring 5,000-10,000 acres to freshwater tidal wetlands and sub-tidal habitat and protecting an undisclosed amount of upland habitat. The Draft Conservation Strategy identifies a general area within the vicinity of Cache Slough. This area appears to be approximately 21,000 to 23,000 acres in size including the following islands and tracts:
 - Prospect Island (approximately 1,680 acres)
 - Trust for Public Lands (Solano) (approximately 3,850 acres)
 - RD 2098 (approximately 2,740 acres)
 - Peters Pocket (RD 2104) (approximately 1,840 acres)
 - Hastings Island (RD 2060) (approximately 4,520 acres)
 - Egbert Tract (RD 536, Heam Ranch, Peterson Ranch, California Fish and Game) (approximately 5,380 acres)
 - Little Egbert Tract (Egbert Island) (approximately 2,930 acres)
- *Strategy No. 8. Large-scale tidal marsh restoration in the Suisun Marsh area.* This strategy relies on the Suisun Marsh Habitat Restoration and Management Plan (and attendant EIR/EIS) currently under development with the program goals of preserving and protecting managed seasonal wetlands, implementing a levee

³ Arguably too limited per CEQA Guidelines section 15082 (providing that the NOP must contain “sufficient information describing the project”).

improvement program, and protecting ecosystem and drinking water quality, while restoring habitat for tidal marsh dependent sensitive species. The Restoration and Management Plan is analyzing three alternatives that include brackish intertidal marsh restoration from 3,000 up to 9,000 acres.

- *Strategy No. 10. Delta outflow targets.* Delta outflow targets affect salinity levels in the Suisun Marsh and lower reaches of the Delta. Salinity standards have not yet been established under the BDCP.

The Draft Conservation Strategy thus identifies approximately 23,000 acres in the Cache Slough area of which 5,000 to 10,000 acres are proposed for tidal marsh restoration and up to 9,000 acres in the Suisun Marsh area for tidal marsh restoration.

However, it is unclear how many acres will be required. First, it is unclear whether the 8,000 acres required under the USFWS OCAP Biological Opinion is included in the proposed acreage or is in addition to the acreage identified. This needs to be clarified in the EIR/EIS. Furthermore, the habitat restoration acreage presented to the BDCP Steering Committee on March 27, 2009 targets 55,000 to 80,000 acres of tidal marsh restoration within the whole Delta over the 50-year BDCP planning horizon, significantly above the initial acreages identified in the Draft Conservation Strategy. Only 21,950 acres within Delta have been identified and presented to the BDCP Steering Committee on March 27, 2009 for tidal marsh restoration (see the "Conceptual Approach to Tidal Marsh Restoration Targets" document). The EIR/EIS must analyze the whole of the project including total proposed restoration over the life of the BDCP. This would include identification of all sites for the potential restoration of 55,000 to 80,000 acres to tidal marsh and associated environmental impacts from the restoration of these sites and the indirect impacts on the surrounding upland areas to provide adequate buffer areas to the restoration sites.

In sum, under the Draft Conservation Strategy, Solano County is being asked to accommodate the vast majority of the proposed conservation activities both in the Cache Slough and Suisun Marsh areas. Areas totaling 30,000 to 32,000 acres have been identified in Solano County as potential habitat restoration area with an identified need of up to potentially 19,000 acres. Furthermore, it is not clear how the 8,000 acres identified in the USFWS OCAP Biological Opinion are addressed –whether they are in addition to or would be included in the acreage identified in the BDCP. Nor is it clear what additional areas would be needed to meet the 50,000 to 80,000 acre long-term target for tidal marsh restoration. It is also not clear as part of adaptive management if more area would be needed in the future for habitat restoration and if needed where that will occur. The EIR/EIS must clearly define the whole of the project including long term operations and the potential restoration of 50,000 to 80,000 acres to tidal marsh.

Water Conveyance Improvements

The BDCP is evaluating three alternatives for improving conveyance of water to the State Water Project (SWP) and Federal Central Valley Project (CVP) pumping plants

located in the southern Delta. One of the alternatives being considered is a West Delta Canal/Pipeline. The West Delta Canal/Pipeline passes through Solano County and would have a direct impact on the County and the City of Rio Vista. The amount of land that would be required or disturbed as part of the West Delta Canal/Pipeline has not been identified. The EIR/EIS needs to do so.

2. SIGNIFICANT ENVIRONMENTAL EFFECTS THAT MUST BE ADDRESSED IN THE EIR/EIS

A. Solano County General Plan

Solano County seeks to balance human and environmental needs in support of its diverse land uses that include farmlands and approximately 80 square miles of water. The citizens of Solano County made a very public commitment to protecting our environment over 25 years ago with Proposition A and the Orderly Growth Initiative. This commitment has continued and is most recently reflected in the 2008 Solano County General Plan. Many of the Delta proposals will impact the County's ability to sustain these environmental objectives. As required under CEQA Guidelines section 15125, the EIR/EIS must review the project for consistency with the 2008 Solano County General Plan, in particular the County's Land Use policies; Agricultural policies; Resource policies including Biological Resources, Marsh and Delta Areas, Scenic Resources, Cultural Resources, Recreational Resources, Water Resources and Quality; Public Health and Safety policies including Flood Control, Disaster Preparedness, and Climate Change; Economic Development policies, Transportation and Circulation policies; and Public Facilities and Services policies including Water Facilities and Service, Drainage, Fire Protection and Emergency Services, Law Enforcements, and Utilities.

The project should be consistent with the County General Plan policies and not result in any direct or indirect adverse environmental, economic or social impacts to the County. Any inconsistencies between the proposed project and the General Plan must be fully discussed and analyzed.

B. Agriculture

The proposed conservation strategies and water conveyance improvements will have a direct impact on agricultural land within Solano County. Historically, agriculture has been an important industry in Solano County and a central part of the County's identity. The County's agricultural economic economy contributes to the region's economic health and prosperity, defines much of the County's visual character, supports wildlife habitats and migration corridors, and provides open space and recreational amenities.

Within the Delta, Solano County has maintained, supported and protected agricultural activities. Delta agriculture is an important component to the County's overall agricultural economy. General Plan polices supported by Propositions A and the Orderly Growth Initiative have protected Delta lands in agricultural and open space uses preventing the introduction of non-agricultural or conflicting land uses. The 2008 General Plan, in addition to continuing to protect the Delta area for agricultural use, has established programs to further promote and

enhance agricultural activities in the Delta including the development regional strategic plans to support marketing and branding of Solano County agricultural products from the Delta area.

Because of the importance of agriculture to Solano County within the Delta area, the following impacts should be thoroughly reviewed and analyzed in the EIR/EIS and fully mitigated.

Impact: Direct loss of Agricultural Land in Solano County from conversion to habitat and construction of water conveyance facilities.

The BDCP has identified a general area around Cache Slough of approximately 21,000 to 23,000 acres that may be considered for conversion to habitat. The Draft Conservation Strategy identified 5,000 to 10,000 acres to be converted from agriculture to tidal wetlands. An additional 8,000 acres may be converted under the USFWS OCAP Biological Opinion. However, as noted in our comments on the project description, it is unclear what the total area of tidal wetland restoration will be over the time period of the BDCP. Under the "Conceptual Approach to Tidal Marsh Restoration Targets" presented to the BDCP Steering Committee Meeting on March 27, 2009, anywhere from 55,000 to 80,000 acres of tidal marsh restoration have been targeted over the 50-year BDCP plan term. Given these targets, it is likely that more than the 5,000 -10,000 acres identified for tidal marsh restoration in the Draft Conservation Strategy will be restored under the BDCP within Solano County. The EIR/EIS must fully analyze the impacts of the whole of the project including long-term restoration targets on the conversion of agricultural land in Solano County.

Of the approximately 23,000 acres identified in the Draft Conservation Strategy in the Cache Slough area, approximately 14,500 acres are currently in agricultural production producing agricultural crops and commodities worth \$7.5 million. Lands within this conservation area not currently flooded consist of approximately 9,600 acres of "Prime Farmland" and 3,100 acres of "Farmland of Statewide Importance" as identified under the California Department of Conservation Farmland Mapping and Monitoring program.

Additional loss of agricultural land will occur if the western alignment for the water conveyance improvements is constructed. The precise location and amount of land that would be impacted by the construction of the western alignment is unknown at this time and needs to be analyzed. Any loss of agricultural land from either conversion to habitat or construction of water conveyance facilities must be analyzed in the EIR/EIS and fully mitigated.

Mitigation measures must include the following:

- Permanent protection/preservation of like or better quality agricultural lands for agricultural land converted based on a 1 to 1.5 ratio as identified in the 2008 Solano County General Plan.

- Priority for agricultural mitigation should be given to the Agricultural overlay areas as identified in the 2008 Solano County General Plan.
- Land acquisitions for habitat restoration must be from willing sellers only.

Impact: Indirect loss of Agricultural Land

Habitat restoration activities will result in indirect impacts on adjoining and upland agricultural lands and must be analyzed in the EIR/EIS. This will include the loss of agricultural land that may not be converted to habitat within a habitat area or to create buffer areas between restored habitat areas and continued agricultural operations other land uses. There is no discussion in the BDCP of how much land would be needed to provide adequate buffers for water quality and/or invasive species protection between habitat restoration areas and adjoining agricultural lands. All buffer areas should be incorporated as part of the habitat conservation area and maintained as part of the conservation area and in a fashion that does not further impact adjoining agricultural lands.

Mitigations measures must include the following:

- Permanent protection/preservation of like or better quality agricultural lands for agricultural land converted based on a 1 to 1.5 ratio as identified in the 2008 Solano County General Plan.
- Priority for agricultural mitigation should be given to the Agricultural overlay areas as identified in the 2008 Solano County General Plan.
- Land acquisitions must be from willing sellers only.

Impact: Restrictions on Adjoining Agricultural Practices

The establishment of habitat conservation areas will potentially impact adjoining agricultural operations and activities. Such impacts may include increased vector impacts; introduction of invasive species and agricultural pests; avian impacts on agricultural crops and operations; increased potential for take of listed species as a result of proximity to adjoining conservation habitat areas; and restrictions on pesticide/herbicide usage and discharge limits that are more restrictive than normal agricultural practices due to adjacent wetlands and aquatic habitat area protection requirements. These impacts may limit the types of crops, pesticide use and other agricultural practices and must be fully analyzed in the EIR/EIS.

Mitigation measures must include the following:

- Establishment of buffer areas incorporated into the project sufficient to avoid the need for additional restrictions on farm practices.
- Establish water quality objectives for any potential discharges that may impact buffer areas and designated areas and the State commit to taking responsibility for any increase regulatory requirements from upstream point and non-point discharges due to existence of new BDCP habitat.

- Establish “good neighbor” programs to deal with vectors, invasive species and agricultural pests to be incorporated and funded as part of conservation management plans.
- Full federal Endangered Species Act (ESA) and California Endangered Species Act (CESA) protection for neighboring lands/landowners.

Impact: Loss of Lands under Williamson Act Contract

Of the 23,000 acres of land identified for potential conversion to wetland habitat in the Cache Slough area, approximately 94% (21,554 acres) is under Williamson Act contract of which 16,194 acres are classified as “prime” and 5,360 acres classified as “non-prime”. The EIR/EIS must analyze how the implementation of the BDCP will affect the existing Williamson Act contracts. Much of the lands in Suisun Marsh proposed for restoration is also under Williamson Act contract.

Mitigation measures must include the following:

- Mitigation ratios for the loss of Williamson Act contracted land which should be higher than the loss on non-contract agricultural land.
- Alternatives to removing “prime” agricultural land.

Impact: Sustainable Agricultural Economy in Solano County

The EIR/EIS must also analyze the impact of the loss of agricultural land and agricultural production on the county’s overall agricultural economy including direct, indirect and induced impacts. This includes the impact to agricultural support activities and industries from the loss of agricultural production to habitat conversion.

Mitigation measures must include the following:

- Payment for lost business opportunity and income based on Solano County Water Agency (SWCA) report “The Economic Impact to Solano County from Converting Agricultural Land to Wetlands Habitat” (January 2009), already provided to BDCP representatives, payable to the County to administer programs to help mitigate third party impacts of conversion.
- Fund improvements to agricultural support facilities to maintain a sustainable agricultural infrastructure.

C. Suisun Marsh

The Suisun Marsh is the largest brackish water marsh in the Western United States. It is comprised primarily of diked seasonal wetlands, managed primarily as habitat for waterfowl and is protected under the Suisun Marsh Protection Act of 1977. The marsh salinity levels are mandated by the Water Rights Decision 1641 and maintained by Delta outflow, tidal flows, and the operation of the Suisun Marsh Salinity Control Gates. Alterations to through-Delta conveyance could result in reduced freshwater inflow to the Suisun Marsh and increased salinity, compromising existing water quality standards, seasonal wetland management

practices, the life of Marsh management infrastructure, and the diversity and quality of existing wetland and wildlife habitats.

As noted above, the Suisun Marsh Habitat Restoration and Management Plan (and attendant PEIR/EIS) is analyzing three alternatives of potential restoration ranging from 3,000 up to 9,000 acres of brackish intertidal marsh which is now targeted under BDCP for possible restoration to address Delta needs. The Habitat Restoration and Management Plan is designed to address the needs of ongoing operation and maintenance within the Suisun Marsh area. The restoration of intertidal marsh would address impacts associated with the Restoration and Management Plan and also contribute to the recovery of tidal marsh-dependent sensitive species. These should be credited towards the BDCP activities. The BDCP process must coordinate closely with the Habitat Restoration and Management Plan process while analyzing the impacts of the BDCP activities on the Suisun Marsh as part of the EIR/EIS.

The EIR/EIS must also analyze the impacts of the BDCP activities on the Montezuma Wetlands project, a dredging sediment re-use and wetland restoration facility located at the eastern edge of the Suisun Marsh near Collinsville.

Mitigation measures must include the following:

- Buffers incorporated into the project that are sufficient to avoid the need for additional restrictions on public agency and private activities on surrounding lands
- Restoration activities in the Suisun Marsh under the BDCP must include consideration for local activities and projects under the Suisun Marsh Habitat Restoration Management Plan.
- Measures to protect on going wetland restoration projects including the Montezuma Wetlands project.

D. Other Land Uses

Impact: Existing Recreational Uses

A number of recreation uses and infrastructure exist within the Cache Slough and Suisun Marsh areas. These include hunting clubs, boating facilities (notably, the Dixon Boat Club), fishing, public access and wildlife viewing areas. Increased frequency and duration of inundation in the Yolo Bypass, conversion of lands to tidal wetlands in the Cache Slough area, and intertidal habitat restoration within the Suisun Marsh may impact many of these recreational activities and facilities, raising environmental as well as economic concerns. Within the Cache Slough area, the loss from hunters' visits is estimated at approximately \$3.1 million annually just from this activity based on the SCWA report "The Economic Impact to Solano County from Converting Agricultural Land to Wetlands Habitat," noted above. The EIR/EIS should fully analyze both the direct and indirect impacts of the project on existing recreational uses.

Mitigation measures must include the following:

- Payment for lost business opportunity and income based on the Solano County Water Agency report noted above, payable to the County to administer programs to help mitigate third-party impacts of conversion.

Impact: Future Recreational Uses

Habitat restoration may provide new and expanded recreational opportunities within the project area. The County supports maximizing such public recreational opportunities associated with habitat projects. These new or expanded uses should be identified and analyzed in the EIR/EIS and the impacts associated with these new uses fully mitigated. Impacts of new recreational uses on County services such as law enforcement, emergency services and roads are discussed under item J. below.

Impact: Rio Vista Airport

The establishment of a wetland habitat in the Egbert Island (Little Egbert Tract) area east of the Rio Vista airport will increase avian activities east of the Rio Vista Airport. This may create potential conflicts with airport operations. The EIR/RIS must fully analyze the impacts of the project on the Rio Vista Airport and airport operations.

E. Ecosystems

Impact: Fish and Terrestrial Species and Existing Wildlife Use

Increased frequency of flows through the Yolo Bypass and conversion of agricultural land for wetland restoration in both the Cache Slough and Suisun Marsh areas will result in impact to existing wildlife communities and terrestrial species including special status species. The EIR/EIS must fully analyze these potential impacts. Impacts to existing wildlife communities and terrestrial species may also result from County and other agency public works projects necessary to service and support the habitat restoration and recreation projects. These must also be fully analyzed and mitigated.

SCWA is preparing a habitat conservation plan (HCP) as required under the March 19, 1999 Solano Project Contract Renewal Biological Opinion between USFWS and Reclamation. The HCP includes federally-listed fish species, species listed as threatened or endangered under the Federal and State Endangered Species Acts, and other species of concern that have been identified as having declining or vulnerable populations but not officially listed as threatened or endangered. The BDCP must be consistent with the Solano HCP. Any BDCP future tidal habitat restoration projects should be credited towards the conservation goals in the Solano HCP.

Mitigation measures must include the following:

- Mitigation for loss of terrestrial habitat for special status species and other wildlife.

- Protection of existing high value terrestrial habitat such as the Yolo Bypass and the Grizzly Island Wildlife Area Complex.
- Credits for the County and other agencies to obtain mitigation of future impacts associated with County and other agency public works projects (e.g. roads, bridges, levee work) necessary to serve BDCP habitat and recreation projects.

Impact: Adaptive Management

The BDCP incorporates the principals of adaptive management for the habitat restoration projects. A responsible agency must be identified with adequate perpetual funding for management, maintenance and monitoring of restoration areas. This should be done through an endowment. Adaptive management may also require future changes unknown at this time to management practices and/or the need for additional habitat areas which would be subject to additional environmental review.

Mitigation measures must include the following:

- Identification of a responsible entity for monitoring and adaptive management of habitat projects and associated lands
- Endowment to provide perpetual funding for management, monitoring and maintenance.

F. Levees and Flood Control

Impact: Existing Levee System

The BDCP habitat restoration activities will have significant impacts on the Delta and Suisun Marsh levee systems in Solano County. Maintaining the capacity and functionality of flood control systems surrounding and protecting the residents of Solano County is necessary for the protection of life and property. Changes in Yolo Bypass operations could affect existing flood capacity of the bypass and may impact downstream levees. Increased tidal action associated with restoration may adversely affect levees in Cache Slough complex and the Suisun Marsh. The project may also increase potential flooding impacts to the City of Rio Vista. The physical impacts on existing levee systems must be fully analyzed in the EIR/EIS. If the project includes the removal of primary levees, then potential impacts on secondary interior levees and surrounding lands that were previously protected from flood water by the levee systems must be evaluated and mitigated including the creation of new exterior levee or additional fortification of existing interior levee systems.

These physical impacts will also have impacts on the cost to local communities and Reclamation Districts to maintain and operate levee and flood protection systems. This directly correlates to the financial capability of local communities and Reclamation Districts based on local tax and assessments to fund the required work and to leverage State and Federal funds for maintenance and improvements. The EIR/EIS must analyze and fully mitigate the increased costs for levee and flood

control operations and maintenance as a result of the project including long term funding for maintenance and improvements to the levee system.

Maintenance of levee systems is also impacted by endangered species issues which can limit and sometimes prohibit the maintaining entity from performing needed work in a cost-effective way. ESA take authority and reasonable "safe harbor" protections that apply to all parties' maintenance levee systems must be a part of the BDCP and included in the mitigation measures.

In analyzing the project impacts to the Delta and Suisun Marsh levee systems, the analysis must also consider the effect of climate change on the project. The most recent estimates of sea level rise as a result of climate change now show a 4-5 foot sea level rise. This will have significant impacts on the Delta and Suisun Marsh levee and flood protection systems that must be fully analyzed in the EIR/EIS.

Small storage reservoirs, or "detention basins," strategically located throughout the County can help level off high stream flows during storm events to reduce flooding. An additional benefit of the construction of such facilities is the reduced storm flows that can overburden and overtop wastewater treatment plants, which impairs local water bodies and possibly contaminate drinking water sources and impact restoration projects. Some municipalities are in the process of building or have already built these types of facilities. If the BDCP projects have indentified flooding impacts, consideration should be given to mitigating these impacts by funding local flood control projects.

Impact: New Levees

Habitat restoration may require the construction of new levees and flood control systems in addition to fortification of existing levees. The EIR/EIS must analyze the impacts of construction of new levee and flood control systems including impacts under the ESA, the cost of operating and maintaining these new facilities and identification of the responsible entity who will be responsible for their operations and maintenance.

Impact: Emergency Response

In evaluating project impacts to the existing and new levee systems, consideration must be made to improving emergency response to flood threats and potential levees failures. The Army Corps of Engineers, State agencies, counties and local agencies and districts, including levee maintenance districts, through coordinated efforts, must maintain a robust command and control, maintenance, and repair capability including maintaining stockpiles of necessary supplies and equipment throughout the Delta to rapidly respond to flooding threats.

Mitigation measures must include the following:

- No adverse changes including increase costs for O&M and regulatory compliance to flood protection for surrounding areas
- Recognition that the Yolo Bypass is primarily a flood control feature of the Sacramento Flood Control Project and that all other uses shall be compatible without hydraulic impact to the current and future needs of the Sacramento River Flood Control Project.
- Emergency Levee Response – develop and fund comprehensive program

G. Water Quality

The changes in Delta operations including conveyance of water through an/or around the Delta and proposed habitat restoration projects will require the County to continue to receive a reliable water supply, both in terms of quantity and quality. The major cities in the County along with Napa County receive water from the SWP through the North Bay Aqueduct (NBA). The pumping plant intake to the NBA is located in the Cache Slough area. Reclamation District 2068 and landowners also obtain water for agricultural operations within the Cache Slough area.

Impact: Delta Water Quality

The creation of new freshwater tidal wetlands may result in increased levels of methylation of mercury due to disturbance of subsurface material. More frequent inundation of the Yolo Bypass may exacerbate the methylation of mercury over current levels and increase the re-suspension and transport of some contaminants to down-stream areas. The EIR/EIS must fully analyze project impacts that would increase levels of methylation of mercury and other contaminants and the impacts from the increased levels of methylation of mercury on fish and wildlife. This would require the establishment of baseline levels. The BDCP must fully mitigate the impacts above baseline levels.

Through a general permit for waste discharge requirements for dredging projects within the Delta, the Central Valley Regional Water Quality Control Board Basin Plan and Water Quality Objectives (WQO) have set limits based on potential discharges to surface water for aquatic habitat and protection. In some cases the WQO for aquatic protection are lower than the drinking water standards or Maximum Contaminant Limits (MCLs). Removal of levees and creating wetland habitat on lands that were not historically required to have stringent restrictions to meet aquatic habitat WQO may cause additional water quality impacts to sensitive areas. Particular concerns include heavy metals (aluminum, arsenic, boron, chromium VI, copper, lead, manganese, mercury, and zinc); salt; nutrients (nitrate, phosphate, and ammonia); pesticides/herbicides (including bioaccumulative historically banned pesticides and herbicides that may still be in residual soils); petroleum hydrocarbons (oil, grease, and other hydrocarbons from pipelines, fuel tanks, and infrastructure); and increased turbidity, reduced dissolved oxygen and fecal coliform associated with agricultural practices and septic systems.

Independent peer review must be conducted on all environmental analysis involving mercury and other contaminants in the Delta and proposed restoration areas. All data used in the EIR/EIS analysis must be validated. A risk assessment should be performed to quantify the risk due to any variability of the data and any variability of the analysis. All possible adverse impacts must be identified. Appropriate financial assurances must also be identified to address any potential adverse impacts that must be mitigated after the project is constructed.

Creation of tidal wetland habitat will increase organic carbon levels in the Cache Slough area. The NBA of the State Water Project Barker Slough Pumping Plant draws its water supply from Cache Slough. The NBA serves over 400,000 residents of Solano and Napa County. Increases in organic carbon will result in an increased cost of water treatment and may result in reduced use of the NBA if organic carbon levels increase to the point that the water supply is not treatable.

Mitigation measures must include the following:

- Mitigation for increased organic carbon at NBA and any areas or activities where total organic carbon may originate.
- No increase in heavy metals, pesticides, or other constituents of concern above the water quality objectives for aquatic habitat for areas within and surrounding the proposed restoration areas.
- Establishment of buffer zones surrounding the restoration areas to provide mitigation of surface water discharges prior to reaching the restoration areas from upland uses.
- Financial assurances that address any potential adverse impacts that must be mitigated after the project is constructed.

Impact: Upstream Water Quality

Creation of new freshwater tidal wetlands and sub-tidal habitat in the Cache Slough area may lead to requirements to improve upstream water quality from agricultural and urban point and non-point discharges above normal requirements. This may include discharge requirements from upstream wastewater treatment facilities and agricultural operation. EIR/EIS needs to establish base-line levels and to analyze these potential impacts and include mitigation measures to address and fund any improvements needed beyond baseline levels and normal requirements or provide safe harbor agricultural and urban point and non-point discharges above normal requirements due to new freshwater tidal wetlands and sub-tidal habitat areas and meeting more stringent guidance or WQO. Mitigations may include providing adaptive management tools, incentive programs and educational outreach for owners of agricultural areas that potentially discharge to the buffer zones and restoration areas to help assist in meeting WQO for discharge and reducing non-point source impacts. The project should not result in any changes to agriculture NDWA above normal requirements.

Mitigation measures must include the following:

- Projects shall not result in increased point and non-point discharge requirement for agricultural and urban activities.
- Safe Harbor for agricultural and urban point and non-point discharges so that local runoff is not required to be improved above normal requirements due to creation of new habitat areas.

Impact: Increased Salinity

The changes in water conveyance and creation of habitat areas in the Cache Slough and Suisun Marsh will result in changes in salinity levels in the Delta and Suisun Marsh. Increased levels of salinity can impact drinking water, agricultural production and certain types of natural habitats. The project description does not clearly define the salinity standards for the project. Certain County water users possess contractual protection of water at a specified quality. The EIR/EIS must fully analyze the potential impacts of increased salinity. Within the Suisun Marsh area, salinity standards exist to protect wetland and wildlife resources and beneficial uses of the marsh.

With an increased tidal prism due to the creation of new tidal habitat, the EIR/EIS needs to analyze the change in salinity in the Cache Slough area and mitigate for the adverse impacts. It is likely that there will be a draw of more salt water during high tide. Changes in Delta and Suisun Marsh salinity must account for global warming which will result in a sea level rise which will result in an increase in salinity intrusion. A global warming analysis must be included in the possible in the analysis of potential adverse impacts.

Mitigation measures must include the following:

- Mitigation for changes in salinity in the north Delta and Suisun Marsh.
- Protection of Suisun Marsh salinity standards to protect existing wetland and wildlife habitat and the beneficial uses.
- Financial Assurances for any potential corrective action to reduce salinity resulting from a post project condition. The financial assurances should cover the cost to construct desalination plants or water treatment facility to restore the salinity in the Delta and the county water users to the pre-project levels.

H. Water Intakes, Irrigation and Drainage Systems

Impact: Impact of NBA, Reclamation District 2068, Private Water Intakes and Agricultural Irrigation and Drainage Systems

Restoration in the Cache Slough complex may have adverse effects on operation of the North NBA, Reclamation District 2068 and private agricultural water intakes related to entrainment of enhanced populations of covered species. Construction of habitat restoration projects could disrupt irrigation and drainage systems essential to agricultural production on land bisected by these projects. The EIR/EIS must fully analyze these impacts and provide mitigation measures that provide protections to

enhanced populations of covered species, provide for the relocation of the NBA intake, and protect urban and agricultural water supplies.

Mitigation Measures must include the following:

- Provisions of an alternate intake for the North Bay Aqueduct.
- Full Federal and State Endangered Species Act protection for affected water diversions within the project regions, including funding for installation and operating fish screens or other diversion modification requirements

I. Water Rights

Impact: Water Rights and Area of Origin

Solano County is within the Sacramento River watershed and parts are within the legally defined Delta. The County has certain statutory, contractual and constitutional water rights, including area of origin rights under Water Code section 10550 and the Watershed Protection Act (Water Code sections 11460 et seq.). The purchasers of lands within the County for habitat restoration purposes may seek to transfer water rights associated with these lands out of county. The project should not result in any infringement of, or change to, area of origin laws. The project should not impact the existing water rights priority system. The North Delta Water Agency contracts shall continue to be honored.

The EIR/EIS should also analyze extreme hydrological conditions, such as a dry season or series of dry seasons and how existing water rights in Solano County will be protected under these circumstances.

Mitigation measures must include the following:

- No out of county water transfers from converted lands.

J. County and District Services and Public Improvements

The following County and district service and public improvement impacts are the result of physical changes in the Delta that will occur under the proposed BDCP and consequently must be analyzed in the EIR/EIS. Such impacts have environmental as well as economic implications.

Impact: Increased demand for public services and infrastructure improvements

The establishment of habitat conservation areas will provide new recreational opportunities with increased public access to areas of the county not previously accessible to the public. This will increase demand for local public services including fire protection, law enforcement, emergency and rescue services, and mosquito control. The construction of new habitat restoration areas may require new, relocated or improved road facilities, water conveyance and irrigation facilities, drainage facilities, and flood control facilities resulting in increased operations,

maintenance, improvement costs to the County and local agencies. These costs should be thoroughly analyzed in the environmental document and fully mitigated.

Mitigation measures must include the following:

- Reimbursement for increased costs of County and districts' public services including but not limited to law enforcement, fire, rescue, mosquito control, roads maintenance, drainage, and flood protection.
- Reimbursement for increased infrastructure improvement cost of County and districts including but not limited to road drainage and levee and flood control improvements
- Opportunity for the County to obtain mitigation of future impacts associated with County and District public works projects as part of habitat projects.
- All activities that require funding, such funding must be guaranteed to Solano County in perpetuity and allocated outside the state's budget process.

K. County and District Revenues

The following County and district revenue issues are significant and relate directly to ability of the County and districts to provide continued services to protect the public health and safety and the environment as a result of physical changes in the Delta that will occur under the proposed BDCP. Consequently these issues must be analyzed in the EIR/EIS. (Furthermore Section 15131 of the CEQA Guidelines allows for economic and social information, even absent any environmental effect, to be included.)

Impact: Loss of County and District revenues

The conversion of large tracks of private land from agriculture to permanent habitat under State or Federal ownership resulting in the loss of local property tax and assessments will significantly impact the ability of the County and local agencies to continue to provide necessary public services. This impact is particularly significant given the current economic down turn with declining property values and increased demands for local social and other services. This impact not only affects the County but also local school and special districts such as fire protection districts, reclamation districts, Suisun Resource Conservation District and the Solano County Mosquito Abatement District, levee districts, and water districts in the area. Fiscal impacts to the County and local agencies should be thoroughly analyzed in the environmental document and fully mitigated.

Mitigation measures must include the following:

- Payment in-lieu of property tax for lands changing from private to public ownership guaranteed to Solano County and applicable special districts in perpetuity and allocated outside the State's budget process.
- Continued payment of special district assessments and fees guaranteed to special districts in perpetuity and allocated outside the State's budget process.

- All activities that require funding must provide guaranteed funding to Solano County in perpetuity and allocated outside the state's budget process.

L. Transportation and Utility Corridors

Impact: Transportation Corridors

Roads, highways and shipping channels are essential to inter-County mobility, public safety, a healthy business climate, recreation, and agricultural vitality throughout the County. Highway 12, Highway 84, Highway 113, Interstate 80 and the Sacramento Ship Channel are key routes within and adjacent to the Delta which serve Solano and Yolo Counties. They are important for not only economic and emergency preparedness but also key in providing service to Travis Air Force Base. Wetland restoration may also impact local county roads. Impacts could include loss of roads due to restoration projects, relocation of roads, impacts on roads from construction and increased traffic for new recreational uses. The EIR/EIS should analyze the impacts of the project on the major transportation corridors and local roads.

Mitigation measures must include the following:

- Protect Delta transportation corridors like Highway 12 and Highway 84. Determine funding for protection from levee breaks.
- Fully mitigate impacts to local county roads.

Impact: Utility Corridors.

The proposed east water conveyance alternative would impact a number of utility corridors including both above ground transmission facilities as well as below ground pipelines. The creation of new habitat areas may also impact existing utilities. The EIR/EIS should fully analyze the impacts of the project on existing and future utility corridors.

M. Other Issues

Impact: Ongoing Project Oversight

For successful implementation of the BDCP and EIR/EIS mitigation measures, a stakeholders group must be formed that will have oversight of the project implementation including evaluating the success of the restoration projects and implementation of adaptive management measures. This group must include local representatives including a representative from Solano County.

3. **PROJECT ALTERNATIVES**

While the BDCP project encompasses many components, alternatives identified in the NOP/NOI only address one component, water conveyance. The EIR/EIS should indeed fully identify and analyze the water conveyance alternatives. However, the EIR/EIS should also

include an alternative that does not involve the establishment of a canal/pipeline system and alternatives for water sources including desalination. Water conservation programs must also be considered. Questions that should be addressed under this alternative include: will water conservation programs for agencies receiving exported Delta water be equal to or better than the water conservation programs in the Delta? Who will be responsible for enforcing water conservation programs?

In addition, the BDCP involves much more than water conveyance. Yet alternatives for habitat restoration and reduction of stressors were not identified in the NOP/NOI. Alternatives must be developed and analyzed in the EIR/EIS for these components of the project as well.

4. FUTURE IMPACTS NOT PREVIOUSLY ANALYZED

Depending on future changes to the project to meet management goals and to the extent these future actions have not been analyzed in this environmental document, future environmental review would be required.

We wish to thank you for the opportunity to comment on the NOP/NOI for the BDCP. If you have questions concerning our comments on the NOP/NOI, please contact Kathy Barnes-Jones at (707) 784-7914 or at KRBarnes-Jones@solanocounty.com.

Sincerely,



Michael D. Johnson
County Administrator

cc: Senator Lois Wolk
Assembly Member Mariko Yamada
Secretary Michael Chrisman
Undersecretary Karen Scarborough
Solano County Board of Supervisors
Board of Supervisors of Contra Costa, Sacramento, San Joaquin, and Yolo Counties
Jan Vick, Mayor of Rio Vista
David Okita, General Manager, Solano County Water Agency
Mike Hardesty, General Manager, Reclamation District 2068
Steve Chappell, Executive Director, Suisun Resource Conservation District
Veronica Ferguson, Assistant County Administrator
Jim Allan, Agricultural Commissioner/Sealer of Weights and Measures