

SOUTH DELTA WATER AGENCY

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Via E-Mail BDCPcomments@water.ca.gov

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

Re: NOP and EIR/EIS for Bay-Delta Conservation Plan

Dear Ms. Brown:

The South Delta Water Agency submits the following comments for the above referenced NOP.

1. The project description is inadequate and therefore prevents meaningful participation and comments by the public. The NOP includes a Project Description that sets forth the "purpose and project objectives." Such information may be the beginning point in determining a project description under CEQA and NEPA, but it does not satisfy the statutory requirements.

2. The underlying purpose of the project appears to be in conflict with existing law. First, the process equates protection of the environment with an undefined "reliable" water supply." Such a purpose or goal is directly in conflict with existing ESA, and CESA statutes which do not allow for governmental action to limit the protection of endangered species. This is especially true if the government action itself (exports from the Delta and decreases in flows needed for fisheries) is one of the causes of the species being endangered.

Second, defining and requiring a minimum amount of exports as "reliable," constitutes a concept which is contrary to the statutory obligations of the SWP and CVP (the "projects") and to current permit restrictions, all of which make non-export obligations of the projects conditions precedent to any exports at all. Until it is

determined what are the minimum amounts of water needed for fisheries, public trust uses, superior rights, area of origin rights, prevention of saltwater intrusion, etc., one cannot determine what (or when) there is a “reliable supply.”

Third, Water Code Section 12205 requires that DWR and USBR maximize reservoir releases to fulfill the goals of the Delta Protection statutes, which include prevention of salinity intrusion and an adequate supply (including future supply) for in-Delta uses. Building a conveyance facility which diminishes water entering the Delta is directly contrary to this statute. Similarly, federal law specifies a water quality standard at Rock Slough. Use of a peripheral canal would likely make compliance impossible at some times.

We note that embarking on a project which would require changes in federal and state statutes is contrary to CEQA and NEPA.

3. The project fails to include any meaningful alternatives. Various parties including SDWA have suggested an alternative to the project commonly known as the Delta Corridors proposal. The BDCP process is obligated to include such proposed alternative. Instead, the BDCP parties have already agreed amongst themselves to proceed with only one alternative; a peripheral canal.

4. The environmental review must include an analysis of how the project relates to the mandatory obligations placed on the CVP under CVPIA. These obligations include the doubling of anadromous fish (defined in the statutes).

5. The environmental review must include an analysis of how the project relates to the mandatory obligations placed on the CVP in HR 2828 (Public Law 361-108). These obligations include the development and implementation of a plan by which the CVP will meet all of its obligations for water quality requirements on the San Joaquin River. They also include the requirement to decrease the CVP’s reliance on New Melones for such water quality requirements, and the purchase of water and recirculation of water to assist in meeting these obligations.

6. The environmental review must include an analysis of how the project will affect salinity levels in the southern Delta. Currently, the DWR and USBR are in violation of their permits which require them to meet water quality objectives in the southern Delta for agricultural beneficial uses. In addition, they are in violation of a Cease and Desist Order issued against them by the State Water Resources Control Board regarding such obligations.

The current “preferred alternative” as stated by BDCP representatives at the previous public meetings, is a peripheral canal. The analysis of the operation of such a facility must include how it will affect the salts in the southern Delta. Currently, CVP introduced salts enter the area via the San Joaquin River. There they are diluted by the cross-Delta flow and some of the salts are removed by the export pumps. Under current circumstances, this situation results in regular violations of the salinity standards in many winters and most summers. A peripheral canal would necessarily decrease the dilution of the salts (through less cross-Delta flow) and decrease the removal of the salts (through less export from the local channels). The only possible result would be an increase in salinity in the area and more extreme and frequent violations of the standards.

Previous modeling released by the BDCP attempted to hide these facts. The modeling (not subject to public review) could not possibly indicate a “no change” in the situation, or compliance with the standards, and, lumped wet years together with dry years to mask the effects of the canal. The environmental review must contain a complete analysis and disclosure thereof of how the proposed peripheral canal exacerbates the salinity problems in the southern Delta.

7. The environmental review must first include a determination of what flows are necessary to both protect and increase fishery populations, especially endangered species. Both the CVP and the SWP are required to fully mitigate their impacts, including their impacts to fisheries. Hence, and conservation plan must first determine what flows (both inflow and Delta outflow) are necessary to mitigate project impacts. The project must then determine what additional flows are necessary to recover declining populations (or meet fish doubling obligations). Those calculations will then allow a determination of what water is in the system under different year types (after superior rights are met). Only then can one determine how much water can be exported. The BDCP goal of a minimum average annual export level is unrealistic until these calculations are made.

8. California area of origin and Delta protection statutes allow for all upstream and Delta water users to secure supply contracts from the projects as local needs may require. Hence, the project must predict those area of origin needs and subtract those amounts from future export planning (unless additional upstream supply is developed). The analysis of the project must include this calculation. For example, if the recent questions regarding in-Delta water rights are resolved against some Delta users, then those users will be entitled to and demand supply contracts from DWR and/or USBR.

9. The base case scenario must include the numerous ongoing violations of DWR and USBR permit conditions, the lack of any “take” permit by the DWR under CESA, and the projects repeated requests to the SWRCB to relieve them from their permit obligations. It is important to include this analysis so that the decision makers are fully aware of the likelihood of future compliance by the projects.

The SDWA hereby incorporates its previous comments to the BDCP and the Central Delta Water Agency’s comments.

SDWA continues to request an opportunity to discuss some of these issues with the modelers being used by the BDCP. Please feel free to contact me if you have any questions.

Very truly yours,

By _____
JOHN HERRICK