



July 23, 2014

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

**Submitted via email: [BDCP.comments@noaa.gov](mailto:BDCP.comments@noaa.gov)**

**Re: Draft Bay Delta Conservation Plan and associated Draft Environmental Impact Report/Environmental Impact Statement (BDCP Draft EIR/EIS)**

Dear Mr. Wulff:

The Delta Caucus is comprised of the five Delta County Farm Bureau's; Contra Costa, Sacramento, San Joaquin, Solano and Yolo. Since 2008, the five Delta County Farm Bureau's joined to form the Delta Caucus and has been engaged to protect and promote the viability of Delta agriculture and represent the family farmers and ranchers who live and farm in the Delta.

We appreciate the opportunity to comment on the Draft BDCP and the related EIR/EIS. Please accept our comments and related questions (Attachment A) on behalf of our combined organization and as if submitted by each of the individual County Farm Bureaus as listed above.

The proposed BDCP will have tremendous negative impacts on Delta agricultural resources. The primary negative impacts will be caused by conversion of agricultural lands to other uses, degraded water quality caused by intrusion of salt water into the Delta and negative impacts to infrastructure such as flood control and drainage. In addition, there will be severe secondary impacts to Delta agricultural resources caused by the cumulative impacts which will irreparably impair the Delta economy. Some of the negative impacts have been identified and studied in the Draft EIR/EIS, but many have not. Mitigation to diminish the severity of identified impacts has been proposed, but is inadequate to provide for a vibrant and viable Delta agricultural economy.

Key ingredients for viable and resilient Delta agriculture are land, high quality water, and infrastructure. Our comments will focus on the impact of the BDCP to these key requirements and are organized around the following:

1. Consistency of the BDCP with laws and regulations protecting Delta agricultural resources.
2. Collective negative impacts of the BDCP on Delta agriculture.
3. Unidentified impacts.
4. Analysis of proposed mitigation.
5. Inadequate study of alternatives.

### **The Regulatory Landscape...Land**

County General Plans value and protects Delta agricultural resources and recognize that agriculture is the foundation of the Delta economy.

The Delta Protection Act of 1992 in Section 29703 (a)(c) describes the Delta as an agricultural region of great value and states that the Primary Zone should be protected from the intrusion of non-agricultural uses. This Act created the Delta Protection Commission and directed it to create the Land and Resource Management Plan, which has five land use policies that protect agricultural resources. In addition, pursuant to the Delta Reform Act, The Delta Protection Commission prepared the Delta Economic Sustainability Study, which clearly shows that agriculture is the backbone of the Delta's economy.

The Delta Reform Act established the co-equal goals of water supply reliability and ecosystem restoration and conditioned their achievement on the protection and enhancement of Delta resources to include agriculture. Section 29702 (a) states that "The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resources and agricultural values of the Delta as an evolving place." The Delta Reform act also created the Delta Stewardship Council and directed it to develop the Delta Plan. Chapter 5 of the Delta Plan establishes policies and goals to protect Delta agricultural resources (Delta Plan: Pages 183 and 192-198).

While the draft EIR/EIS mentions the applicable laws and regulations, it does not demonstrate consistency with county general plans, the Delta Protection Act or the Sacramento- San Joaquin Delta Reform Act.

### **The Regulatory Landscape...Water**

The establishment and operation of the State Water Project (SWP) and the Central Valley Project (CVP) are based on water law that, among other things, establishes the common pool principle, area of origin priorities, and limits water exports to surplus water.

Because of the changing definition of surplus water and the need to recognize environmental needs in that equation, a series of steps has been taken over time to establish standards to protect water and Delta environmental quality.

- The 1995 Bay Delta Plan established salinity standards throughout the Delta.
- The Water Resources Control Board in Decision 1641 (D-1641) Chapter 10 assigned responsibility for achieving salinity standards to the SWP and CVP, and because salinity intrusion into the Delta is determined by outflow, Chapter 13 also assigns responsibility for achieving flow standards to the SWP and the CVP.

The BDCP Draft EIR/EIS acknowledges:

- The importance of flow to control salinity intrusion into the Delta (ES-12 line 1).
- That outflow under alternative 4 will be reduced up to 864,000AF.
- The result will be increased seawater intrusion (8-408lines 36-38).
- In addition, modeling shows increased salinity will occur in much of the Delta (8-436-438).
- The result will be regular violations of water quality standards (acknowledged as violation 8H-1 line 17).

The Delta Protection Commission recognized that water quality is a key consideration in protecting the resources of the Delta and included policies to protect Delta water in its Land and Resource Management Plan.

In 1981, the State of California and the North Delta Water Agency entered into a contract that established salinity standards in the North Delta and other terms and conditions that have not been addressed or analyzed in the Draft EIR/EIS.

The Delta Reform Act of 2009 included a mechanism for the BDCP to be included in the Delta Stewardship Council's Delta Plan. Water Code Section 85320 lists requirements that BDCP must achieve in order to be included in the Delta Plan. The Draft EIR/EIS claims consistency (Appendix 31), but does not achieve the conditions of Water Code 85320 (b)(2)(A) which requires that a series of studies be completed which "...will identify the remaining water available for export and other beneficial uses." The studies may have been performed, but the amount of water available for export has not been determined and is one of the key uncertainties of the BDCP.

In addition, the Delta Reform Act of 2009 as explained in Water Code Section 85021 requires that reliance on the Delta in meeting California's future water needs be reduced. Certainly a 50-year permit will be operating in the future, and therefore, the BDCP should demonstrate that it reduces reliance on the Delta through strategies such as regional self-reliance, local and regional water supply projects, and other strategies. On the contrary, the BDCP seems to increase rather than reduce dependence on the Delta as a source of future water.

Even though the BDCP Draft EIR/EIS recognizes and explains many of the laws, regulations, and contractual agreements controlling water exports from the Delta, it is meaningless. The document fails to address the operational concerns of those within the Delta and offers no commitment to operate the BDCP in a manner that is consistent with prevailing California water law and issues of priority. The BDCP must be consistent with California water policy, laws, and regulations.

### **The Regulatory Landscape...Infrastructure**

The BDCP Draft EIR/EIS states that the Central Valley Flood Control Board (CVFCB) has no jurisdiction or authority over construction, operation or maintenance of CVP or SWP (6-35 lines 40-41). Flood control is a key element of the infrastructure necessary to protect agricultural values in the Delta. The BDCP and any plans which emerge regarding flood control structures such as the Yolo Bypass and Levees throughout the Delta must be analyzed and be consistent with the State Plan of Flood Control administered by the CVFCB and other state and federal agencies with jurisdiction over Delta flood control. In addition, Water Code Section 85320 (b) states, "The BDCP shall not be incorporated into the Delta Plan and the public benefits associated with the BDCP shall not be eligible for state funding, unless the BDCP does all of the following" and 85320 (b)(2)(E) requires that BDCP studies include "the potential effects on the Sacramento River and San Joaquin River flood management." This analysis has not been performed.

In addition, the BDCP has not performed the analysis to determine consistency with the State Plan of Flood Control and therefore, is not consistent with local, state, and federal regulations regarding flood control in the Delta. Until the BDCP has performed the analysis and determined that its proposed actions are consistent with the State Plan of Flood Control, there should be no State or Federal funding to support the project.

### **Cumulative Effect of BDCP on Delta Agricultural Resources**

As stated earlier, the BDCP will have tremendous negative impacts on Delta agricultural resources. As shown in Table 3-4 in Chapter 3, page 22 of the Draft EIR/EIS, in Table 6-2 Chapter 8, page 6 of the Bay Delta Conservation Plan Public Draft, and in Table 8-1 of the Bay Delta Conservation Plan Public Draft, 150,000 acres of agricultural land will be acquired, converted, restricted or otherwise impacted by BDCP. In analyzing the BDCP's impact on agricultural resources, any action that converts agricultural land to other uses or which will negatively impact the viability and resiliency of the land in the future will negatively impact Delta agricultural resources. Certainly there are different levels of negative impacts such as conversion to marshland versus restriction to field crop, but each of these actions will negatively impact the resource as a whole.

Many of the negative impacts are recognized in the BDCP draft EIR/EIS; however, because of the way the document is organized and because of the size of the document, the total impact of the BDCP on agricultural resources is indecipherable. For example, water quality impacts will negatively impact agricultural resources, but Chapter 14 (Agricultural Resources) refers the reader to other chapters to try to figure out what the impact on agricultural resources might be (14-12 lines 24-26). Increased salinity in many Delta areas as shown by the modeling (8-437 and Appendix 8H) will have a major impact on Delta agricultural resources, yet in Chapter 14 we are again referred to other chapters (14-15, lines 14 & 15), and there is only a general discussion indicating that increased salinity will affect crop selection and production, but the real impact detailing how increased salinity caused by the BDCP will negatively impact resources of the Delta, including agriculture, is not explained in the analysis.

The Delta Protection Commission recently completed a Delta Economic Sustainability Study, which concluded that agriculture is the major economic force in the Delta and while converting thousands of acres agricultural lands to other uses will certainly negatively impact Delta agricultural resources and the Delta economy, the total impact of this is not considered in the document. A cursory review of impacts identified in the executive summary suggests that the

64 impacts listed below impact agricultural resources and that approximately 20 of them are classified as significant and unavoidable.

Surface Water: SW 4, 5, 6, 8, 9

Ground Water: GW 1, 2, 3, 4, 5, 6, 7, 8, 9

Water Quality: 7, 8, 9, 10, 11, 12, 13, 14, 17, 18, 22, 25

Soils: Soils 2, 7

Agricultural Resources: AG 1, 2, 3, 4

Socioeconomics: ECON 1, 2, 3, 4, 5, 6, 7, 8, 9, 12, 13, 15, 17, 18

Noise: NOI 1, 2, 10

Hazards and Hazardous Materials: HAZ 1, 2

Public Health: PH 1, 2, 5

Land Use: LU 1, 2, 4, 5

Transportation: TRANS 1, 2, 3, 8, 9, 10

The EIR/EIS makes no effort to measure the cumulative effect of all of these many impacts and the devastation they will have on the agricultural resources of the Delta, its legacy communities, businesses, and residents. The effect of these 64 negative impacts must be evaluated both separately and collectively in order to insure that mitigation is adequate to fully mitigate for the negative impacts of the project in its totality. The effects of one negative impact will increase the severity of others. For example, if 50,000 acres are converted from agricultural production to other uses, 50,000 acres are subject to crop restrictions, 50,000 acres go out of production because of water quality impacts, another 20,000 acres go out of production from more frequent flooding of the Yolo bypass, 15,000 acres go out of production because of construction impacts, and another 10,000 go out of production because of traffic, noise and other construction related interference, the combined effects becomes greater than each impact considered separately. In addition, the ability to finance special district operations which provide key agricultural infrastructure such as flood control, drainage and water delivery will be impaired, and more agricultural land will be impacted, businesses that depend on agriculture will close, agricultural jobs will decrease, and the Delta economy will begin a downward spiral. The combined effects of the negative impacts will be devastating. These 64 negative impacts, 20 of which are significant and unavoidable, will destroy the viability, sustainability and resiliency of the Delta economy, its businesses, communities, and the livelihood of its residents.

### **Unidentified Impacts**

The BDCP Draft EIR/EIS is incomplete because it has not recognized, analyzed, and mitigated for the following impacts:

1. During construction, BDCP will cause ten years of major disruptions to residents, agriculture and other businesses with noise, water supply interruption, traffic, and other negative impacts referred to as “short term impacts”. Because the combined effect of these impacts could have long- term implications for Delta agricultural resources, and its residents and businesses, construction impacts must be studied as both short and long-term and appropriate mitigation needs to be developed.
2. During construction, in order to de-water construction sites, there will be large amounts of drainage water generated. According to the EIR/EIS, the drainage water will be treated if necessary and discharged into “local drainage channels or rivers” (6-58). How will drainage water be treated? Will treating drain water impact Reclamation Districts and agricultural resources? Will drainage water be discharged into Reclamation District drainage systems? How much drainage water will there be, and do

Reclamation Districts have the capacity to remove the extra drainage water? How will the impacts be mitigated?

3. There must be assurances that construction does not impact flood control infrastructure. It is acknowledged that levee roads will suffer damage from construction activities, however, damage to the levees themselves is not considered. To the extent that there is damage to underlying levees, it must be mitigated to eliminate the risk of flood to the Delta communities.
4. Because coffer dams will impede river flows and increase upstream river elevations (6-58), flood risk may be increased. This impact must be analyzed and mitigated.
5. The Yolo Bypass is a flood control structure. Because CM-2 may reduce flood-flow capacity, the CVFCB, must determine that CM-2 is consistent with the State Plan of Flood Control. Any reduction in flood-flow capacity must be identified and mitigated.
6. As reported in Bulletin 125 Studies conducted in 1967 concluded that increased river elevations will increase seepage into agricultural lands. The full effect of increased seepage caused by coffer dams (6-58) must be analyzed and mitigated.
7. Construction and operation of CM 2-22 will result in increasing populations of endangered species and other conditions which will impact neighboring agricultural resources. Farmers must be indemnified from liability for agricultural practices that are necessary to farm, such as but not limited to pumping water.
8. Water quality impacts WQ7, WQ8 and WQ11 all deal with increased salinity in Delta water downstream from the proposed northern intakes. This impact is not adequately analyzed with respect to its effect on agricultural resources. The data shows the number of days standards will be violated and the percent of days in violation (Appendix 8H). This data must be analyzed to demonstrate the magnitude of the violations and the resulting impacts on agricultural resources.
  - a. Increased EC may result in changing cropping patterns to less profitable crops or fallowing land. Corn is an important crop for agricultural viability and also for migratory waterfowl. The crop demands high quality water and may no longer be a viable crop choice if EC is too high.
  - b. It is misleading to compare Sacramento River E.C. data at Emmaton (existing conditions) to data as measured at Three Mile Slough for the BDCP alternatives (Appendix 8H-5). It would be more appropriate to compare E.C. data at the same location, and there is a high probability that the true comparison would show a greater magnitude of increased EC caused by operation of the BDCP.
  - c. We find the use of the phrase “anomaly” to also be incredibly misleading and ill-defined. Appendix 8H, page 1, line 17 indicates that there may be some modeling anomalies that have masked or distorted results. Modeling is an essential part of the EIR and if the modeling contains errors, omissions or is outdated, the EIR inaccurately describes impacts and evaluates mitigation. Because modeling is such an essential part of the project’s description, there is no room for anomalies, errors, omissions or other factors which have distorted the project’s description.
  - d. The BDCP EIR acknowledges that it will violate water quality and flow standards as required under D-1641. It identifies these violations as significant and unavoidable impacts. The legal questions that come with a project such as this must be addressed. The water quality and the protection of area of origin diverters are a settled matter of California law. The BDCP must demonstrate compliance with the law. To describe a

violation of the law as a significant and unavoidable impact is unacceptable.

9. The impact of the BDCP on the terms and conditions of the North Delta Water agency contract with the State of California and the subsequent effect on the agricultural resources within the boundaries of the North Delta Water Agency must be addressed in the EIR.
10. The employment of the “Decision Tree” and “Adaptive Management” results in deferring major decisions about how BDCP is built and operated. The project is not clearly defined and the employment of the "Decision Tree" and "Adaptive Management" result in failure to adequately describe the project, disclose impacts, and design proper mitigation. The public cannot adequately comment on the Draft EIR/EIS when the employment of the “Decision Tree” or “Adaptive Management” could result in major changes to the project or the operation of the project.
11. The programmatic study of CM2-22 defers comprehensive description and analysis of major components of BDCP and results in failure to adequately describe the project, disclose impacts and design proper mitigation.
12. The Implementation Agreement (IA) has not yet been released. On 5/29/14, DWR announced that a draft IA is being prepared for release, but that it does not contain operating information or financial commitments. Without that information the soon to be released IA fails to meet HCP and CEQA guidelines. A complete draft IA must be available for public review and should restart the beginning of the public comment period as it may impact the validity of previously submitted comments.

### **Analysis of Proposed Mitigation**

The California Environmental Quality Act (CEQA) requires that mitigation be feasible (section 15126.4(a)(1) as defined (Section 21061.1), fully enforceable (section 15126.4(a)(2) and adequately financed and monitored (section 15097).

Many proposed mitigation measures in the BDCP Draft EIR/EIS are inadequate. For example WQ11 states “Avoid, minimize, or offset as feasible reduced water quality conditions.” This mitigation measure is discretionary, deferred, unfunded and may not be feasible. Mitigation for WQ11 is expanded by WQ11a “Conduct additional evaluation and modeling of increased EC levels following initial operations of CM1.” This mitigation measure is inadequate because it only studies the condition creating the impact and does not offer a feasible, funded, legally binding action to offset or mitigate the impact.

Another example of inadequate mitigation is the Agricultural Land Stewardship Plan (ALSP) proposed as mitigation for AG 1,2,3,4 and ECON 6,7,12,13, and 18. “Agricultural land stewardship means farm and ranch landowners—the stewards of the state’s agricultural land—producing public environmental benefits in conjunction with the food and fiber they have historically provided while keeping land in private ownership (California Water Plan Update 2005, Agricultural Land RMS).” Continued agricultural production is a key element of the definition of agricultural land stewardship. In the BDCP draft EIR/EIS, BDCP proponents are tasked with developing ALSPs by choosing from a group of strategies to offset impacts. Some of the suggested strategies are:

1. Strategy A: Have farmers manage habitat land (14B-14).
2. Strategy C: Designate habitat production as agricultural production (14B-14).
3. Strategy E: Work with counties to include habitat lands in Williamson Act Preserves (14B-15).
4. Strategy Q: Consider opportunities to develop sustainable agricultural land community in the Delta Region consistent with ecosystem conservation and restoration (14B-17).

None of these strategies is consistent with the definition of agricultural land stewardship because they do not provide for production of food and fiber. The ALSP is inadequate as mitigation because it allows the project

proponents to choose from a group of strategies, some of which advance biological goals of the BDCP rather than mitigate for impacts to agricultural resources. In addition, ALSP mitigation is inadequate because it is not defined, and therefore, is not feasible. It is not enforceable nor is it funded.

Even though the BDCP will negatively impact up to 150,000 acres of Delta agricultural resources (Table 3-4, Chapter 3 page 22 Draft EIR/EIS), Appendix 8A of the Bay Delta Conservation Plan Public Draft (8.A.7.1 page 8-A-169 line 11) states, "EIR/EIS mitigation requirement would be 1,752 acres." This analysis is based upon permanent conversion of approximately 45,000 acres of important farmland inappropriately offset by 43,174 acres placed in a cultivated land reserve to benefit covered species impacted by the BDCP. Because both converting agricultural resources to other uses and restricting agricultural resources in a cultivated land reserve (BDCP chapter 3, Section 3.4.11) negatively impacts agricultural resources, concluding that 1,752 acres constitutes adequate mitigation is ludicrous. Mitigation must reduce, minimize or offset negative impacts caused by the project. Negative impacts should be cumulative, not offsetting.

Mitigation as proposed in the BDCP draft EIR/EIS that is discretionary, deferred, unfunded, not enforceable, ungoverned or where feasibility has not been determined, is inadequate. In addition, in cases where mitigation does not meet minimum CEQA guidelines, "impact after mitigation" must be reevaluated to determine significance.

### **Inadequate Study of Alternatives**

The development of the BDCP began in 2006. Between 2006 and the release of the 2013 Draft EIR/EIS, a great deal of effort has been spent designing Alternative 4. Alternative 4 changed from a canal to tunnels, from five (5) diversion sites to three (3), from 15,000 cfs to 9,000 cfs, from tunnel muck disposal sites to treatment and reuse of excavation material to name a few of the changes. The other alternatives remained static. Alternative 4 has been pursued through the courts in an effort to gain access to private property in order to conduct onsite surveys of environmental and geophysical conditions and has been described in detail in informational material throughout the process leading up to the release of the BDCP Draft EIR/EIS. On May 12, 2014, a month before close of comments on the Draft BDCP EIR/EIS, the Department of Water Resources (DWR) announced that a new organization has been created within DWR to continue moving the twin tunnel project forward. The new entity will be responsible for designing and constructing the project. All the other alternatives presented in the Draft BDCP EIR/EIS have received very little real analysis and have been presented simply as a formality to satisfy legal requirements and will receive no consideration by the new entity created to plan and build the twin tunnel project. In addition, several alternatives suggested by the public have been dismissed with very little, if any, analysis.

Because of the preferential analysis and focus on Alternative 4, not all alternatives were studied in equal detail nor have any of the alternatives presented by the public been analyzed in equal detail. Continuing to design the twin tunnels (alternative 4) and establishing an entity to construct the project long before close of comments on the Draft EIR/EIS implies that the CEQA/NEPA process is just a formality and the process is not meant to provide meaningful public participation and input on projects that will have long-term environmental, economic and human impacts. The bottom line is that alternatives have been proposed, left unstudied and could potentially supply similar benefits without the devastation of the Delta communities, agricultural resources and local economies.

### **Conclusion**

The more water that is taken from the Sacramento-San Joaquin River Delta, the more economic and environmental damage will occur. Over the last two decades, Delta outflow has been regulated to protect the Delta water quality and natural resources include agriculture. The BDCP will reverse the steps taken to protect the health of the Delta and its economy by providing the means to increase water exports, reduce Delta outflow, and increase saltwater intrusion. The BDCP Draft EIR/EIS confirms that the preferred alternative will devastate Delta agricultural resources, the Delta economy and Delta communities. The Delta Caucus is convinced that there are better, more affordable projects to

advance water reliability for California--projects that will impact the supply/demand equation by reducing demand and increasing supply. Regional self-reliance and increased water storage is key to reliability of water supplies in the future. Neither of these key elements is included in the Draft BDCP. The Delta Caucus remains committed to ensuring that Delta agricultural resources are protected and enhanced in accordance with the Delta Reform Act of 2009 and searching for solutions which will achieve the Delta Reform Act's co-equal goals without sacrificing Delta agricultural resources.

**Attachment A** provides a list of questions that should be addressed in preparing the BDCP Final EIR/EIS.

Again, we wish to express our appreciation for your consideration of our comments and concerns as they relate to the BDCP Draft EIR/EIS.

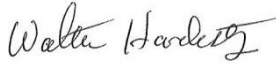
Sincerely,



Russell van Loben Sels, Chair  
Delta Caucus



Wayne Reeves, President  
Contra Costa County Farm Bureau



Walter Hardesty, President  
Sacramento County Farm Bureau



Jack Hamm, President  
San Joaquin Farm Bureau Federation



Ryan Mahony, President  
Solano County Farm Bureau



Jeff Merwin, President  
Yolo County Farm Bureau

Attachment A: BDCP Draft EIR/EIS Questions

cc.

U.S Senator Dianne Feinstein  
U.S. Senator Barbara Boxer  
Representative John Garamendi  
Representative Mike Thompson  
Representative Doris Matsui  
Representative Ami Bera  
Representative Jerry McNerney  
Representative Jeff Denham  
Representative George Miller  
Senate President Pro tem Darrell Steinberg  
State Senator Lois Wolk  
State Senator Cathleen Galgiani  
State Senator Tom Berryhill

State Senator Mark DeSaulnier  
State Assemblymember Joan Buchanan  
State Assemblymember Roger Dickinson  
State Assemblymember Susan Eggman  
State Assemblymember Richard Pan  
State Assemblymember Jim Frazier  
State Assemblymember Mariko Yamada  
Contra Costa County Board of Supervisors  
Sacramento County Board of Supervisors  
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