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311 Vernon Street
Roseville, California 95678

July 14, 2014

Ryan Wulff
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

[Submitted by e-mail to BDCP.Comments@noaa.gov]

Re: Comment letter from the City of Roseville on the Draft Bay Delta Conservation Plan (BDCP) and the BDCP Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) dated December 13, 2013

Dear Mr. Wulff,

The City of Roseville submits the following comments on the Draft Bay Delta Conservation Plan (BDCP) and the BDCP Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) dated December 13, 2013 (hereafter referred to as BDCP and related documents).

The City of Roseville's water supply comes from Folsom Reservoir, a Central Valley Project (CVP) facility that is operated by the U.S. Bureau of Reclamation (Reclamation). The cities of Roseville and Folsom and the San Juan Water District collectively serve more than a half million people in the Sacramento region and divert their primary water supplies directly from Folsom Reservoir. The City of Roseville is also a Preference Customer of the Western Area Power Administration-Sierra Nevada Region (Western), which markets federal power from CVP facilities. As a Preference Customer of Western, the City of Roseville receives an allocation of preference power generated from the CVP facilities to help serve electric customers in the City of Roseville.

Although the proposed project area of the BDCP does not cover Folsom Reservoir, the BDCP would ultimately rely on CVP facilities including Folsom Reservoir in its operation. As such, the City of Roseville has a significant interest in fully understanding the BDCP and related documents and how the operation of the proposed twin tunnel alternative will impact our water supplies at Folsom Reservoir.

The City of Roseville has invested significant time and resources to review the current draft of the BDCP and related documents including a thorough legal review, an independent fisheries impact analysis and a review of the modeling assumptions that were used to construct the BDCP and its related documents.

In addition to the comments that were provided in the letters from the North State Water Alliance and the American River Water Users, both of which the City of Roseville agrees with and incorporates as part of this letter, we are providing additional comments specific to the City of Roseville which need to be examined and addressed as follows:

Comment 1 – Operating Folsom Reservoir to “dead pool” 10 percent of years violates existing water rights and contracts

The City of Roseville diverts its primary water supplies using an intake within Folsom Reservoir. That intake would be dry if the level of the reservoir were to drop below the top of the intake. This "dead pool" condition has never occurred previously, but probably would occur when the reservoir has

approximately 100,000 or fewer acre-feet of water in storage. Such a "dead pool" condition would have a severe detrimental impact on the City's residents, businesses and economic health.

The BDCP inappropriately assumes that the U.S. Bureau of Reclamation could operate Folsom Reservoir so that it would drop below the water-supply intake that supplies the City – to "dead pool" – in 10 percent of years and to levels that would create serious water-supply and fishery problems even more frequently.

Operational scenarios in the BDCP assume that Reclamation would operate, and would be allowed to operate, Folsom Reservoir to eliminate deliveries through the reservoir's water-supply intake for at least three months in 10 percent of years. This indicates that BDCP implicitly assumes that Reclamation would operate, and would be allowed to operate, Folsom Reservoir so that the approximately 500,000 people that currently rely on the reservoir as their primary water supply would be denied that water supply for those three months in 10 percent of years. Notwithstanding the numerous other flaws, inaccuracies and faulty assumptions that pervade the BDCP and its Draft EIR/EIS, this assumption in the BDCP is extremely troubling for the City of Roseville, would violate numerous laws and by itself underscores the City of Roseville's conclusion that this document is fundamentally flawed.

The assumed future operation in the BDCP's No Action Alternative and the proposed project would violate contracts for diversions from Folsom Reservoir and the terms of Reclamation's water-right permits for Folsom Reservoir. In particular, in 1958's Decision 893, the State Water Rights Board imposed a term on Reclamation's water-right permits for Folsom Reservoir to protect, among others, the City of Roseville, which, at that time, was pursuing a competing water-right application that would have priority under California's area-of-origin laws. (See Decision 893, p. 72 (Term 14).) Decision 893 explained that term's effect as follows:

Permits are being issued to the United States to appropriate enough American River water to adequately supply the applicants naturally dependent on that source and *availability of water to such applicant is reasonably assured by the terms to be contained in the permits to be issued to the United States restricting exportation of water under those permits insofar as exportation interferes with fulfillment of needs within Placer, Sacramento and San Joaquin Counties.* Other applicants in more remote areas must if necessary seek water from other sources.

(Decision 893, p. 54 (emphasis added).)

The impacts of BDCP's No Action Alternative and its proposed project on the City of Roseville and other diverters from Folsom Reservoir would prevent approving the BDCP's proposed north Delta diversion because operations assumed by the BDCP would injure legal users of water including the City of Roseville.

Any notion that would require the City of Roseville to forego CVP contract water diversions to make the BDCP a success is not only inconsistent with California law, but contradicts statements made by the Governor and his Secretaries, meant to assuage communities, like Roseville, by stating that, *"State and U.S. governments will make sure implementation of BDCP will not result in adverse effects on the water rights of those in the watershed of the Delta, nor will it impose any obligations on water users upstream of the Delta to supplement flows in and through the Delta."* (July 25, 2012) The City of Roseville is neither a party to nor a direct beneficiary of the BDCP, thus there must be no resultant impacts, by the activities and projects proposed in the BDCP, to Roseville water supplies, economy or environment.

In addition, it is important to recognize that the operation of Folsom Reservoir, from an electric generation perspective, serves an important role in the region during certain electric system emergency

conditions. As operations of the Folsom Reservoir may change in the future due to the BDCP, it is essential that the corresponding implications on electric generation be clearly understood as not to jeopardize the ability for Western to address electric system emergency conditions in the region, if necessary.

Comment 2 – Lack of an operational plan within the BDCP creates uncertainty for CVP contractors

The proposed BDCP and its Draft EIR/EIS creates a significant risk to water users who are not BDCP proponents in that their water uses will be affected by events that would be within what the draft BDCP defines as “unforeseen circumstances.” (See draft BDCP, pp. 6-45 to 6-46.) Under the proposed BDCP, BDCP proponents presumably would be immune from most impacts of these “unforeseen circumstances,” but BDCP contains no explanation of how the existence of those assurances could affect other water users, and especially CVP contractors who are not BDCP proponents.

If the draft BDCP had contained an operations plan demonstrating how Reclamation would operate in conjunction with BDCP to address the needs of those non-BDCP CVP contractors, it might have been possible for the EIR/EIS to explain how granting BDCP proponents’ desired assurances might affect those other water users.

Unfortunately, no such operations plan exists within the draft BDCP and its draft EIR/EIS. Instead, as discussed elsewhere in these comments, BDCP’s hydrologic modeling assumes that, in the case of climate change, Reclamation generally would operate upstream reservoirs so that they would go dry in 10 percent of years, which would cut off supplies to many CVP contractors. Without a well-described operations plan that explains how the BDCP’s terms would be integrated with CVP operations outside the scope of BDCP, especially the regulatory assurances its proponents would receive, the draft BDCP and its EIR/EIS are too vague to support the necessary findings or provide adequate environmental analysis under NEPA and CEQA. For the City of Roseville, this vagueness underscores the inadequacy of the draft BDCP and its EIR/EIS and does not provide upstream water diverters, like the City of Roseville, the level of information and sound analysis that we should reasonably and legally expect as part of this public review process.

Comment 3 - City of Roseville water demands are incorrect in the BDCP’s modeling

The draft BDCP’s hydrologic modeling assumes future demands by the City of Roseville that are substantially too low and therefore does not accurately depict the impacts of the No Action Alternative and the proposed project on the city. The city’s two primary water supplies are a CVP water-service contract with Reclamation for 32,000 acre-feet per year and a contract with Placer County Water Agency (PCWA) for up to 30,000 acre-feet per year of water that PCWA appropriates under its own water rights for its Middle Fork Project. While the assumptions for BDCP’s hydrologic modeling correctly assume that the City has a demand for 32,000 acre-feet of CVP contract water per year, now and in the future, those assumptions incorrectly state that the city’s demand for water under its PCWA contract will be only 5,000 acre-feet per year in the No Action Alternative. (BDCP EIR/EIS Appendix 5B, p. 5A-B135, Table B19 (depicting the City’s demand for “Water Rights” water).) In fact, the City anticipates using its full 30,000 acre-feet per year allotment under its contract with PCWA in the future. As discussed in Table 3.13 of the City of Roseville’s 2010 Urban Water Management Plan, the City anticipates having a demand for the full amount of the PCWA contractual supply by 2025. The BDCP draft documents’ contrary assumption causes those documents to inadequately disclose project impacts on the City of Roseville, Folsom Reservoir and all resources that depend on that reservoir.

Comment 4 – Stormwater impacts: Insufficient justification for Conservation Measure (CM) 19

CM19 is described in seven pages of the BDCP with little detail, numerous inaccuracies on urban runoff contaminants and water quality regulations, and without any evidence that CM19 control measures

could provide any measurable benefits to the covered species. CM 19 (CM19, BDCP Section 3.4.19) intends to decrease urban runoff contaminant discharge to support Objective L2.4 to provide water quality to “help restore native fish habitat”. However, there is no technical analysis demonstrating the potential benefits of CM19 aside from incomplete descriptions of pyrethroid research in upstream urban tributaries; this research has not demonstrated relevance to impacts on covered species in the Delta. No technical justification is provided for the primary inclusion of urban runoff sources as a Conservation Measure over all other contaminant stressor sources that are described throughout the BDCP and EIR/EIS but are absent as Conservation Measures. As proposed, CM19 provides no new benefits to downstream covered species. Furthermore, CM19 proposes measures that are already generally implemented by stormwater management programs and local planning departments with new development requirements.

The City of Roseville echoes and incorporates the request, made by the Sacramento Stormwater Quality Partnership, in their comment letter on the BDCP that CM19 be removed because it is not justified as an action that would reasonably improve the covered species populations in the Delta.

Comment 5 - Inadequate financing

A habitat conservation plan must ensure that there is adequate funding to implement its conservation actions. The draft BDCP does not meet this standard. It depends not only on funding from the current proposed bond – which is subject to amendment and general election vote, and has already been delayed four years – but also a second, as yet undefined, bond and equally vague federal funding.

Moreover, the draft BDCP does not contain adequate assurances that the water agencies that would receive regulatory coverage under the federal Endangered Species Act and the state Natural Community Conservation Planning Act are the only agencies that would be asked to contribute funding to the project.

The City of Roseville needs strong assurances that implementation of any BDCP will adhere to the principle that the beneficiary must pay for financing the activities that would be required for BDCP proponents to receive their desired regulatory coverage. The current draft of the BDCP does not provide those assurances or a level of confidence that financing assumptions are more than just speculative.

Comment 6 – The current draft of the BDCP is fundamentally flawed and needs more work – to allow the public and agencies to assess the true impacts

As was pointed out specifically in the comment letters from the North State Water Alliance and the American River Water Users, the current draft BDCP and its Draft EIR/EIS are based on flawed hydrologic modeling and a flawed scientific analysis. Significant errors in the underlying hydrologic model, from which all effects were analyzed, call into question the analyses and conclusions throughout the entire draft BDCP and its related documents.

Given these shortfalls, the draft BDCP and its EIR/EIS fail to adequately provide the environmental documentation necessary for our community and public decision makers to reach an informed and thoughtful assessment as to how the BDCP will impact our water supply from Folsom Reservoir. As pointed out in the American River Water Users comment letter, this lack of clarity in the BDCP’s EIR/EIS violates NEPA’s readability requirement and violates CEQA’s requirement that the document adequately inform the public of the scope and potential impacts of a proposed project.

It is well-established that an EIR must be “prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences.” CEQA Guidelines §15151.

As the Supreme Court has said, an EIR must disclose to the public the “analytic route the agency travelled from evidence to action” and in doing so, the EIR “must contain facts and analysis, not just the agency’s bare conclusions or opinions.” *Citizens of Goleta Valley v. Board of Supervisors*, (1990) 52 Cal.3d 553, 568. CEQA Guidelines Section 15151 recognizes that the evaluation of the effects of a project “need not be exhaustive” and that the courts have “looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.”

The draft BDCP and its EIR/EIS fails this good faith effort test because it leaves the City of Roseville with many unanswered questions as to how the proposed activities and projects will impact its future water supply reliability.

As a result, the current draft BDCP documents are incomplete and inadequate to inform the public of the consequences of implementing the BDCP. The City of Roseville expects that the State of California will address these shortcomings outlined in this and the other referenced comment letters, if the State of California wishes to continue with this process. This would require that another draft of the BDCP be released to the public with another public comment period that provides sufficient time to assess the impact of the BDCP and its related documents.

Conclusion

The City of Roseville is committed to working towards developing comprehensive water supply and environmental solutions for all of California. A properly developed and analyzed BDCP as part of a more comprehensive California Water Action Plan could be part of those solutions. The current documents are not. We urge you to recirculate the BDCP documents after the various shortcomings are addressed in a cooperative and collaborative process and they can provide enough information for interested parties to determine whether a BDCP can contribute to meet the pressing water and environmental needs of the state, without driving upstream reservoirs to “dead pool,” harming our region’s environment and devastating our regional economy.

If you have any questions or wish to discuss this comment letter in more detail, please call Sean Bigley, City of Roseville Government Relations Analyst, at (916) 774-5513.

Sincerely,



Ray Kerridge,
City Manager

cc:

Congressman Tom McClintock
Senator Dianne Feinstein
State Senator Jim Nielsen
Assemblywoman Beth Gaines
Roseville Mayor Susan Rohan
Roseville Vice Mayor Carol Garcia

Roseville Councilmember Bonnie Gore
Roseville Councilmember Tim Herman
Roseville Councilmember Pauline Roccucci
The Honorable Sally Jewell, Secretary, U.S. Department of the Interior
The Honorable John Laird, Secretary, California Natural Resources Agency
Shauna Lorange, General Manager, San Juan Water District
Evert Palmer, City Manager, City of Folsom
David Breninger, General Manager, Placer County Water Agency
Michelle Bertolino, Director, Roseville Electric, City of Roseville
Ed Kriz, Director, Environmental Utilities, City of Roseville