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# California State Senate



**SENATOR  
JIM NIELSEN**

FOURTH SENATE DISTRICT

COMMITTEES  
BUDGET & FISCAL REVIEW  
HEALTH  
INSURANCE  
VETERANS AFFAIRS

July 28, 2014

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

**RE: Public Comment on the Draft Bay Delta Conservation Plan and its Draft Environmental Impact Report/Environmental Impact Statement**

Dear Mr. Wulff:

I submit public comment on the Draft Bay Delta Conservation Plan (BDCP, or Plan) and the BDCP Draft Environmental Impact Report (EIR)/Environmental Impact Statement (EIS) with concern that this proposal is based on faulty hydrologic models and analysis and, consequently, is rife with incorrect assumptions and disastrous policies. This project, including the proposed twin tunnels that would pump water under the Delta to farms and southern California, perpetrates the notion that all of California's water issues are "Delta-centric." It neglects the watershed from which the vast quantity of the state's water resources originates. Indeed, the proposed solutions focus on solving the Delta's environmental problems and central and southern California's water supply demands, ignoring California's needs upstream. This poses serious risk to the North State's economy, environment, and way of life.

The absence of an operating plan for the proposed twin tunnels is one fatal omission of the current draft. While exporters advocate to move the diversion upstream to ensure continued access to North State reservoirs despite "unforeseen circumstances," this plan only tends to exporters' interests and leaves northern California with the continuous burden to meet increasingly onerous Delta environmental objectives. Bear in mind that once water is exported south, it is no longer available to benefit the Delta and northern needs. Northern California reservoirs remain liable for Delta salinity goals, even if it means draining reservoirs with no remaining supply available for customer needs. In contrast, water south of the Delta can be used exclusively to meet customer demand. A realistic next draft of the BDCP will include an operating plan that does not deplete North State reservoirs in future dry years, regardless of unanticipated precipitation patterns.

Further, depending on how exactly the operations of the Central Valley Project and the State Water Project are affected, the BDCP threatens to harm existing water rights and contracts. Consider the case exemplified by the City of Roseville (located within the Fourth Senate District): The BDCP assumes that the Bureau of Reclamation will operate Folsom Reservoir, the primary water source for the City's 500,000 residents, to the point at which the water level drops below Roseville reservoir's intake (known as "dead pool") for three months in 10 percent of years. In other words, hundreds of thousands of Californians can be denied water for a several months-long period each decade. Apart from the practical devastation this would deliver to the region's economy, this is a clear violation of the City of Roseville's diversion contracts and the terms of the Bureau of Reclamation's water-right permits of Folsom Reservoir.

The BDCP's financing must be based on the "beneficiary pays" principle. However, the current draft does not provide this assurance. For example, habitat conservation plans are required to have adequate funding and only to be financed and affect those who voluntarily pursue a Section 10 Endangered Species Act permit. Upstream water users who are merely potentially affected stakeholders should not be harmed, asked to pay, or otherwise negatively impacted by changing operations or additional regulatory actions stemming from a Section 10 permit. The plan does not provide guarantees that only the voluntary potentially regulated entities will bear the costs. Additionally, the BDCP assumes funding from a water bond that (1) has not been passed by the electorate, (2) has been delayed twice over the past four years, (3) and may be replaced by the Legislature in the coming month. The Plan also depends on a second bond—which appears to be a politically infeasible prospect—and some ambiguous, unsecured stream of federal financing.

Unfortunately, some BDCP proponents anticipate paying for their benefits with an alarming new funding source: major water districts are considering raising property taxes without a public vote. While Proposition 13 requires most property tax increases to be vetted by a two-thirds vote, these water agencies argue that their authority to increase the taxes predates Proposition 13's provisions. One Silicon Valley district has already discussed nearly doubling the average residential property assessment. This erodes Proposition 13, which remains one of California's greatest and most popular policy achievements. It is also taxation without representation. The next draft must prevent such unfair and potentially unconstitutional funding sources.

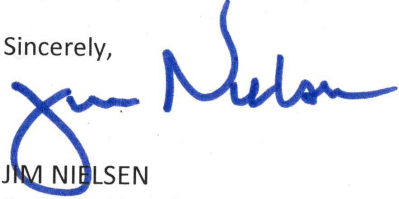
The BDCP is based on flawed assumptions of funding, a lack of explanation for how expenses will be limited, and a belief that Californians will continue to support costly project overruns. Yet again, the North State's residents and watershed are asked to assume an unfair burden at the expense of historic water contracts and rights. Further, this draft retreats from the bipartisan 2009 California Water Plan. It continues policies based on unfounded principles, breaches of trust, and a return to failed Delta-centric policies. It also dismisses the central element of that plan, co-equal goals.

This incomplete plan should return to the drawing board with collaborators this time mindful of past failures and resolved not to repeat them. The next drafting phase should include more influence from stakeholders within the watershed. It is my hope that you will instruct the Department of Water Resources to further revise and develop the Plan to mitigate disparate negative impacts among the

regions, to correct errors, and to satisfy ambiguities. If you have any questions about these comments, please contact me at (916) 651-4004.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jim Nielsen". The signature is fluid and cursive, with the first name "Jim" written in a larger, more prominent script than the last name "Nielsen".

JIM NIELSEN

Senator, Fourth District