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SAN JOAQUIN

July 25, 2014

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

Re: BDCP Draft Environmental Impact Report/Environmental Impact Study (EIR/EIS) Comment Letter Pertaining to SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft EIR/EIS, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension the comment period due to the failure to release the draft Implementation Agreement (IA).

We identified issues in the prior releases of the BDCP draft document which were again not fully addressed in those specific BDCP document sections nor in this BDCP Draft EIR/EIS. The continued concerns with the BDCP and this Draft EIR/EIS are very similar to those our agency has voiced previously to BDCP staff regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.

- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft EIR/EIS is all the Delta counties which have or are developing HCPs or NCCPs approved or to be approved by federal and state regulatory agencies are not being given a full voice with the overlap of the plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits. <u>These existing agreements are a major difference between SJMSCP and the others under development.</u> Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents of an EIR/EIS:

Chapter 4 –

- Section 4.1.2 Project Level and Program Level Analyses

  As described as a short-coming of the document in this section, the future planned '*locations for restoration and preservation actions within the conservation zones have not been specifically identified at this time*' which means the document is guessing about the impacts to other implementing (e.g. SJMSCP and East Contra Costa HCP/NCCP) and developing (Solano, South Sacramento, Yolo) plans surrounding the Delta. The

document states the '*analysis is being done at a programmatic level based on theoretical effects of typical construction, operation and maintenance activities that would be undertaken for implementation of CM2-CM22 at a program-level of analysis, describing what environmental effects* ***MAY*** *occur in future project phase.*' The document pushes future project-level review (as necessary) prior to implementation of specific measures other than CM-1. The reality of approving one of the largest infrastructure projects which can greatly affect existing and planned habitat conservation plans in the Delta without fully vetting the actual impacts seem near sighted.

The Draft EIR/EIS should take a step back to further detail the specific sites, acreages and restoration/preservation concepts to fully evaluate the impacts in consultation with the specific habitat plan administrators before release of the final EIR/EIS document.

- Section 4.2.1.1 CEQA and NEPA Baselines

  The 'Existing Conditions' assumed in the baseline employed in this draft EIR/EIS document is supposed to take into account facilities and ongoing programs that existed as of February 13, 2009. The SJMSCP has been in existence since 2001 and implementing in partnership with the USFWS, under a Section 10 take permit, and CDFW, under a Section 2081 take permit successfully within San Joaquin County which covers approximately 33% of the Sacramento San Joaquin Delta area. Over that time, the SJMSCP has employed a Conservation Strategy which is the back bone of the preserve system to off-set the loss of thousands of acres of covered activities within San Joaquin County over the 50-year term of the take permits. The BDCP Draft EIR/EIS has not based the document on the full build out of the SJMSCP for the overlap areas of the two very different plans which can create unrecoverable impacts to an existing habitat plan.

  The Draft EIR/EIS should consider the full build out of the SJMSCP (covered activities and preservation) as the baseline. Also, our agency cannot fully comment on the draft EIR/EIS without **adequate time** to review in concert with the important accompanying document of the draft IA.

- Section 4.2.5.2 Cumulative Effects Analysis

  The Draft EIR/EIS states the SJMSCP was accounted for as an existing condition under the cumulative effects analysis based on Appendix 3D, *Defining Existing Conditions, the No Action/No Project Alternative, and Cumulative Impact Conditions*, but in the section described it only mentions 'the contribution of the BDCP to other programs, projects and policies' rather than the destructive conflicts which would occur from the BDCP overlapping the already existing SJMSCP which has been implementing since 2001.

  The Draft EIR/EIS should note the BDCP does contribute but also has adverse impacts in the cumulative aspect of the existing conditions.

- Section 4.2.5.3 Mitigation Approach

  The Draft EIR/EIS states the *'mitigation related to restoration and other activities in CM3-CM22 shall be the responsibility of a larger group of agencies (including DWR and Reclamation) as set forth in relevant portions of the BDCP'* and *'responsibilities for particular measures will be described in the* ***Mitigation Monitoring and Reporting Program*** *to be issued in connection with the Final EIR/EIS.'* Unfortunately, our staff was unable to identify the mitigation (who, what, when, why, where) details with relation to impacts to the existing SJMSCP areas which overlap the proposed BDCP conservation zones or locate the **Mitigation Monitoring and Reporting Program** noted.

  We respectfully request a copy of the **Mitigation Monitoring and Reporting Program** to be provided and discussed fully with all the surrounding habitat plan administrators and regulatory agencies (e.g. USFWS and CDFW) to review and comment further before the Final EIR/EIS is released.

Chapter 12 -

- Section 12.0.2.1 Natural Communities

  The Draft EIR/EIS touched on a list of 'Natural Communities' with relation to terrestrial species but for simplicity, the cultivated lands were not studied in-depth.

  The cultivated lands must be studied in-depth to understand the reality of the environment for terrestrial species between the agricultural land types (e.g. row and field crop habitat, multi-purpose habitat, irrigated pasture habitat, etc.) because each classification has specific impacts to various species (e.g. swainson's hawk, burrowing owls, tricolor black bird, etc.). The breakdown of the type of cultivated lands will greatly affect the surrounding plans which may require conservation of these types of cultivated lands that are in conflict with the proposed BDCP.

- Section 12.0.3 Environmental Consequences

  The Draft EIR/EIS calls out the first eleven conservation measures (CM 1 – 11) in this section. The CM 1, which regards construction and operation of water conveyance facilities, and CM 2 - 11 are measures which restore, protect, manage or enhance.

  The section does not differentiate that CM1 actually deteriorates the value of the environment while CM 2 – 11 may provide actual benefit to the environment for BDCP. The use of building the facility as a conservation measure would be like considering the building of a large cement gas extraction pad for equipment as a benefit to the agricultural and natural environment it is within. The CM 2 – 11 providing benefit to the SJMSCP is still to be determined.

- Section 12.0.6.2 Comparison of Effects of the Alternatives

The Draft EIR/EIS section goes into numerous scenarios which would cause great losses of natural communities and cultivated lands in the range of 40,000 acres on the lowest end to upward of 100,000 acres on the highest end. The alternatives each have dramatic effects on the Delta (and other programs planned or existing) except for the lone alternative of **No Action Alternative**. The Draft EIR/EIS states *'under the No Action Alternative, there would be no water conveyance facilities construction effects on natural communities. Also, there would be no restoration, protection or enhancement of natural communities resulting from the other BDCP conservation measures. Several programs that are under way or in the planning stages to increase wetlands and riparian natural communities in the absence of the BDCP will benefit natural communities and increase wildlife-friendly agriculture in the study area.'*

The logical response is building the project in any alternative other than the No Action Alternative causes more harm than benefit. Especially, by the Draft EIR/EIS states other existing or planned programs are providing the same or better benefit then the BDCP would. For the natural communities and agricultural mosaic in relation to the species, invest the money in the existing or planned programs within the areas to bolster the success.

- Section 12.1.2.1 Natural Community Mapping Methods

The Draft EIR/EIS defines and categorizes the landscape with data from various sources and dates. The Draft EIR/EIS uses definitions from the CALFED Bay-Delta Program (2000) and CDFW (2005/2006) as well as GIS data using the 2005 USDA Farm Service Agency National Agriculture Imagery Program. Other sources used by BDCP were from the developing HCP/NCCP programs from surrounding counties (e.g. Yolo County Heritage and South Sacramento HCP) with dates of from around 2008. The western area of the Delta (e.g. western Area of Additional Analysis) was truthed in 2012 via Google Earth imagery and ground truthing by consultants.

The natural communities' definitions and mapping data used to analyze the BDCP are stale. Most of the data is between 5-10 years old in an ever changing environment of the Delta. The Draft EIR/EIS should take the steps to use more current data and truthing of the natural communities and landscape to understand the reality of the Delta today.

- Section 12.2.3.1 City and County General Plans

The Draft EIR/EIS mentions the San Joaquin County General Plan 2010 adopted in 1992 and five policies from the Resources Element are considered applicable to the BDCP. Also, the General Plan is under revision currently.

Unfortunately, the Draft EIR/EIS does not fully explain the SJ County and the existing General Plan 2010 are part of the implementing SJMSCP for impacts within SJ County. The current and revision will continue to be part of the SJMSCP for providing conservation and enhancement with SJ County. Furthermore, the Draft EIR/EIS does not provide any discussion of the other jurisdictions with San Joaquin County that are

within the potential plan area of the BDCP (e.g. City of Lathrop, City of Lodi, City of Stockton or City of Tracy) which are also signatories of the SJMSCP. The Draft EIR/EIS should include those jurisdictions' General Plan information in this section.

- Section 12.2.3.2 Habitat Conservation Plans

  The Draft EIR/EIS note there is a relationship with other existing or developing habitat conservation plans discussed later in the section (12.3.3.18 Effects on Other Plans).

  The SJMSCP comments will be addressed within that section.

- Section 12.3.3.17 Cumulative Effects on Terrestrial Biological Resources
  The Draft EIR/EIS states the Action Alternatives *'would have little or no negative effect or would have long-term beneficial effect on nearly all of the terrestrial biological resources of concern in the study area. This is consistent with the goal of HCP/NCCP programs, which is to improve long-term viability of special status species and their habitats. The positive effects of implementing the BDCP are similar in all of the project alternatives other than the No Action Alternative. There are relatively small variations in the acres affected by construction of the alternative water conveyance facilities (CM1), but the restoration, protection, enhancement and stressor reduction elements of the alternatives are the same for Alternatives 1A, 1B, 1C, 2A, 2B, 2C, 3, 4, 6A, 6B, 8 and 9.'*

  Also, this section describes cumulative effects on Giant Garter Snake Movement and Connectivity between Subpopulations. It is stated in Impact BIO-190 under the second bullet point that '*A number of HCP's have been issued by USFWS for projects anticipated to impact the giant garter snake, which include San Joaquin County Multi-Species HCP....*' and other areas within the giant garter snake range being developed.

  As stated earlier in the Draft EIR/EIS – Section 12.0.6.2, the various alternative actions will have a wide range of impacts (project construction footprint and CM 2 – 11) on the existing landscape of the entire Delta ranging from 40,000 acres on the lowest end of the spectrum up to 100,000 acres of impact on the highest end. These changes would greatly have effect on the existing habitat landscape, local county governments' bottom tax rolls, productivity of the lands and especially the terrestrial species within each surrounding Delta County with existing or developing HCP/NCCPs. More discussion and explanation is needed with regards to the logic of the contradictory concept:

  How do near-term period of alternatives disrupting temporarily or permanently removal of natural communities and modeled habitat for special status plant and wildlife species seem offset with potential undisclosed near-, mid-, and long-term conservation actions? One example is the impacts at Staten Island which is a specie friendly easement created with state public funds within San Joaquin County for the sand-hill cranes. Not to mention the SJMSCP complimentary habitat preserves adjacent to the Staten Island location. The sand-hill crane preserve on Staten Island and the adjacent SJMSCP preserves will have various impacts such as muck piles established large exhaust stacks

created and 5-9 years of construction activity, noises and vibrations occurring where lands have been set aside in protection for the species.

The SJMSCP holds two take authority permits under Section 10 (federal) and 2081 (state) which include potential giant garter snake habitat under incidental take minimization measures prescribed under the plan. The permits do not cover direct take of the giant garter snake or cover activities for giant garter snake impacts in the "Known Occupied Areas" as clearly defined in the SJMSCP (e.g. known occupied habitat for the giant garter snake is the area west of I-5 on Terminous Tract, Shin Kee Tract, White Slough Wildlife Area, and Rio Blanc Tract). These "Known Occupied Areas" are the same tracts of land some of the BDCP alternative actions will be impacting.

- Section 12.3.3.18 Effects on Other Conservation Plans
  The Draft EIR/EIS was to analyze the impacts to the surrounding HCP/NCCP of the Delta which call out six (6) that will be impacted due to the overlap of the potential BDCP plan area. While four (4) are still in development (e.g. South Sacramento, Yolo, Solano and Yuba-Sutter), the BDCP will have impacts on the remaining two (2) HCP/NCCP and an adopted Conservation Strategy Plan. The Delta's two implementing HCP/NCCP programs have been in the implementation phase with federal and state regulatory partners since as early as 2001 (e.g. SJMSCP). The *'construction of the water conveyance facilities would reduce the amount of available cultivated land for acquisitions by overlapping conservation plans by ....as much as 14,016 acres in the San Joaquin County HCP (Alternatives 1B, 2B, 6B).'*

  The table 12-11 describes the range of impacts to the SJMSCP for the footprint alone to be between 6 acres to 14,050 acres.

  The tables 12-14 and 12-18, 12-19, 12-20, 12-21, 12-26 and 12-27 show the estimated acreage in the overlap for the various activities between the existing SJMSCP and the proposed BDCP to be a wide range. The tables states the BDCP would need a minimum of approximately 14,000 acres to 49,000 acres within the overlap area.

  The Draft EIR/EIS states *'the cultivated preservation needs of the BDCP and other conservation plan are deemed to be without conflict if the available cultivated land with full build-out is at least double the sum of the needs of the two plans in the overlap area. This assumption is based on the need to have more cultivated land for preservation than required to ensure that enough willing sellers are available for each plan.'* The Draft EIR/EIS refers to the draft BDCP out for public comment *'Chapter 3, Section 3.4.1.3.1 Land Protection having a process for coordination among BDCP, South Sacramento HCP, and San Joaquin Multiple Species Conservation Plan to ensure sufficient lands are available in the overlap area for each plan to meet its conservation obligations.'*

  For the SJMSCP as an implementing HCP since 2001, the discussions have been on-going with the BDCP staff and consultant regarding the Draft EIR/EIS calculations and the referenced section of the DBCP Chapter 3, Section 3.4.1.3.1 - Land Protection with regards to the proposed potential process between plans. The SJMSCP 2010 data used

for acreage accounting in the Draft EIR/EIS for potential impacts within the overlap area for the project alternatives and restoration/enhancements coupled with the SJMSCP are not accurate as reported to BDCP staff and consultants or available in the SJMSCP Annual Reports. To further complicate the matter, the assumptions used by the BDCP staff and consultants for the analysis was not accurate to the actual activities/allowances of the SJMSCP's conservation strategies which will decrease the overall acreage allowed to be used by the SJMSCP in the overlap area to meet the obligations of the issued permits. The Draft EIR/EIS shows lower acreage than the reality of lands impacted by the BDCP activities and over reports the available lands for the SJMSCP to acquire within the overlap area. As to the statement of '*deemed to be without conflict*', it has been stated to BDCP staff repeatedly and now in writing to the Draft EIR/EIS there will be a major conflict because the '*double the sum of needs*' does not exist in the overlap area to '*meet its conservation obligation*' for the implementing SJMSCP.

On the matter of the BDCP Chapter 3, Section 3.4.1.3.1 – Land Protection statement in the Draft EIR/EIS, the most accurate description (from the SJMSCP viewpoint) would be described as the Chapter text is in the early infancy stage and needs to be completely vetted with all the surrounding Delta HCP/NCCPs. For the SJMSCP, nothing has been agreed upon with the implementing SJMSCP administrating agency, permittees or regulatory partners in accord with the BDCP as for any potential processes. A more detailed or accurate description of the entire Section of the Draft EIR/EIS is requested.

Our staff looks forward to working with the BDCP staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and draft IA when available) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,

STEVE DIAL
Deputy Executive Director / Chief Financial Officer

Cc: SJCOG, Inc. Board
Josh Emery, United States Fish and Wildlife Service
Todd Gardner, California Department of Fish and Wildlife
Habitat Technical Advisory Committee (HTAC) members
Kathy Miller, City of Stockton Council Member and Delta Coalition Chair