SOLURI MESERVE
a law corporation

tel: 916.455.7300 · fax: 916.244.7300
1010 F Street, Suite 100 · Sacramento, CA 95814

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SENT VIA EMAIL (mbanonis@usbr.gov)

Ms. Michelle Banonis
U.S. Department of Interior
Bureau of Reclamation
801 I Street, Suite 140
Sacramento, CA 95814

RE: BDCP Cooperating Agency Comments - BDCP Environmental Coordination Team (BECT)

Dear Ms. Banonis:

NEPA cooperating agencies Reclamation Districts 3, 150, 551, and 999, which are members of the Local Agencies of the North Delta ("LAND"), have been assessing and commenting on some of the greatest issues of technical importance associated with the Bay Delta Conservation Plan ("BDCP") since its public inception. The issue of technical importance is a driving factor for LAND since its members have unique experience in land and water management in the Delta, as well as experience in land acquisition, mitigation and monitoring, as a result of their respective operations of water delivery, drainage and levee maintenance. These LAND members will also bear many of the economic and legal burdens of managing these facilities under the BDCP. Accordingly, these LAND members want to ensure that the projects have as minimal negative impact on their existing operations as feasible. To that end, LAND has taken a cooperating agency perspective, not just legally through its agreements with the U.S. Department of the Interior, Bureau of Reclamation ("BOR"), but also through its engagement with the other federal and state agencies and the project proponents.

LAND believes that the original premises of the BDCP, in particular Conservation Measure ("CM") 1 and its failure to reduce reliance on the Delta, are technically flawed in a fundamental way. Over several years, LAND has urged optimization of BOR project infrastructure and the Habitat Conservation ("HCP") planning elements to attempt to achieve their project purpose, minimize their effects on the environment, and meet the legal requirements of Senate Bill ("SB") 7x to protect Delta communities. BDCP ultimately responded by forgoing a proposed ring levee around Clarksburg, a proposed western habitat bypass along the ship channel, and by reducing the size of the intermediate forebay.

Notwithstanding these incremental improvements to the project, the BDCP still proposes to significantly impair the flood protection and water supply operations of the cooperating LAND districts. As the districts have identified in a separate letter, BDCP's analyses as presented in the Plan and the EIR/EIS, have significant deficiencies. Despite these issues, the analysis still clearly indicates that there has been a gross failure in the development of an effective HCP/Natural Community Conservation Planning ("NCCP") and project alternative since the preferred project has over 48 significant and unavoidable impacts.

The primary issues that concern all parties still remain, which include reliable water supplies, stable native species populations, take coverage for water operations and levee maintenance, and invasive species management. These issues, among others, will not be resolved with the current BDCP. This letter is broken into generalized problem statements, which are followed by technical comments.

Problem Statements

BDCP continues to inadequately address the following issues:

Reconciling the Water Demand: Removing millions of acre feet of water a year from a stressed system, and not designing that withdrawal to match the hydrologic cycle, is patently irresponsible. The BDCP's proposed operations take even more water out of the system, and take much more of it in drier years at the driest season of the year. No attempt is made by the BDCP to manage the demand side. The sole focus is to capture the supply side.

HCP/NCCP: This HCP/NCCP directly interferes with, and competes with, existing HCPs, conservation easements, habitat management plans, and refuge management plans. This HCP/NCCP is unique because it was developed without substantive input and support of those plans, or the participating local governments and landowners. Yet, the BDCP does not readily allow for future projects with similar goals and objectives to rely upon the BDCP HCP/NCCP, unlike other HCP/NCCPs.

The South Delta Pumping Operations: The BDCP fails to fundamentally address continued flow reversals and the massive fish killing in the South Delta. The engineered system needs to attempt to improve overall circulation, San Joaquin River connectivity, and some means of reducing take (and salvage losses). The BDCP claims this is the purpose of CM 1 (BDCP, p. 4-24), but then still proposes to operate the new facility only half of the time.

The Existing Habitat Projects: Tens of thousands of acres of existing publicly funded and/or managed lands have already been acquired with essentially no scientific analysis of their success or failures or active management for optimization for listed species needs (or even reducing weeds). Instead, the BDCP trades off successful terrestrial and riparian resources for yet more generic aquatic habitat. This is a numbers game instead of a quality-based effort that will simply put more species into peril, such as the greater sandhill crane.

Invasive Species Management: The BDCP proposes some sort of invasive species management, at an unspecified time in the future, and in some other unspecified analysis. This should be the highest priority under any future Delta scenario for any ecological outcome to be favorable in the Delta, and it has widespread support, yet it is the least developed of the conservation measures (CM 13 & 20). These may be difficult ecological issues, but the pelagic organism decline, as well as any attempt to counteract that decline, hinge in a large part on improving invasive species management.

Inter basin Transfers: The BDCP, as well as the grossly over appropriated San Joaquin system in general, is dependent on inter basin transfers of water. The transfers have significant and unanalyzed impacts in their areas of origin, and can result in further stream depletion with or without conjunctive use. This is a classic example of how the BDCP trades off the high ecological value tributaries to make up for systemic failure to manage the root causes of declining Delta fisheries.

Agricultural Impacts: The BDCP is also literally sacrificing an exceptionally high value, sustainable agricultural region for another region, which has devastated its local water supplies and has already created several ecological disasters. Massive Tulare Lake, the San Joaquin River, San Joaquin Valley groundwater, and the South Delta, as well as every large river in the lower water watershed has been captured, depleted and/or destroyed. The BDCP fails to even acknowledge this history and current practice, as well as the repercussions of continuing to subsidize these impacts and their resulting toxic agricultural drainage.

In addition to those more general problems and failures to develop an effective problem statement that deals with the fundamental issues of removing too much water from an already depleted watershed, there are a host of technical issues that are either inadequately addressed or simply not dealt with at all in the current BDCP analysis.

Problems with Conceptual Development

The CMs are a hodgepodge of an industrial water project and undeveloped window dressing "habitat" measures (CMs 2-13) that attempt to serve as mitigation for the impacts of CM 1. To what degree the CMs mitigate for the project and what degree they stabilize and recover covered species is unclear in the analysis, but should be the most obvious part of the BDCP. It is nearly impossible to discern what the habitat-associated mitigation measures are for CM 1 or for other CMs, and how these measures are different from the requirements to support species recovery. In just one illustration, miles of contiguous, mature riparian forest is lost for the intakes, project roads and other features, but replacement is deferred and piecemealed. The lapse in time before replacement of this critical ecological resource is 30-40 years, and the replacement is spatially re-distributed to areas other than where the original impact occurred.

The range of alternatives is incomplete and insufficient to adequately analyze the project. For illustration, Alternative 9 (Through Delta) is a potentially significant improvement on current conditions, but that is not reflected in the analysis. Regardless of the selected alternative, existing Delta channels will remain the primary route for water for a minimum of 10 years during construction of the preferred alternative. It would also remain the primary flow route for up to half the time under the preferred alternative. Yet the benefits of implementing this alternative, or portions of this alternative, are not discussed. Since it would be still a primary flow route, it should be optimized for better hydrodynamics and reduction of fish loss. The implications of this failure to analyze the obvious future impacts of the project, and how to mitigate for them both during construction and during operations demonstrates how the analysis and its conclusions fail to meet the Least Environmentally Damaging Practicable Alternative ("LEDPA").

The BDCP should consider all alternatives individually without CM 1. For example, there is no analysis of which combination of CM 2, 13 and 16 would result in the lowest environmental impacts and greatest environmental and water supply benefits. There is also no analysis of the environmental result of timing CM 1 after successful completion of CM 2, 13 and 16. This stepwise process was effectively the outcome of CalFED, but was not considered under the BDCP.

Operational Uncertainties

The issues of defective conceptual development described above create a weak foundation for operations and the analysis in the BDCP. For example, the screen losses for salmonids in the north Delta were based on a series of assumptions that were not

conservative. If depletions of groundwater resulting from water transfers and conjunctive use further damage the spawning areas upstream, the ecological impacts of those losses could be much higher than analyzed. The limits of those transfer operations and their environmental impacts are explicitly left out of the BDCP documents, yet could be responsible for much of the overall project impact on the environment.

The relationship between how pumping will be controlled under real-time operations ("RTO"), and new dam operational rules are not described in this analysis. Yet, based on the provided water quality modeling, the dams would have to be operated under new rules – rules that are not yet developed or analyzed. The ecological considerations of matching north Delta pumping locations and rates in real world conditions, upstream dam operations, intake bypass flows, CM 2 bypass flows, Delta Cross Channel, Steamboat and Sutter Slough flow reversals, Head of Old River Barrier, and south Delta pumping operations are simply not analyzed in the EIR/EIS.

The implications for this failure of describing operational conditions and providing an associated analysis are profound to the cooperating agency districts. The likely stage elevation and water quality changes associated with the project are also not identified. The districts are likely to be subject to greater seepage from increased stages associated with the project and its unanalyzed water transfers. The water elevations and rapid changes in those elevations can lead to scour on levees, seepage can lead to crop damage, and water quality degradation can lead to crop losses. The amount of loss cannot be predicted because the real time impacts of the project are simply not described. The means by which these impacts will be quantified by the project is not identified, placing the burden of monitoring and remediation on the districts.

The overall environmental impacts of the project itself, together with its mitigation, and the habitat implications to the cooperating agency districts, have not been analyzed. The districts protect riparian and wetland habitat, and at times have mitigation needs of their own. The HCP should be open to all with similar project needs so that the Delta's environmental needs are consistently managed through one program. Under the BDCP, however, the existing and proposed local HCPs will compete for mitigation land with each other and the districts. It appears that the districts would have to duplicate portions of the BDCP in their own Section 7 and 10 processes, if needed in the future.

The cooperating agency districts remain concerned that the significant environmental impacts of the project on both terrestrial and aquatic species will result on the burden being shifted from the beneficiaries of the project to the local districts. As the resource agencies discover the need for more species protections and restrictions due to

the inadequacies of the BDCP, the BDCP proponents will be protected as they will have received 50-year take authority with "no surprises" assurances. On the other hand, BDCP offers no process by which other landowners or agencies within the plan area may receive take authority if needed for ongoing activities. Though remotely possible, the districts believe that re-consultation on the BDCP is unlikely and that the agencies will instead place environmental restrictions on local districts and landowners. The districts support LEDPA alternatives described earlier because they are far likely to achieve real environmental benefits, which in turn reduces everyone's compliance burdens.

For example, the critical project monitoring and associated metrics are poorly defined and are likely not to provide any ecologically useful statistical information. This can lead to the requirement to take more land out of agriculture and put it into habitat, placing additional local burdens due to poor science. Or, local restrictions may be put into place based on flawed analysis. A transparent, robust monitoring analysis program must be developed.

The project's monomaniacal emphasis on aquatic species over terrestrial species remains a concern across the board. Project impacts may occur to terrestrial species, such as greater sandhill cranes, but the proposed inadequate project monitoring will likely not disclose whether reductions in populations are due to the project's impacts. That puts the districts at risk of being subjected to new environmental restrictions. Strong environmental support for all listed and covered species needs to be put in place before CM 1 so that species do stabilize and recover, and an effective statistically-sound monitoring program must be implemented to identify project benefits and impacts.

The water quality impacts of the project raise similar unresolved concerns for the districts. It appears that sediment reductions will lead to Delta smelt impacts, which are arbitrarily ignored. Selenium and methylmercury impacts from habitat restoration activities could also lead to Central Valley Regional Water Quality Control Board restrictions on districts to reduce loads created by the project.

Finally, the districts have repeatedly identified that levee road damage and access impacts as a result of the project have been inadequately or improperly analyzed. The EIR/EIS does not deal with the structural impacts of the project on the structural, access and maintenance of critical district infrastructure. The districts use these levees to protect their islands from flooding, support flood fighting, transport agricultural supplies, goods and services, and to provide rescue routes. There are simply no substitutes available to replace these structures and routes; yet, the BDCP's treatment of impacts on local infrastructure is cursory and trivial.

Conclusion

The LAND cooperating agency districts appreciate the opportunity to work with the federal lead agencies and the other cooperators to address these technical concerns that so profoundly affect the Delta. This letter has also been submitted as a formal comment on the BDCP and associated environmental documents.

Very truly yours,

SOLURI MESERVE
A Law Corporation

By: 
Osha R. Meserve

cc:

Ryan Wulff, NOAA-NMFS (BDCP.comments@noaa.gov)
Michael G. Nepstad, U.S. Army Corps of Engineers
(Michael.G.Nepstad@usace.army.mil)
Erin Foresman, U.S. EPA (foresman.erin@epa.gov)
Maria Rea, NOAA-NMFS (Maria.Rea@noaa.gov)
Michael Tucker, NOAA-NMFS (Mike.Tucker@noaa.gov)
Lori Rinek, U.S. FWS (lori_rinek@fws.gov)
Heather Webb, U.S. FWS (Heather_Webb@fws.gov)
Carl Wilcox, Dept. of Fish & Wildlife (carl.wilcox@wildlife.ca.gov)
Melinda Terry, NDWA/Central Valley Flood Association (melinda@cvflood.org)
Richard Denton, Contra Costa County (rdenton@ccwater.com)
Ryan Hernandez, Contra Costa County (ryan.hernandez@dcd.cccounty.us)
Don Thomas, Sacramento County (thomasdon@saccounty.net)
Roberta Goulart Solano County (rgoulartpostofficebox@gmail.com)
Philip J. Pogledich Yolo County (philip.pogledich@yolocounty.org)