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July 29, 2014

Bay Delta Conservation Plan Comments
Ryan Wulff, National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Re: Bay Delta Conservation Plan (BDCP)

Dear Mr. Wulff:

The Butte County Board of Supervisors understands the critical importance of achieving the co-equal goals of improving water supply reliability and restoring the Delta ecosystem for the entire State of California. Butte County and the northern Sacramento Valley region have an interest in the overall health and stewardship of the Delta and the outcome of the Bay Delta Conservation Plan (BDCP) process. The northern Sacramento Valley region is the area of origin for much of the water that flows through the Delta, and our region is a major source for California's overall water supply picture. Our surface water resources include the crown jewel of the State Water Project (SWP) located at Lake Oroville, as well as a network of creeks and rivers that are tributary to the great Sacramento River which feeds into the Delta. The resources in our region are more than just the water supply for the Delta and the State; they provide the life blood for our agricultural-based communities, economy and environment. Much of our local water supply comes from various groundwater basins throughout the region that are recharged through these creek and rivers. A successful BDCP will be a key component to achieving the co-equal goals.

The Butte County Board of Supervisors has voiced their concerns and offered recommendations throughout the development of the BDCP. The Board passed a resolution on August 12, 2012 to emphasize these key areas of concern. We hoped that reasonable and constructive steps would have been taken to address our concerns in a manner consistent with the stated goals of the BDCP. However, the BDCP and the Environmental Impact Report/Environmental Impact Assessment (EIR/EIS) violates the terms of the National Environmental Quality Act (NEPA), the California Environmental Quality Act (CEQA), the National Communities Conservation Plan Act (NCCPA), and the Endangered Species Act (ESA). In addition, the BDCP proposes to extract upstream of the Delta water resources without fully assessing or mitigating those impacts.

The BDCP and the EIR/EIS do not fulfill the requirements of State and Federal law. Under NEPA, an EIS must include a discussion of the environmental impacts of the proposed action

and provide full and fair discussion of significant environmental impacts, and shall inform decision-makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts (42 U.S.C. § 4332(C)(i) and 40 C.F.R. § 1502.1). Under CEQA, EIRs must include details regarding all significant effects on the environment of the proposed project, and mitigation measures that will minimize those effects (Cal. Pub. Res. Code § 21100(b)). The BDCP and the EIR/EIS fail to assess potential environmental and socioeconomic impacts to Butte County and much of the northern Sacramento Valley region, and lacks adequate financial commitments.

The Project Description of the BDCP and the EIR/EIS fails to fully describe the project's environmental and socioeconomic impacts. The BDCP purports to comprehensively assess impacts including those that may occur outside of the Plan Area upstream of the Delta. The BDCP document, Chapter 1 (page 1-21) states,

> "*Because the SWP and CVP water infrastructure is operated as an integrated system, the effects of implementing the BDCP may extend to aquatic systems beyond the Delta, both* ***upstream*** *and downstream, and will implicate water operations parameters as well as species and their habitats located in those areas. As such, the BDCP effects analysis (Chapter 5, Effects Analysis) takes into account these upstream and downstream aquatic effects, both positive and negative, and describes, analyzes, and addresses the overall effects of the BDCP.* ***Areas potentially affected by the implementation of the BDCP located outside of the Plan Area, have been included in the analysis of effects to ensure that all of the potential effects within the action area (all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action), as defined by Section 7 of the ESA, have been adequately assessed.***"

Although the BDCP makes this statement, the EIS/EIR failed to assess the direct and indirect impacts from the BDCP outside of the Delta. This failure to assess the impacts of the BDCP to the region north of the Delta is inconsistent with State and Federal law.

The potential BDCP impacts to groundwater basins in the northern Sacramento Valley region could cause devastating consequences. The sensitivity of groundwater basins in the region necessitates that the BDCP fully disclose and assess groundwater impacts upstream of the Delta. The EIR/EIS identified the need to assess groundwater impacts, but subsequently failed to do so. In the EIR/EIS, Chapter 7, *Groundwater* states that for the "*purposes of this analysis, the groundwater study area (the area in which impacts may occur) consists of the Delta Region, ... the Upstream of the Delta Region and ...*". On page 7-13 the description of the Sacramento Valley points out that portions of the region are showing early signs of declining groundwater elevations. Although the EIR/EIS acknowledges that the BDCP's effects on Sacramento Valley groundwater should be assessed, any analysis of the impact to the region's groundwater was specifically eliminated. On page 7-37 the EIR/EIS states, "*The CVHM domain was reduced by eliminating most of the Sacramento Valley and San Joaquin Valley from the domain when developing CVHM-D. This modification allowed for greater precision in model output in the Delta Region.*" The decision to eliminate the Sacramento Valley from hydrologic modeling demonstrates the disregard of the region and creates an inconsistency within the EIS/EIR.

The anticipated changes in storage in Lake Oroville as a result of BDCP implementation would result in impacts to groundwater, from groundwater substitution transfer programs, as well as causing socioeconomic and ecosystem impacts. The operational changes to Lake Oroville are acknowledged in the BDCP. Appendix 5.C (page 5C 1.1) of the BDCP document confirms that "*No substantial changes in reservoir operations are expected as a result of the BDCP, with the potential exception of Lake Oroville, where the BDCP could shift substantial releases from summer months to spring months under high outflow scenario to contribute to spring outflow criteria.*" In an analysis prepared by HDR on behalf of the State and Federal Contractors Water Agency (2011), assuming changes to Delta flow criteria from implementation of the BDCP will cause Lake Oroville to remain in a "dead pool" condition in most years. This situation would render Lake Oroville inoperable as a recreation venue, damage the ecosystem and be a blight on the region. Lake Oroville is more than a part of the SWP system. Lake Oroville is integral to our recreation, economy and ecosystem for those in its Area of Origin. Butte County has been in dispute with the State of California over its failure to meet its obligation regarding the Lake Oroville facility. Actions through this BDCP that further erode Lake Oroville's economic, recreation and ecosystem benefit cannot be dismissed or ignored. Additionally, the failure to assess the environmental and socioeconomic impacts from the reoperation of Lake Oroville under BDCP creates another flaw and inconsistency of the EIS/EIR.

The EIR/EIS (Appendix 5.C.) proposes that the Project facilitate groundwater substitution transfer programs from improved Delta conveyance and increased Lake Oroville storage capacity. The EIR/EIS Section 5C.10 *Potential Sources of Upstream-of-Delta Water Transfers and Potential Impact* indicates that the BDCP is expecting additional water from upstream of the Delta. The EIR/EIS ignored any environmental consequence from groundwater substitution programs and failed to acknowledge that groundwater substitution programs must comply with applicable County ordinances. If the BDCP is expecting to incorporate north of Delta groundwater basins into the state water project, the EIR/EIS must fully disclose, assess and mitigate the impacts.

The BDCP does not comply with the requirements of a Habitat Conservation Plan and a Natural Community Conservation Plan to include viable financial commitments. Typically, financial commitments would be part of an Implementing Agreement (IA) that explains how the obligations will be carried out. The Natural Community Conservation Planning Act requires each conservation plan to disclose and assure adequate funding for establishing the long-term protection of any habitat, and mechanisms to ensure adequate funding to carry out the conservation actions (Cal. Fish & G. Code § 2820(b)). Most, if not all, of the identified funding sources are speculative including the Federal sources, State bonds and state water contractors. The commitment of state water contractors is among the most uncertain. Butte County is one of 29 State Water Project Contractors. The BDCP notes that state water contractors have committed to providing funds for the construction and operation of new water facilities, as well as for mitigation necessary to address impacts to terrestrial and aquatic impacts associated with construction and operation. The BDCP provides no basis to substantiate the state water contractors' commitment to fund BDCP. The commitment is nothing more than a non-binding indication of support. Nowhere in the BDCP does a list exist of the state contractors that have authorized a financial commitment. The water contractors funding commitment is only as valid as the commitment of individual agencies. The commitment of water agencies is suspect and

illusive. The funding commitment including those from water contractors are not secured or credible. The BDCP indicates that the state water project contractor commitment will require amendment to the existing contracts. The BDCP should acknowledge that the Department of Water Resources and the state water project contractors are nearing the completion of renegotiating the state water project contracts (http://www.water.ca.gov/swpao/watercontractextension/). The contract extension process that began in 2013 intends to extend the State Water Project contracts to December 31, 2085, restructure financial management and modify state water project financing. There was an opportunity to address the BDCP financial obligations through this contract amendment process. However, the water contractors were not prepared to engage in any meaningful discussions on BDCP financial obligations. Due to the complexities and lack of support to fund BDCP, the contract amendment for BDCP obligations will be dealt with in a separate process. Accordingly, the absence of adequate funding commitments does not meet the requirements of the National Environmental Policy Act (NEPA), NEPA regulation 40 C.F.R. § 1502.25, Endangered Species Act (ESA) regulations 50 CFR § 17.22(b)(1)(i); § 222.307(b)(4), the California Environmental Quality Act (CEQA), and the Natural Communities Conservation Planning Act (NCCPA). Without the financial assurance for all of the BDCP components, the BDCP does not meet State and Federal requirements.

In closing, the BDCP and its EIR/EIS fail to fulfill the legal obligations under State and Federal law and ignored constructive comments previously presented by Butte County. The failure of the BDCP and its EIR/EIS are more than legal technicalities; they could lead to actions that will damage the regions' economy, environment and communities. The Butte County Board of Supervisors makes a final request that the BDCP and the final EIR/EIS be modified to comply with legal requirements. If no further action is taken to comply with legal requirements, Butte County will consider taking appropriate measures to protect the County's economy, environment and communities.

Sincerely,

Doug Teeter, Chair
Butte County Board of Supervisors