

From: Joshua Horowitz <JMh@bkslawfirm.com>
Sent: Wednesday, May 21, 2014 6:08 PM
To: BDCP.comments@noaa.gov
Subject: Farmland Reserve, Inc. Letter Commenting on the Draft BDCP Documents
Attachments: L0521214jmh FRI BDCP Comments Signed Final.pdf

Mr. Wulff:

Attached are the comments of Farmland Reserve, Inc. on the draft public review Bay Delta Conservation Plan and associated EIR/EIS. Please post this letter with other public comments received by the BDCP and forward the letter to the appropriate BDCP representatives for their consideration.

Please contact me if you have any comments or questions.

Thank you,

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Farmland Reserve, Inc.

79 South Main Street, Suite 1000
Salt Lake City, UT 84111
(801) 715-9195

May 21, 2014

VIA U.S. MAIL

BDCP Comments
Ryan Wulff, NMFS
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Re: Comments on Public Review Draft of Bay Delta Conservation Plan EIR

Dear Mr. Wulff:

Thank you for the opportunity to comment on the public review draft of the Bay Delta Conservation Plan (“BDCP”) and its related EIR/EIS. This letter presents Farmland Reserve, Inc.’s (“FRI”) preliminary comments on the BDCP.

FRI owns Byron Ranch, an agricultural property comprising approximately 3,440 acres in southeastern Contra Costa County. The southeastern edge of the ranch is immediately north of Italian Slough and northwest of Clifton Court Forebay. The northern edge of the ranch is near Discovery Bay. Byron Ranch puts approximately 3,300 acres to productive use for growing feed crops and pasture.

Because BDCP would site the proposed conveyance facilities’ final segment on Byron Ranch, including the twin tunnels’ exit shaft and appurtenant facilities and significant construction-related facilities, FRI is potentially one of the most impacted private landowners from the proposed conveyance facilities. While FRI believes that the BDCP project as proposed will cause significant permanent and long-term impacts to Byron Ranch (which likely would require the BDCP to compensate FRI for acquisition of Byron Ranch property interests), there is insufficient detail about the plan’s facilities and analysis of their impacts for FRI to determine the full extent of how those facilities would affect FRI’s operation of Byron Ranch and impacts to its value.

A. Summary of Proposed BDCP Impacts to Byron Ranch

The public draft of BDCP proposes significant impacts to Byron Ranch if the preferred BDCP alternative, referred to as Alternative 4 or the Modified Pipeline/Tunnel Alignment, were implemented. Those impacts would include:

- permanent siting of the shaft terminus of the two large tunnels that would be built under the Delta;
- permanent siting of a siphon to move water from the shaft terminus into the northern cell of Clifton Court Forebay;
- permanent siting of an access road across Byron Ranch to the shaft terminus and related structures;
- stacking of excavated tunnel muck, or reusable tunnel material (“RTM”), on Byron Ranch for dewatering, treatment, and storage, including possible long-term or permanent storage;
- construction of a 40-acre concrete batch station near the proposed shaft terminus during construction of the new conveyance facilities;
- construction of a 2-acre temporary fueling station during construction of the new conveyance facilities; and,
- construction of temporary barge unloading facilities on Byron Ranch, which presumably would involve the transport and delivery of a variety of hazardous materials.
- In total, BDCP plan elements would impact approximately 963 acres of Byron Ranch, or 28 percent of ranch lands.

B. Insufficient Information on Potential Project Impacts

Alternative 4’s modified pipeline and tunnel alignment would divert water through three intakes near Clarksburg and move it south to Clifton Court Forebay through a series of tunnels and pipelines. (See BDCP EIR, Figure M3-4.) BDCP would site the permanent shaft terminus and related structures on the southeastern corner of Byron Ranch to the northwest of the existing Clifton Court Forebay. (See BDCP EIR, Figure M3-4, Sheet 11.) However, the public draft of BDCP lacks a detailed description or analysis of the shaft terminus and related structures, including their likely footprint. Without a more-specific description of the plan elements that would be sited on Byron Ranch, there is no way for FRI to determine what the scope of the direct and indirect impacts to the ranch would be and if those impacts have been properly analyzed and mitigated.

Byron Ranch diverts and uses surface water from points of diversion on Old River, Italian Slough, and Dredger Cut pursuant to a riparian right and two water right permits. The siting of permanent structures in the southeastern corner of Byron Ranch could affect FRI’s ability to use its existing facilities to divert and use surface water from Italian Slough, which runs along the southern boundary of the ranch. The BDCP EIR does not provide sufficient information on the extent to which the project would impact these water supplies.

The public draft of BDCP also proposes to control the amount of water in Old River to prevent blowout of the embankments around Clifton Court Forebay. (BDCP EIR 3C-41.) Without more information, however, FRI cannot evaluate whether those actions would interfere with FRI's diversion of water from Old River for use on Byron Ranch.

C. Insufficient Information on Potential Project Construction Impacts

The public draft proposes RTM generated by tunnel boring would be stored on an undetermined number of acres on Byron Ranch. (BDCP EIR Figure M3-4, Sheets 12 and 13.) Based on the available maps, it appears that approximately 930 acres of the ranch would be affected. In addition, leachate would drain from the RTM areas into a leachate collection system, which would then be pumped to leachate ponds for possible additional treatment. (BDCP EIR 3C-55.) There is not sufficient information in the BDCP EIR to determine how DWR would ensure that RTM leachate will not leak and contaminate Byron Ranch over the 10-year timeline for construction of the conveyance facilities. The BDCP also states that it is possible RTM cannot be treated or transported, and therefore might be permanently sited on Byron Ranch and covered by stored topsoil. (BDCP EIR 24-143 to 144.) The BDCP EIR does not provide sufficient information on the impacts of permanent storage of hazardous RTM on Byron Ranch.

BDCP also proposes to site a 40-acre concrete batch plant and a 2-acre fuel station near the shaft terminus on Byron Ranch. (See BDCP EIR 3-30 and BDCP EIR Figure M13-4.) Bulk fuel would be stored and would potentially pose the risk of contaminating Byron Ranch land and groundwater from spills and leakage. (BDCP EIR 24-137.) There is insufficient information in the BDCP EIR on potential impacts from spills and leaks. (BDCP EIR 24-138 to 24-140.)

In addition, BDCP proposes to construct a temporary barge unloading facility on Byron Ranch. (BDCP EIR 3-115 and Figure M13-4, Sheet 6.) BDCP assumes that barge activities would take place on levees using a ramp barge in conjunction with a crane/excavator barge or a crane or excavator positioned on or near the levee. (See BDCP EIR 3-115.) There is no information in BDCP concerning the number of barges or frequency of unloading at Byron Ranch. Presumably, this activity would be related to delivery of supplies for the concrete batch plant, fuel for the fuel station, and possibly RTM. One or more of these activities would involve the transportation and unloading of hazardous materials on Byron Ranch, which increases the potential risk of releases of hazardous materials on the ranch. There is insufficient information and analysis about the scope of the barge-related activities and the risk of those activities for FRI to determine what impacts would occur at Byron Ranch and if those impacts would be properly mitigated to a level of insignificance.

D. Conclusion

The preferred BDCP alternative would create potentially significant permanent and temporary impacts on Byron Ranch. However, the public drafts of the BDCP and EIR/EIS do

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not provide sufficient information for FRI to be informed as to the full extent of direct and indirect impacts and proposed mitigation measures. As noted, it appears that DWR will need to acquire significant property interests from FRI to implement the proposed project. Additional information on project impacts and mitigation measures is necessary for FRI to evaluate the extent of Byron Ranch property interests that might be impacted (and consequently acquired or compensated for) by the proposed project.

FRI appreciates your attention to these comments and looks forward to your response.

Sincerely,

A handwritten signature in blue ink that reads "Merrill N. Dibble".

Merrill N. Dibble
Vice President, California Operations

MD:

cc: Mark W. Cowin, Director, DWR
James Mizell, III, DWR, Office of Chief Counsel