



S J C O G , I N C .

555 E. Weber Avenue • Stockton, California 95202

209.235.0600 • 209.235.0438 (fax)

www.sjcog.org

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THE COUNTY OF
SAN JOAQUIN

July 25, 2014

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

Re: BDCP Draft Implementation Agreement (IA) 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 IA, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, may be submitting a separately transmitted joint comment letters.

Our agency identified issues in the prior releases of the BDCP draft documents which were again not fully addressed in those specific BDCP documents (e.g. the BDCP Public Draft, the Draft EIR/EIS or this Draft IA) in relation to those issues. The continued concerns with the BDCP and all the subsequent Draft documents are very similar to those our agency has voiced previously to BDCP staff regarding the overlap of vast tracts of land and species in parts of San Joaquin County covered by the existing county-wide habitat conservation plan. Those concerns are but not limited to:

- 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 IA is all the Delta counties which have permitted HCPs or are developing HCPs or NCCPs be approved by federal and state regulatory agencies are not being given a full voice with the various overlapping areas of the BDCP and existing/potential 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 and the SJMSCP Implementation Agreement. These existing agreements are a major difference between SJMSCP and the others under development. 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 existing SJMSCP 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, the Draft BDCP EIR/EIS and the Draft IA, 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, Draft EIR/EIS and Draft IA 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 approved BDCP Implementation Agreement document:

1. The Draft IA in the first paragraph states a ‘note to reviewers’ regarding the “level of agency signatory” under this agreement remains to be determined. This leaves a large void in the purpose of the draft IA. The draft IA is the tie between the various documents, the project, the proponents of the project and the regulatory agencies which will be giving authority for impacts of said project. How is this possible to not know?

2. The Draft IA should provide details of the project (conditions and funding mechanisms for mitigation) and assignments of responsibilities during the various phases of the project (construction, implementation, mitigation, monitoring). The primary reason for the IA would be a solid contract between the project proponents and regulatory agencies as to the process and means for what will be built, how it will be built, funding to assure it can be mitigated fully and assurances of obligations to meet the various federal, state and local ordinances (e.g. NEPA, CEQA, ESA, CESA, etc.). Those details are lacking in the Draft IA.
3. The Draft IA does not provide the needed assurances, details or support the required information as noted in the draft BDCP public document (see chapters 6, 7 and 8) which was to be provided in the future IA. The prior drafted material 'kicked the can down the road' with details stating the details would be found in the future IA which is not the case.
4. The Draft IA insufficiencies can lead to compliance issues with the state's Natural Community Conservation Planning Act (NCCPA) and federal Endangered Species Act (ESA) section 10 requirements. In addition, the insufficient draft IA can cause concerns with meeting the obligations under CEQA and NEPA for the project.
5. The Draft IA does not provide adequate assurances for the funding of the project (construction, implementation, mitigation, restoration or monitoring) for meeting the goals and obligations under the state and federal permits.
6. The Draft IA does not contain necessary details or language to support the assertions of meeting the NCCPA, CEQA, ESA, NEPA or any other requirement for projects of this magnitude.
7. The Draft IA shows the flaws with the BDCP's implementation structure with the 'Authorized Entity Group'; 'Permit Oversight Group'; 'Adaptive Management Team'; 'Stakeholder Council'; and 'Supporting Entities' by giving the project proponents (DWR, SWP contractors and CVP contractors) equal to that of lead agencies on the state and federal level. There is a lack of any local representation with weight.
8. The Draft IA does not allow for any 'checks/balance' or veto allowance by the regulatory agencies providing the take permits as allowed in other habitat plans.

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