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July 28, 2014

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

Mr. Wulff:

Enclosed, please find my comments for consideration in the Final EIR/EIS and decision making process.  
Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "John Garamendi".

JOHN GARAMENDI  
Member of Congress, CA-03

## **BDCP COMMENTS PREPARED BY CONGRESSMAN JOHN GARAMENDI**

The range of alternatives evaluated for the Bay Delta Conservation Plan (BDCP) violate federal and state law and fail to adequately capture the variety of options that exist to meet the co-equal goals of water supply reliability and ecosystem restoration in the Delta. Fifteen different alternatives, all largely similar, are provided through the course of thousands of pages of documents, but none of them consider different solutions to addressing California's water needs. While experts will be able to point out a myriad of other short-comings to the BDCP, I will focus my comments on the need for a more diverse range of alternatives to be considered and what the alternatives should include.

### **FEDERAL LAW**

Under the National Environmental Policy Act (NEPA), a range of alternatives that would meet the project's purpose and need must be evaluated. The Council on Environmental Quality (CEQ) has provided guidance on what this "range of alternatives" means as Environmental Impact Statements (EIS) are developed under NEPA:

*The phrase "range of alternatives" refers to the alternatives discussed in environmental documents. It includes all reasonable alternatives, which must be rigorously explored and objectively evaluated.... Section 1502.14 requires the EIS to examine all reasonable alternatives to the proposal. In determining the scope of alternatives, the emphasis is on what is "reasonable" rather than on whether the proponent or applicant likes or is itself capable of carrying out a particular alternative. Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant. Counsel on Environmental Quality, Guidance document "NEPA Forty Most Asked Questions"*

This guidance is clear that alternatives must represent a wide range of options that can be rigorously explored and objectively evaluated. The draft EIS fails to meet this requirement in several ways. First, it fails to provide a wide range of options that meet the purpose and need of the proposed action. The stated planning goals for the BDCP are to restore ecological functions of the Sacramento-San Joaquin Delta and improve water supply reliability in the state of California. Alternatives to meet these needs should include not only a conveyance facility, but also other actions and water projects that could be pursued to achieve water reliability. The alternatives in the draft EIS fall drastically short in this regard. Each of the fifteen alternatives includes the same two elements: a conveyance facility and habitat restoration. There is no discussion of water conservation measures or recycling projects or increasing storage capacity, all of which could be used to support water reliability.

Next, the draft EIS fails to rigorously explore the alternatives because the alternatives are inadequate. Building massive tunnels through the Delta is not the only option for creating water reliability, and there are plenty of other ideas out there for how reliability could be achieved. If

the range of alternatives identified do not include all options that could reasonably meet the purpose and need for the BDCP, then a rigorous review is impossible to achieve.

Finally, reasonable alternatives are those that are practical and feasible from a technical and economic standpoint, not just those that are desirable for the applicant. Proponents of the BDCP have one goal in mind – building tunnels to move water from the North to the South. These blinders have limited the scope of this project and the scope of alternatives put forth for analysis. For these reasons, this EIS violates federal law and fails to provide the required components for an EIS under NEPA.

## STATE LAW

The current draft EIS/EIR also violates state laws governing the development of the project. First, the California Environmental Quality Act (CEQA) applies to state projects which can be defined as “an activity undertaken by a public agency or a private activity which must receive some discretionary approval from a government agency which may cause either a direct physical change in the environment or a reasonably foreseeable indirect change in the environment.” Since building tunnels 40-feet wide and 40-feet long through the Delta will directly cause physical change, the state has prepared a Draft Environmental Impact Report (EIR) to comply with CEQA. However, draft EIRs must provide feasible alternatives or mitigation measures that could substantially lessen the significant environmental effects of the proposed project and this is where the state has failed. As previously mentioned, the alternatives offered in the draft EIR are not actual alternatives to the proposed project, they merely offer different sizes of conveyance systems without looking at alternatives that would actually lessen the environmental impact. Building tunnels, no matter what size, will have a major environmental impact. To comply with CEQA, the project proponents need to offer alternatives that would provide a reliable water supply through a variety of methods that extend beyond building a new conveyance system.

Second, in 2009, the Sacramento-San Joaquin Delta Reform Act became state law and mandated coequal goals for the Sacramento-San Joaquin Delta. These two goals are to provide a more reliable water supply for California and to protect, restore and enhance the Delta ecosystem. The Delta Stewardship Council (DSC) was created through the legislation and charged with the mission of developing and implementing a Delta Plan to achieve these goals. Rather than allowing the Delta Stewardship Council to complete its work in developing a Delta Plan, a group of independent stakeholders rushed ahead with the BDCP in an effort to find an easier way to export water from the Delta to the South under the guise of meeting the coequal goals. However, this narrow focus clearly fails to comply with the state law which states:

*Providing a more reliable water supply for the state involves implementation of water use efficiency and conservation projects, wastewater reclamation projects, desalination, and new improved infrastructure, including water storage and Delta conveyance facilities. (CA Water Code, Division 35, Section 85004(b))*

A conveyance system is only one element to achieving water reliability, and any plan that is put into place should encompass the entire list above. Some may argue that this is just the first step

to achieving reliability, but that is the wrong approach. The Delta Reform Act goes on to discuss the need to reduce reliance on the Delta:

*The policy of the State of California is to reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies, conservation, and water use efficiency. Each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts"*  
(CA Water Code, Division 35, Section 85021)

If we are going to reduce reliance on the Delta, a conveyance facility is not the first place we should start in developing a reliable water system, it is the last.

As a result, the BDCP as it stands does not meet the state's mandated goals and fails to offer any alternatives that even come close to meeting them. The only thing the BDCP does is to provide a conveyance facility that will potentially harm the Delta more than help it while providing no reliable water supply.

If the BDCP were truly committed to achieving the state's coequal goals, it would analyze a variety of options to help meet them. Just as the DSC's *Delta Plan*, the Department of Water Resources' *California Water Action Plan*, Congressman John Garamendi's *Water Plan for All of California*, and the Natural Resources Defense Council's *Portfolio-Based BDCP Conceptual Alternative* consider a wide range of actions that could be taken to provide water reliability, so should the BDCP consider actions beyond a new pumping facility and large underground tunnels. Each of the plans listed above discuss water conservation, recycling or desalination, and the creation of more storage as the means to achieving a reliable water supply. These elements are vital to our water future and by leaving them out of the BDCP's scope and planning, we are failing seek out the most economical and environmental option for our state and the Delta.

#### **CONGRESSMAN JOHN GARAMENDI: A WATER PLAN FOR ALL CALIFORNIA**

*A Water Plan for All California* was drafted to address the two co-equal goals of the Delta Reform Act, water reliability and Delta protection, and to provide an adequate alternative to the Bay Delta Conservation Plan as required under both NEPA and CEQA. Reliability is achieved by creating new water with agricultural, urban, and industrial water conservation; underground and surface storage; better management of Sierra and Siskiyou mountain watersheds; and improved Delta levees paired with a small 3,000 cfs conveyance facility in the Delta.

We need to think in a comprehensive way about water in California. The Bay Delta Conservation Plan (BDCP)<sup>1</sup> is an outdated and destructive plumbing system. It does not create any new water nor does it provide the water and the ecological protection that the Golden State must have. California and the federal government must set aside this big, expensive, destructive plumbing plan and immediately move forward with a comprehensive approach that includes:

- 1) Conservation,
- 2) Recycling,
- 3) The creation of new storage systems,
- 4) Fix the Delta - right sized conveyance, levee improvements, and habitat restoration,
- 5) Science driven process,
- 6) Protection of existing water rights.

This combination of projects constitutes a comprehensive water plan for the state and a viable alternative that should be evaluated. If California does all of these, we will create new water supplies and better use the resources we already have.

### *CONSERVATION*

The quickest and cheapest source of new water is to stretch our current supplies by conserving what we have. Californians have been at this for years in our cities, in our industries, on the farm, and in our homes. We have engaged in serious water conservation, yet more can and should be done everywhere.

There are many conservation strategies. One conservation strategy is to use devices that measure the moisture in the soil to provide real time monitoring of the exact amount of water needed for ideal growing conditions. These devices are connected to a computer that automatically turns on just the right amount of water. These systems are in use and conserve at least ten percent with a financial payback in less than one year. If they were deployed widely perhaps at least 1 percent of the 30 million acre feet of water consumed by agriculture could be saved each year (300,000 acre feet).<sup>ii</sup>

All of us are going to do a lot more water conservation, not just the agriculture community. The water conservation mandate set by the state is a 20 percent reduction per capita by 2020 which equals 1,600,000 acre feet.<sup>iii</sup> In a very real way, conservation can create new water that was not previously available for use. To be on the conservative side, let us assume that just one quarter of the State's goal could be obtained in the next decade, thereby adding 400,000 acre feet of new water to our supplies each year.

### *RECYCLING*

Can you name the fifth biggest river on the west coast of the Western Hemisphere? It's the water that flows out of the sanitation plants in Southern California and is dumped into the Pacific Ocean.

Why would any sane government take water from the Sacramento River, pump it 500 miles south, lift it 5,000 feet in the air, clean it, use it once, clean it to a higher standard than the day it arrives in Southern California, then dump it in the ocean? California does just this as it discharges over 3.5 million acre feet of water to the ocean each year, much of which could be reused.

We need to think seriously about recycling, not just in Southern California, but everywhere. The State of California currently recycles approximately 650,000 acre feet of water each year and has set a water recycling goal of 1.5 million acre feet of new water in California by 2020, and 2.5 million acre feet by 2030.<sup>iv</sup> While achievable, WaterReuse California estimates this goal cannot be achieved without State regulatory changes to expand the types of recycling available that rely on existing technologies.<sup>v</sup>

Another option is desalination of the ocean. This is feasible and used extensively throughout the world, however it is not a viable option for all communities. It costs about 40 percent more to desalinate sea water than to recycle water using current technology. However, technological advances are being pursued for both recycling and desalination that could lower the costs of both.

In the next ten years, conservation and recycling in California can create approximately 2.2 million acre feet of new water to use each year, and that can increase to 3.2 million acre feet in twenty years. This is new water that is not available today because it is wasted or pumped out to sea. It can be developed at a reasonable cost when compared to all other alternatives that might be out there. Conservation and recycling are steps one and two in a comprehensive water program for California.

#### *CREATE NEW STORAGE*

Water storage south of the Delta is possible and necessary. The capacity of the great Delta pumps near Tracy is 15,000 cubic feet per second. They are designed to meet maximum demand south of the Delta. They do not operate year round, only when there is sufficient water in the Delta, when threatened fish are not near the pumps, and when there is agricultural and urban demand south of the Tracy pumps. There is very limited water storage capacity south of the Delta. We must build more. San Luis and Los Vaqueros reservoirs could be expanded. New dams could be built at Los Banos Grandes, Temperance Flats, and numerous smaller off stream sites throughout the San Joaquin Valley. There are extensive and numerous aquifers throughout the San Joaquin Valley that may prove suitable to store additional water that would be used in a conjunctive water management system. With these water storage facilities in place and a smaller cross Delta facility operating year round, the need for havoc causing, excessive pumping in the Delta could be avoided.

When coupled with recycling, the underground aquifers in Southern California are another key to our water future. The underground aquifers of the Santa Ana River in Orange County, the San Fernando Basin, Chino Basin, San Bernardino, San Gabriel Basin, and others have a combined capacity larger than Shasta Reservoir, the largest man made reservoir in the state. Today, some recycled water is put into the underground water basins to be stored for those inevitably dry years. When needed, it is pumped out, used, cleaned and returned to storage. On a larger scale this recycling system could create as much as 2.5 million acre feet of new water, and thereby reduce the need for shifting Colorado River supplies and imports from the Sacramento River.

Surface and underground storage should be used in a conjunctive water management program. Use the rivers when there is lots of water and use the reservoirs when there is little. Another way

to describe this strategy is "big gulp" and "little sips." When there are low flows in the Delta the system would take a little sip. When there is excessive water in the Delta, the system would take a big gulp, but there must be some place to put that water when the big gulp is taken. Therefore, the surface and sub-surface reservoirs south of the Delta become an essential element in a California water plan.

Water storage north of the Delta is also important, and three proposals are on the books today. An off stream reservoir at Sites, located west of Williams, has great promise for storage and for creating greater flexibility in managing the Sacramento River for salmon runs, water demand, and Delta outflow. This reservoir can deliver 500,000 acre feet of annual yield and the additional flexibility that it offers can under some scenarios save another 500,000 acre feet of water that would otherwise be released into the river systems.<sup>vi</sup> Raising Shasta Dam is also possible, as is better conjunctive management of the many aquifers in the Sacramento Valley. State and federal agencies have already commenced studies for these projects. A quick completion of these studies is essential.

### *FIX THE SACRAMENTO – SAN JOAQUIN DELTA*

The current plan for the BDCP is a dual use facility with the main focus on the twin tunnels with a capacity of 15,000 cubic feet per second, and the continued use of the Delta channels for moving water from the Sacramento and San Joaquin rivers to the Tracy pumps. This dual use system adds another layer of risk to the eco-system and agricultural economy of the Delta with the potential for the massive tunnels to suck the Delta dry from the north and from the south with the thirsty pumps. In scale, the cost and destructive potential of this project will rival the Three Gorges Dam on the Yangtze River in China. The twin tunnel proposal is a large scale, destructive project that does not create one gallon of new water for a thirsty California.

The location of the intakes for the twin tunnels is in the heart of the rich farm lands of the northern Delta, near the small community of Courtland. Thousands of acres of valuable farmland essential to California agriculture production will be destroyed during construction of the project, and, following completion, a vast industrial zone of pumping stations, fish screens, reservoirs, and electrical stations will impede on one of California's great agricultural regions. Along the forty mile route of the twin tunnels the construction process will produce a total of 22 million cubic yards of tunnel muck. This combination of soil and conditioning agents will have to be stored and managed and the latest draft of the plan calls for storage areas along the tunnel ranging in size from 100 to 570 acres. The amount of muck extracted would be enough to cover 100 football fields to a height of roughly 100 feet, and in the end will destroy close to 1600 acres of farm land while disrupting domestic and agricultural water wells.

### *A SOLUTION FOR THE DELTA*

Go forward carefully; start small; use science to evaluate each step; then proceed to the next step. Remember the Delta is a unique and precious environmental asset. We must take care of it. A narrowly focused plumbing system like the BDCP will not achieve progress in creating a water supply sufficient for California's future. We must pursue a holistic, comprehensive approach that will achieve a bigger bang for our buck.

First, reduce demand on the Delta with steps one, two and three: water conservation, recycling, and strategic use of storage facilities. Use the "Big Gulp, Little Sip" pumping strategy. Move forward with the flood plain and fresh and saltwater marsh habitat improvements. Repair and improve the key Delta levees. Evaluate the effect on the Delta as these projects come on line. Then, and only if necessary, proceed with a conveyance system that is much smaller and with a reduced capacity to destroy.

A much smaller facility with a capacity of no more than 3,000 cubic feet per second could be built to deliver water from the Sacramento River to the Tracy pumps. With the normal minimum flows in the Sacramento River above 15,000 cfs, a small 3,000 cfs facility could operate at least 300 days in most years, delivering approximately two million acre feet of water south to the pumps at Tracy where it would be pumped south to the new and expanded storage facilities.

There are several alternative ways to build this smaller system. One alternative is found with a careful look at the Delta map which reveals that two thirds of this Delta friendly system is already built. Two miles from the State Capital is the Port of Sacramento and the shipping channel that ends 25 miles south near Rio Vista. From there it is thirteen miles to existing channels and the Tracy pumps. The Federal Government already owns the land along the river where an intake and fish screen could be built, allowing 3000 cfs of Sacramento River water to enter the channel and flow south to a shipping lock at the southern end of the channel. Then, pumps could deliver the water into a short 12-mile pipe beneath the Sacramento and San Joaquin Rivers and into the existing Delta channels that lead to the Tracy Pumps. The threatened Delta fish could be protected by sealing the channel from the Delta. Such a smaller facility is less costly than two 40-foot diameter, 40-mile long tunnels that devastate large swaths of the Delta and put the entire Delta at risk.

It is correct that this smaller facility like the twin tunnels is insufficient to quench the thirst of the Southern water contractors. This is where the southern reservoirs and the "Little Sip, Big Gulp" strategy comes into play. In normal water years there is sufficient water in the Delta to allow the pumps to take a big gulp of two million acre feet of water. This amount together with the two million acre feet delivered through the 3,000 cfs facility and the new water developed from conservation and recycling efforts could add up to six million acre feet. This plan would create far more new water than will ever be available with the current BDCP plan, which in its current state creates nothing new, except new destruction.

### *IMPROVE DELTA LEVEES*

This small 3,000 cfs proposal and the current twin tunnel BDCP proposal envision the continued use of the existing Delta levee system as water conveyance channels for the delivery of water to the big pumps at Tracy. However, the BDCP has neither a plan nor funding for the maintenance of the levees that are crucial for their proposed water conveyance system. The Delta levees must be upgraded and maintained if water is to be transported through the Delta and if the Delta agriculture, infrastructure, ecology and people are to be protected.

No sane homeowner would go fifty years without maintaining their plumbing system. For more than fifty years, the Bureau of Reclamation and the California Department of Water Resources have used the Delta levees as a plumbing system to deliver water from the Sacramento River to the Tracy pumps. Yet, they have spent virtually no money maintaining these critical levees, the failure of which could shut down water deliveries for an extended period of time. The Federal and State agencies have relied upon the local reclamation agencies to do the repairs, literally giving the exporters a free ride. When a levee does give way and an island is flooded, it is the local agency and federal and state governments that foot the bill to repair the levees, often at a much greater cost than would have been necessary with basic maintenance.

Legislation is necessary to require that the Federal and State water contractors, who have for years and will continue for even more years depended upon the Delta levees for the delivery of water to their fields and cities, pay a part of the levee maintenance cost.

### *HABITAT RESTORATION*

The BDCP envisions restoring flood plains and the salt and freshwater marsh habitat of the Delta in an effort to restore the fisheries. However, a series of questions are raised: where to do it, how much to do, what type, at what cost and who is to pay for the restoration? Those who have created the ecological problem should pay for the restoration of the problem. All this will require careful attention to science, and a careful balance between competing goals. Current science indicates that no amount of habitat restoration can compensate for the damage done to fish from excessive water exports.

### *LET SCIENCE DRIVE THE PROCESS*

The BDCP and any other proposal must be based and driven by quality science that measures and informs decisions. California and federal law require that the Delta aquatic and terrestrial ecosystems be protected. We must do so, not just because the laws demand it, but because our status as human beings on this planet demands that we pay attention and protect precious and rare ecosystems. Also, healthy ecosystems provide a valuable asset to our communities because healthy ecosystems help to ensure we have healthy water. If we let the ecosystems fall by the wayside, our water will get dirtier making it increasingly difficult and costly to clean it up enough to use. For all of these reasons, we must let science govern.

The BDCP anticipates 50-year permits from state and federal agencies to allow incidental takes of endangered fish species. Once granted, the water exporters will have assurances that the project can take covered species and pump Delta water despite changes in the environment. To date, BDCP has not built in flexibility to address the inevitable changes that will occur and the damage that could be done if the plan does not account for climate change.

We must also use science to understand our river basins in the age of climate change. Dams on California Rivers serve multiple purposes of water storage, flood protection, electric power generation, recreation, and environmental river flows. Current dam operations on California Rivers place flood protection as the first priority followed by water storage. The decisions to release water to create greater flood storage are based on the average river flows compiled from

the last 60 years. Climate change and resulting river flow change is certain and one can only imagine how rare it will be for the historic average to actually occur.

We have the technology today to better understand what is happening, in real time, in every river basin in this state. Satellites and unmanned aircraft using infrared and ground sensing radar, together with terrestrial stations collecting soil conditions, snow temperature and moisture content coupled with telemetry will soon be deployed in the American River basin. Collecting this data and using it in real time to predict river flows allows for better operation of the dams so that additional flood storage capacity could be available by lowering the reservoir ahead of the storm or keeping water in the reservoir if a major storm is heading for a different river basin or if it is a cold snow storm. Using the best science can simultaneously deliver increased flood protection and greater water storage.

### *PROTECT WATER RIGHTS*

Soon after gold was discovered in California, the miners discovered that water could be used to separate gold from gravel and soon after, the right to the water flowing in the rivers became as valuable as the gold. Today, water is California's gold. The classic water war in California is usually about one group attempting to take another group's water. It is reasonable to view the current BDCP conflict in this way: southern exporters taking water belonging to northern water right holders and water necessary for the aquatic river environment. Any water plan that ignores the prior and existing water rights is destined to be embroiled in a vicious and contracted water war. If a project is to be built, then existing rights must be honored.

### **CONCLUSION**

California and the federal government must evaluate adequate alternatives to the BDCP which must include a comprehensive water plan for California. The current proposal will fail to create water reliability through its limited scope and I urge the project proponents to consider additional alternatives. Creating new water is the best possible way to ensure California's water needs are met and the adopted project plan should include conservation, recycling, and storage among a variety of other items. This is the only way to expand the dwindling resource we currently have.

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<sup>i</sup> California, Department of Water Resources and Natural Resources Agency, *The Bay Delta Conservation Plan Draft Chapters*, March 2013

<<http://baydeltaconservationplan.com/Library/DocumentsLandingPage/BDCPDocuments.aspx>>.

<sup>ii</sup> PureSense: Real Time Irrigation Management, *New Technologies to Enhance Agricultural Water Management*, March 2013 <<http://www.puresense.com/>>.

<sup>iii</sup> California, State Water Resources Control Board, *20X2020 Agency Team Questions and Answers*, 2 June 2008, <[http://www.swrcb.ca.gov/water\\_issues/hot\\_topics/20x2020/docs/questions\\_answers.pdf](http://www.swrcb.ca.gov/water_issues/hot_topics/20x2020/docs/questions_answers.pdf)>.

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<sup>iv</sup> California, Department of Water Resources, *California Water Plan Update 2009, Integrated Water Management Bulletin 160-09*, Vol. 2, Chapter 11, 2009 <<http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>>.

<sup>v</sup> WaterReuse Research, *Meeting California's Water Needs and Goals through an Unprecedented Initiative: Advancing Direct Potable Reuse*, Capitol Hill briefing materials, March 2013.

California, Department of Water Resources, *California Water Plan Update 2009, Integrated Water Management Bulletin 160-09*, Vol. 2, Chapter 11, 2009 <<http://www.waterplan.water.ca.gov/cwpu2009/index.cfm>>.

<sup>vi</sup> Sites Project Joint Powers Authority, *North-of-the-Delta Off Stream Storage Fact Sheet*, <[www.sitesjpa.net](http://www.sitesjpa.net)>.