

SOUTH DELTA WATER AGENCY

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Via E-Mail

BDCP-NEPA.SWR@noaa.gov

**Re: Notice of Intent to Conduct Public Scoping and Prepare an
EIR/EIS Regarding the Bay Delta Conservation Plan (BDCP)
for the Sacramento-San Joaquin Delta**

Gentlemen:

The South Delta Water Agency submits the following comments regarding the NOI to prepare environmental documents reviewing the Bay Delta Conservation Plan ("BDCP").

1. The BDCP proposes to provide for the conservation of endangered species and their habitats in the Delta in a way "that also will provide sufficient and reliable water supplies" for parties reliant on exports from the Delta. Thus, the underlying premise limits the various options available to DFG, FWS and NMFS for recovery and enhancement of not only endangered (and threatened species) but for most Delta species in general.

One of the options available to the fishery agencies is to limit exports and require increased outflow to the point where the impacted fisheries are improved. By assuming ahead of time that some certain level of exports will be allowed (or amounts of outflow will be limited), the agencies are precluded from examining possible scenarios which might be better for the fisheries than the alternatives proposed by the BDCP. This approach also ignores various underlying legal requirements that DWR and USBR fully mitigate the impacts of the SWP and CVP.

2. The environmental review must fully analyze the alternative's impacts to water quality, especially in the South Delta. Currently, Sacramento River water is drawn across the Delta to the export pumps. This "fresher" water is mixed with the "poorer" San Joaquin River water and provides water quality benefits to both the Central and Southern Delta channels. An isolated facility decreases the amount of Sacramento water moving across the Delta, and thus result in a worsening of water quality in the Central and South Delta.

Studies so far have improperly examined this effect. DWR's modeling suggests that the operation of an isolated facility would have no significant effect on water quality. However, that modeling was an averaging of all year types, which resulted in a masking of the effects of the project. The environmental review must look at the various year types separately, showing how differing levels of flows through an isolated facility would result in differing flows across the Delta and less dilution of salts in the Central and South Delta.

For example, this past month, exports have been curtailed due to a court ruling. With the diminished through-Delta flow, the water quality objective was violated as measured at the Old River Tracy Blvd. compliance location. With an isolated facility, there might be less or no cross Delta flow, resulting in even worse quality and a more extreme violation of that and other standards/objectives.

As part of the analysis, the environmental documents must examine how the various options will affect compliance with the Southern Delta salinity standards as those standards are terms of the DWR and USBR permits. [Note, the standards are required to be met throughout the channels, not just at the compliance locations per the 2006 Bay-Delta Water Quality Control Plan.] The project purpose must include compliance with all permit terms and conditions, as well as other legal limitations and requirements on the projects. SDWA's analysis indicates that moving Sacramento River water through an isolated facility will in most years and in most months result in violations of the salinity standards, and thus any option with such a facility could not be adopted or implemented.

3. Operation of an isolated facility would decrease the inflow to the Delta, and thus affect outflow. Either outflow will decrease, or additional inflow will be necessary to meet outflow requirements. The environmental documents must fully examine the various operational scenarios and the consequent effects on fisheries and other beneficial uses. Less inflow will mean that the flow of water through the Delta will be slower. There are resulting impacts to fisheries as well as water quality from this change. Previous studies indicate that decreased rates of flow result in increased predation on various species, especially endangered ones. It would also result in warmer water, decreased DO, and increased hyacinth and other plants clogging the channels. As stated above, an alternative not presented by BDCP is an increased outflow scenario which should improve fisheries. Such an option must be considered in the review.

4. An isolated facility, by changing the water quality in Delta channels could result in changes in the location of various fish species who use water quality as cues for migration, spawning and other life stages. Hence, the intake to an isolated facility might become a place of greater risk for some species. Further, decreasing Delta cross flow might decrease the areas of good habitat for species seeking better water quality, thus increasing the stressors to the species.

5. The environmental documents must examine how an isolated facility would be operated to insure no adverse impacts to other and superior water right holders. During low flow

times, the "natural" flow may be necessary for in-Delta users and thus cannot be removed from the system through an isolated facility. Similarly, upstream return flows may be necessary for numerous water right holders and not available for the junior export permits. Further, stored flow may be necessary to comply with existing permit terms and conditions to meet outflow and water quality parameters and again not be available for transport through an isolated facility.

It is important to note that all (legal) Delta channels are subject to the tides, and in combination with their channel bottom elevations, result in water always being in those channels. This raises important issues that must be covered in the environmental documents. Water is always available for in-Delta users. If some or all tributary flow ceased, water would still be in Delta channels. Case law, statutes, and permit terms and conditions require the projects to keep the Delta water at certain qualities for those in-Delta uses. Hence, the operation of any isolated facility must include the protection of the water quality on which those uses depend. Any honest analysis will indicate those obligations cannot be met when an isolated facility is moving water around the Delta instead of through it.

6. As a follow on to the above point, the Delta Protection Act (Water Code Sections 12200 et. seq.) places certain burdens on the export projects. Those statutes require that the Delta be kept as a "common" pool for in-Delta and export supplies. The statutes go on to require that an "adequate supply" be provided to in-Delta water users (no supply amount is guaranteed to export users), that no water needed for this supply or for salinity control may be exported, and that exports cannot include water to which in-Delta users are entitled. Finally, the statutes require that releases from storage in the Sacramento-San Joaquin system shall be integrated as much as possible to meet the requirements of the Act.

Taken together, these statutes place severe operational limitations of not only the export pumps, but also any isolated facility. Hence, the environmental documents must include a review of the BDCP alternatives with these statutory/operational limitations. The result will indicate that the opportunities for its operation will be nil.

7. The review must include other alternatives, not currently in the BDCP proposal. SDWA and CDWA proposed to the Delta Vision process a comprehensive program which included the "Delta Corridors" plan. This plan seeks to reconnect the San Joaquin River with the Bay, a situation that no longer exists during most years. This is because the export projects typically take more water than is entering the Delta from the San Joaquin, and thus no San Joaquin water reaches the Bay. In addition, upstream use has decrease in-Delta flow to the point where in many months in most years, the inflow of the San Joaquin is less than the local, in-Delta diversions. Again, this results in none of the river's flow reaching the Bay. The Delta Corridors plan seeks to correct this and thus should show increased benefits to fisheries over proposals which will decrease water quality in the Delta (isolated facility).

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8. The review should include an improved through Delta conveyance as well as one that curtails exports in order to meet superior water right and environmental needs. As currently constructed, the BDCP proposals for through Delta are constrained by inaccurate assumptions regarding improved Delta channels and the need to maintain some "acceptable level" of exports.

9. It is unrealistic to assume that a Conservation Plan can be developed at this point. Ongoing investigations, speculation and analysis in the POD process indicates that the solution or solutions to the radical decline in certain fisheries are not yet known. Until such time as the specifics of why the decline is occurring at this time it is impractical and improper to adopt a Plan which gives exports a multi-year approval or guarantee of operations. We do not know yet if any particular level of exports is consistent with the protection of endangered species. Until we do, no plan should be contemplated or adopted which protects exports which are the likely cause the fishery problems.

SDWA can provide information and documentation to support the points set forth above and looks forward to participating in the environmental review of the BDCP proposals.

Please call me if you have any questions or comments.

Very truly yours,



JOHN HERRICK

JH/dd