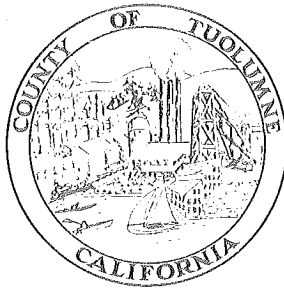


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July 15, 2014

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

Re: Comments on Bay Delta Conservation Plan, EIR/EIS, and Implementing Agreement

Dear Mr. Wulff:

Thank you for accepting these comments from Tuolumne County on the Bay Delta Conservation Plan (BDCP, or the Plan), the related Environmental Impact Report/Environmental Impact Statement (EIR/EIS), and the related and recently released draft Implementing Agreement. Our comments will be divided into three parts, first on the Plan itself; second, on the EIR/EIS; and third on the draft Implementing Agreement. With the recent release of the Implementing Agreement, Tuolumne County is sending this follow up comment letter. The County's comments are not intended to be exhaustive and do not touch on all aspects of the Plan or EIR/EIS but, rather, are limited to fundamental points of primary concern to residents of Tuolumne County.

THE PLAN

Costs and Funding Sources

Chapter 8.2.7.1 estimates the total capital cost of the BDCP to be \$24.9 billion, and we note parenthetically that this does not include interest on related debt and truly must be considered an estimate, as we understand that the engineering work for BDCP is only at the 10% level. Table 8-37 breaks down projected funding sources as being 68.4% from water contractors, 16.6% from State sources (primarily General Obligation bonds yet to be approved by the voters), and 14.3% from various Federal sources. Thus, it would appear that about \$8 billion of the estimated pre-interest capital cost is to be borne by the taxpayers of California and the United States.

Tuolumne County residents pay both State and Federal taxes. Yet, we find nothing in BDCP that is of any benefit to Tuolumne County whatsoever. To the contrary, as is discussed below, it is likely that implementation of BDCP will result in the State Water Resources Control Board (SWRCB) looking at sources in Tuolumne County to provide replacement fresh water for the Delta to make up for the Sacramento River water that the Tunnels component of BDCP will route under the Delta. It is simply inequitable to ask residents of Tuolumne, or any other County that gets no benefit from BDCP, to shoulder any portion of the State and Federal funding sources of BDCP.

The Plan Fails to Acknowledge the Important Role of Storage

The Executive Summary of the Plan describes the Plan as a "comprehensive conservation strategy" and goes on to emphasize the importance of the Delta as a source of water for parts of the State ranging from Alameda County to urban Southern California to Kern County, and in between. Yet when one searches the 114 page Executive Summary looking for the word "storage" it is only found once; in a sidebar describing the functional and geographical areas of responsibility of the Department of Water Resources.

We understand that point 6 of Governor Brown's 10 Part California Water Action Plan calls for expanded water storage in the State (with an emphasis on groundwater storage), but that plan is short on specifics, either in terms of amount and location of new storage, or in terms of sources of funding. The BDCP Plan does not include any provision of new storage, yet has an estimated capital price tag of \$24.9 million with a portion of that cost presumably being paid by the major water contractors in the State. Our concern is simply that the essential element of new storage, whether surface or underground, will not receive the attention or funding that is needed. Stated otherwise, an expensive and untested new water conveyance system for California, with no corresponding provision for related storage needs may prove to be money not wisely spent.

THE EIR/EIS

The Failure to acknowledge that the Tunnels will increase the pressure to take further Foothill and Sierra water supplies for the Delta

Commenting on the EIR/EIS from the point of view of Tuolumne County is somewhat like attempting to do what many say can't be done --- proving a negative. That is the case because in none of the chapters of the EIR/EIS where we would expect to see our concerns addressed is there any explicit acknowledgement of what we believe to be a serious issue. A review of chapters 5 (Water Supply), 6 (Surface Water), 8 (Water Quality) and 15 (Recreation) does not result in finding any mention of the likelihood that new sources of fresh water will be sought to replace the water that the Tunnels called for by BDCP will convey underground rather than through the Delta.

The SWRCB on August 3, 2010 by Resolution 2010-0039 found that from a fishery protection perspective significantly greater flows of fresh water are needed in the Delta. See-http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/final_rpt080310.pdf

Yet the Tunnels proposed in BDCP would further reduce fresh water flows in the Delta. It is likely, if not inevitable, that SWRCB would look for new sources of flows into the Delta. One obvious source would be up-river reservoirs in the foothills and high Sierra; specifically Don Pedro on the Tuolumne River and New Melones on the Stanislaus. Both rivers have their origins in Tuolumne County. This could amount to one of the greatest diversions of water supply and encroachment on established water rights in the State's history. Further, it would have a severe negative impact, not just on water supply and water quality in our county, but also on local recreation and tourism activities and future growth potential.

The Failure to Consider Improved Forestry Management Practices as an Alternative

We find the alternatives included in Chapter 3 of the EIR/EIS to be little more than modest variations of the Preferred Alternative of the Tunnels. We suggest that more imaginative alternatives to the Tunnels exist for dealing with California's chronic water shortages.

It is no secret that 60% of California's developed water supply and 50% of the flow into the Delta comes from the Sierra (<http://www.sierranevadaconservancy.ca.gov/our-region/sierra-water-supply-connection/sierra-delta-connection>). And there is a growing body of research that indicates that improved forestry management practices can materially increase water yields from our forests (for example, see <https://eng.ucmerced.edu/people/rbales/CV/Talks/1204.1>

We believe that a thorough analysis of the potential for significantly increasing the water yield from the Sierra should be considered and included as an alternative to the exceptionally expensive and equally controversial Preferred Alternative of the Tunnels.

THE DRAFT IMPLEMENTATION AGREEMENT

Lack of Specifics

The draft Implementation Agreement is lacking in specifics in numerous critical areas, not the least being that it fails to identify by name the State Water Project and Central Valley Project contractors who are expected to pay their share (68.4% according to the Plan) of the estimated \$24.9 billion capital cost of BDCP. The draft

Implementation Agreement contemplates a list of Exhibits, with Exhibit H being a list of contractors. But no exhibits are attached to the draft Implementation Agreement. Another significant omission in the list of intended Exhibits is Exhibit D, which is supposed to be the all-important Implementation Schedule. In our comments above we expressed concern that State and Federal taxpayers may already be in line to pay a substantial portion of the cost of BDCP. Without there being identification of the contractors expected to pay the difference, or an Implementation Schedule showing when contractor commitments will become legally binding, our concerns about the exposure of taxpayers is magnified.

Our concerns about the identification and allocation of BDCP funding sources are further heightened by the fact that the draft Implementation Agreement is either silent or vague on these related questions:

- o How many and which of the State and CVP contractors will make enforceable commitments?
- o When will those commitments be made?
- o What remedies will exist if the contractors default on enforceable commitments that they presumably will make?
- o How will the costs to be funded by the contractors be allocated among the contractors and when will this be known?

Misleading Statement on Critical Issue

We recognize that this is a draft of a proposed Implementation Agreement. Yet we are disturbed by the provision of Section 8 which unqualifiedly asserts that the fish and wildlife agencies "have found" that BDCP "fulfills the requirements" of both Federal and State endangered species laws. We appreciate that both the May 30 Resources Agency press release and California Fish & Wildlife Director Bonham's comments at a related press conference clarify that this provision is anticipating future decisions, that may or may not materialize. We believe that a similar statement should have been included in the draft Implementation Agreement as a highlighted "Note to Reviewers" making it abundantly clear that the provision assumes a future state of affairs, which may or may not ever become reality.

Sierra Resources will likely be tapped for Additional Delta Outflow

Finally, and probably most importantly, we repeat our concern expressed above ("The Failure to acknowledge that the Tunnels will increase the pressure to take further Foothill and Sierra water supplies for the Delta") and point out that the provisions of Section 10 of the draft Implementation Agreement, particularly the last paragraph of Section 10.3.7.3.2, do nothing to alleviate our concern that waters of the foothill rivers, including the Stanislaus and Tuolumne, will be targeted to replace the fresh water that

the Tunnels will divert from the Delta. Suffice it to say that this sentence in Section 10.3.7.3.2 is disconcerting, "In the event that additional outflow was determined to be necessary, supplemental water may be acquired from voluntary sellers." And what if there are no voluntary sellers (or if the Supplemental Adaptive Management Fund has been depleted)? At that point it would appear that the SWRCB would have no alternative but to exercise its considerable authority and require additional foothill and Sierra river flows into the Delta.

Sincerely,



EVAN ROYCE
Chairman

cc. BDCP.Comments@noaa.gov
Senator Dianne Feinstein
Congressman Tom McClintock
Senator Tom Berryhill
Assemblyman Frank Bigelow
Rural County Representatives of California

I hereby certify that according to the provisions of Government Code Section 25103, delivery of this document has been made.

ALICIA L. JAMAR
Clerk of the Board

By: _____

