



FRIENDS OF THE RIVER

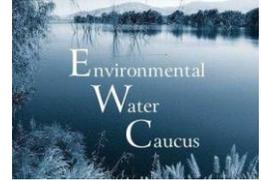
1418 20TH STREET, SUITE 100, SACRAMENTO, CA 95811

916/442-3155 • FAX: 916/442-3396 •

WWW.FRIENDSOFTHERIVER.ORG

ENVIRONMENTAL WATER

CAUCUS



May 28, 2014

BDCP.Comments@noaa.gov (via email)

John Laird
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

David Murillo
Regional Director
U.S. Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

Mark Cowin
Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

Ren Lohofener
Regional Director
U.S. Fish and Wildlife Service
2800 Cottage Way
Sacramento, CA 95825

Chuck Bonham
Director
California Department of Fish and Wildlife
1416 9th Street, 12th Floor
Sacramento, CA 95814

Will Stelle
Regional Director
National Marine Fisheries Service
7600 Sand Point Way, NE, Bldg 1
Seattle, WA 98115-0070

Additional Addressees at end of letter

Re: Comment Letter re Failure of BDCP Draft Plan and Draft EIR/EIS to Include a Range of Reasonable Alternatives Increasing Flows and Reducing Exports Including the Responsible Exports Plan Submitted by the Environmental Water Caucus

Dear Federal and California Agencies, Officers, and Staff Members Carrying out the BDCP:

The Bay Delta Conservation Plan (BDCP) Draft plan and Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) are out for public review and comment at this time. Development and evaluation of a range of reasonable alternatives are the declared “heart” of both the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) required EISs and EIRs. Despite that, the alternatives section (Chapter 3) of the Draft EIR/EIS and the Endangered Species Act (ESA) required Alternatives to Take section (Chapter 9) of the BDCP Draft Plan fail to include even one, let alone the CEQA, NEPA and ESA required range of, reasonable alternatives that would increase water flows in the San Francisco Bay-Delta by reducing exports. These serious violations of law, brought to your attention by the Environmental Water Caucus (EWC)(a coalition of over 30 nonprofit environmental and community organizations and California Indian Tribes) and Friends of the River (FOR), require corrective action.

The BDCP omission of alternatives reducing exports to increase flows is deliberate. A claimed purpose of the BDCP Plan is “Reducing the adverse effects on certain listed [fish] species due to diverting water.” (BDCP Draft EIR/EIS Executive Summary, p. ES-10). “There is an urgent need to improve the conditions for threatened and endangered fish species within the Delta.” (*Id.*). The omission of a range of reasonable alternatives reducing exports to increase flows violates CEQA, NEPA and the ESA. The failure to include even one alternative reducing exports to increase flows is incomprehensible. Alternatives reducing the exporting/diversion of water are the obvious direct response to the claimed BDCP purpose of “reducing the adverse effects on certain listed [fish] species due to diverting water.”

The BDCP agencies have been marching along for at least three years in the face of “red flags flying” in their deliberate refusal to develop and evaluate a range of reasonable alternatives, or indeed, any alternatives at all, that would increase flows by reducing exports. Three years ago the National Academy of Sciences declared in reviewing the then-current version of the draft BDCP that: “[c]hoosing the alternative project before evaluating alternative ways to reach a preferred outcome would be post hoc rationalization—in other words, putting the cart before the horse. Scientific reasons for not considering alternative actions are not presented in the plan.” (National Academy of Sciences, Report in Brief at p. 2, May 5, 2011).

More than two years ago, on April 16, 2012, the Co-Facilitators of the EWC transmitted a short, 1 ½ page letter to Gerald Meral, Deputy Secretary of the California Resources Agency, sharing “concerns with the current approach and direction of the [BDCP] project and we would like to share those concerns with you.” (Letter, p. 1). Most of the paragraphs in the letter dealt with the types of issues involving consideration of alternatives. The penultimate paragraph of the letter specifically pointed out:

The absence of a full range of alternatives, including an alternative which would reduce exports from the Delta. It is understandable that the exporters, who are driving the project, are not interested in this kind of alternative; however, in order to be a truly permissible project, an examination of a full range of alternatives, including ones that would reduce exports, needs to be included and needs to incorporate a public trust balancing of alternatives. (Letter, p. 2).

We **attach** (for BDCP.Comments@noaa.gov) and incorporate by reference a copy of the April 16, 2012, EWC letter. As you can see from the letter’s distribution list, the letter was also distributed to a number of other federal and State officials involved in the BDCP process and BDCP decision-making in addition to Gerald Meral who was leading the BDCP process.

On December 15, 2012 by email, and December 17, 2012 by letter, Nick Di Croce, Co-Facilitator of the EWC transmitted the EWC’s Reduced Exports Plan to the California Resources Agency Deputy Secretary and requested “that you include it among the alternatives to be included in the BDCP.” On November 18, 2013, FOR submitted a comment letter in the BDCP process urging those carrying out the BDCP to review the “Responsible Exports Plan [a later, more detailed version of the Reduced Exports Plan]” proposed by the EWC:

as an alternative to the preferred tunnel project. This Plan calls for reducing exports from the Delta, implementing stringent conservation measures but no new upstream conveyance. This Plan additionally prioritizes the need for a water availability analysis and protection of public trust resources rather than a mere continuation of the status quo that has led the Delta into these dire circumstances. Only that alternative is consistent with the EPA statements indicating that more outflow is needed to protect aquatic resources and fish populations. The EWC Responsible Exports Plan is feasible and accomplishes project objectives and therefore should be fully analyzed in a Draft EIS/EIR.”(FOR November 18, 2013 comment letter at p. 3, Attachment 4 to FOR January 14, 2014 comment letter).

FOR specifically pointed out (at p. 3, fn. 1) that the plan was online at <http://www.ewccalifornia.org/reports/resonsibleexpltplanmay2013.pdf>. We incorporate by this reference a copy of FOR’s May 21, 2014 BDCP comment letter explaining in greater detail the failure of the Draft BDCP Plan and EIR/EIS to include the required range of reasonable alternatives as well as supporting legal citations. (The FOR letter is in the BDCP comments Record and may also be found online at www.friendsoftheriver.org/bdcpcomments). We also reiterate that the May 21, 2014 FOR comment letter attached and incorporated by reference a copy of the 39 page “Responsible Exports Plan” of May 2013 as setting forth a feasible alternative that must be considered in the BDCP process.

By this letter, the EWC repeats the demand for consideration of the Responsible Exports Plan alternative and reasonable variants on that alternative. This demand follows up EWC’s similar requests which started back on April 16, 2012 but have to date been ignored in the BDCP process.

We also urge you to not load up the Responsible Exports Plan alternative with “poison pills” designed to make the alternative or variants on the alternative appear infeasible or undesirable. Our suspicions of future BDCP process intentional violations of CEQA, NEPA and the ESA are heightened by the flat refusal of the BDCP agencies to develop or even consider a reasonable range of alternatives despite the clear warnings in this regard given by the National Academy of Sciences three years ago, and repeated by the EWC over the past three years. In addition, obvious variants on the Responsible Exports Plan alternative creating a range of reasonable alternatives will include reducing exports both more and less than the 3,000,000 acre-feet reduction called for by the Responsible Exports Plan alternative as well as phasing in reductions in exports over time.

Finally, the BDCP agencies have failed to produce an alternatives section that “sharply” defines the issues and provides a clear basis for choice among options as required by the NEPA Regulations, 40 C.F.R. § 1502.14. The choice presented should include increasing flows by reducing exports, not just reducing flows by increasing the capacity for exports as is called for by *all* of the so-called “alternatives” presented in the BDCP Draft Plan and EIR/EIS. No matter how badly the BDCP proponents do not want to reduce exports and increase flows, during the Draft CEQA, NEPA and ESA processes inclusion of such alternatives as part of a range of reasonable alternatives is mandatory. Because of the gross deficiencies in the BDCP alternatives and Alternatives to Take sections in the Draft BDCP Plan and EIR/EIS it will be necessary for the BDCP agencies to prepare and release for decision-maker and public review a *new* Draft Plan and *new* Draft EIR/EIS. Those new Draft documents *must* include alternatives and Alternatives to Take sections that present the required evaluation of a range of reasonable alternatives.

Please call Nick Di Croce, Co-Facilitator, Environmental Water Caucus at (805) 350-8898 or Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext. 207 with any questions you may have.

Sincerely,

/s/ Nick Di Croce
Co-Facilitator
Environmental Water Caucus

/s/ E. Robert Wright
Senior Counsel
Friends of the River

Additional Addressees, all via email:

Maria Rea, Assistant Regional Administrator
National Marine Fisheries Service

Michael Tucker, Fishery Biologist
National Marine Fisheries Service

Ryan Wulff, Senior Policy Advisor
National Marine Fisheries Service

Mike Chotkowski, Field Supervisor, S.F. Bay-Delta
U.S. Fish and Wildlife Service

Lori Rinek
U.S. Fish and Wildlife Service

Mary Lee Knecht, Program Manager
U.S. Bureau of Reclamation

Patty Idloff
U.S. Bureau of Reclamation

Deanna Harwood
NOAA Office of General Counsel

Kaylee Allen
Department of Interior Solicitor's Office

Tom Hagler
U.S. EPA General Counsel Office

Tim Vendlinski, Bay Delta Program Manager, Water Division
U.S. EPA, Region IX

Stephanie Skophammer, Program Manager
U.S. EPA, Region IX

Erin Foresman, Bay Delta Coordinator
U.S. EPA
Sacramento, CA

Lisa Clay, Assistant District Counsel
U.S. Army Corps of Engineers

cc:

Congressman John Garamendi
Third District, California

Congresswoman Doris Matsui
Sixth District, California