

Summary Outline of CEQA/NEPA Comments

The following is a summary of Contra Costa County's comments regarding the draft Bay Delta Conservation Plan (BDCP) and associated draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) (dated December 2013):

1. The draft BDCP proposed project (Alternative 4 - Modified Tunnel Alignment) and the remaining DEIR/EIS alternatives would result in significant adverse water quality impacts in the Delta (as acknowledged in the DEIR/EIS). The DEIR/EIS is inadequate because it fails to mitigate these completely avoidable impacts to municipal and industrial, agricultural, recreational and ecosystem beneficial uses of water.
 - a. The DEIR/EIS fails to examine a reasonable range of alternatives;
 - b. The DEIR/EIS fails to analyze increased storage for capturing surplus flow in wet months which would allow increased flow for fish and water quality in drier months;
 - c. The BDCP proposed project benefits southern California at the expense of northern California, significantly harms the Sacramento-San Joaquin Delta, and does not meet the main goal of the project, improving water supply reliability;
 - d. Declaring water quality impacts caused by the SWP unavoidable contravenes the requirements of the Delta Protection Act of 1959 which requires the SWP to maintain salinity control in the Delta and prohibits export of water that is required to meet the needs of the Delta;
 - e. The DEIR/EIS fails to avoid the impact altogether by not taking a certain action or parts of an action (CEQA Guidelines Section 15370).
2. The significant adverse water quality impacts of the BDCP must be fully mitigated. A finding and statement of overriding considerations regarding adverse water quality impacts of the BDCP would be inadequate because:
 - a. There are feasible alternatives or feasible mitigation measures available which would substantially avoid the significant environmental effects of the BDCP project.
 - b. The DEIR/EIS does not examine a reasonable range of alternatives;
 - c. The BDCP proposed project does not benefit California as a whole, harms a significant portion of California and the Delta in particular, and does not even provide any additional water supply for the project proponents;
 - d. Allowing further degradation of Delta water quality is poor public policy and contrary to the statutory requirements of the 2009 Delta Reform Act (Cal. Water Code 85020(e));
 - e. CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits (CEQA Guidelines Section 15093). The limited local benefits of the BDCP proposed project do not outweigh the unavoidable adverse environmental effects.

3. The analysis of **water supply** impacts in the DEIR/EIS uses computer models and assumptions that contain significant errors and, therefore:
 - a. Fails to disclose the full magnitude of adverse water supply and Delta flow impacts;
 - b. Fails to disclose additional adverse impacts that would occur in subsequent months when the modeling errors are corrected.

4. The analysis of **water quality impacts** in the DEIR/EIS using computer models contains significant errors and, therefore:
 - a. Fails to accurately disclose the magnitude of adverse Delta water quality impacts,
 - b. Fails to disclose adverse water quality impacts that would occur in subsequent months if these modeling errors were corrected;
 - c. Fails to meet required SWRCB standards such as the Rock Slough chloride standards, even in the base cases (i.e., without BDCP);
 - d. Fails to apply consistent flow inputs to the water quality models. The use of daily variations in Sacramento River inflows to the Delta but monthly variations in Delta exports in the BDCP modeling studies caused large unrealistic spikes in water quality that distort the impact analyses.

5. The analysis of environmental impacts includes a number of significant changes to existing facilities and existing Delta operation standards (e.g., State Water Resources Control Board water rights decision 1641) such that the individual adverse impacts of each change is masked and therefore not disclosed. These changes are:
 - a. Adding new diversion intakes in the North Delta on the Sacramento River;
 - b. Shifting the compliance point for the SWRCB's Emmaton water quality standard from Emmaton to Three Mile Slough;
 - c. Adding a permanent operable flow barrier at the Head of Old River;
 - d. Eliminating the existing U.S. Army Corps limits of the inflow from the south Delta into Clifton Court Forebay;
 - e. Relaxing the SWRCB's D-1641 export/inflow standards to allow increased exports;
 - f. Ignoring the current biological opinion limits on the ratio of San Joaquin inflow to south Delta exports.

6. The effects of operations of the proposed project on fish are not fully disclosed because actual operations to protect fish will not be determined for at least 10 years after the DEIR is certified and a Record Decision is issued on the DEIS.
 - a. The BDCP proponents are proposing to operate according to a Decision Tree which will not be finalized until a 10-year study of fall and spring outflow criteria is completed;

- b. The Delta Independent Science Board has expressed concern that the study will not consider six of the species of concern and that criteria to protect Delta smelt may be different than for longfin smelt;
 - c. The Decision Tree process will end once the new facilities become operational and thereafter, adaptive management will be the primary process for determining the spring and fall outflow operations.
7. The DEIR/EIS fails to analyze a reasonable range of alternatives.
 - a. There are essentially only two alternatives: one through-Delta alternative and 13 variations of a new north Delta intake alternative;
 - b. No additional storage upstream, downstream or within the Delta is considered;
 - c. Because no additional storage is considered, no serious consideration of alternatives that increase flows during drier months by shifting the timing of export diversions to wetter months when water is surplus to the needs of the Delta;
 - d. No actions to reduce reliance on the Delta, such as regional supplies, conservation or water use efficiency, are considered (2009 Delta Reform Act, Cal. Water Code Section 80521);
 - e. No screening of the Clifton Court Forebay even though screening of other Delta diversions is proposed as a conservation measure, and the Conceptual Engineering Reports shows that constructing a screened intake off Victoria Canal is feasible.
8. The DEIR/EIS is inadequate because it relies on future actions (“blank checks”) to be decided after certification of the EIR and the NEPA Record of Decision to mitigate impacts and determine final operational criteria. This is not permitted under both CEQA and NEPA.
 - a. Operations will be determined through a Decision Tree process that requires at least 10 years of research study;
 - b. Operations to protect fish will be determined after initial operation of the new BDCP facilities through an adaptive management approach;
 - c. Mitigation measures to address the significant adverse water quality impacts will not even be considered, and determined whether they are feasible or not, until after initial operation of the proposed BDCP facilities.
9. The DEIR/EIS and BDCP assume new limits on operation of the south Delta export pumps in the fall (September-November) and the spring (March-May), which when combined with existing Delta standards in the spring (February-June X2 limits) will shift the existing impacts of reduced flows and export diversions to July-August. Unless enhanced protections for fish are also set during July and August as well as the Fall (critical, dry and below normal years), the proposed project will put other fish species, not currently listed or in decline, at risk. The DEIR/EIS is therefore inadequate because it fails to protect resident fish species from redirection of adverse impacts to the summer months.

- a. The BDCP operations criteria needs to include Old and Middle River flow limits for July- September. This is consistent with the original objectives of reducing (not increasing) exports from the south Delta;
 - b. The BDCP operational criteria needs to have Fall X2 limits for critical, dry and below normal years, as well as corresponding Delta outflow, X2 and Rio Vista flow requirements for July-August;
 - c. The BDCP north Delta intake would need to include more protective limits for July-September to avoid shifting adverse impacts to these three months.
10. The DEIR/EIS fails to fully analyze alternatives with increased flows as a percentage of unimpaired flow as informed by the SWRCB's 2010 Delta Flow Criteria Report and corresponding California Department of Fish and Wildlife (formerly Fish and Game) 2010 Quantifiable Biological Objectives and Flow Criteria for Aquatic and Terrestrial Species of Concern Dependent on the Delta Report. The DEIR/EIS also fails to present modeling study flow results as percentages of unimpaired flow to allow comparison with the SWRCB and DFW recommendations.
 11. The DEIR/EIS fails to optimize reservoir operation rule curves to represent realistic reservoir and export operations by the SWP and CVP in response to new conveyance facilities, global climate change and enhanced Delta flow requirements.
 12. The BDCP proponents are seeking public funding for habitat restoration for the BDCP in lieu of increased Delta outflow even though numerous scientific panels have declared the efficacy of the proposed habitat at such a large scale to be uncertain, and the primary benefits will be additional exports for the proponents. The proponents are also seeking public funding for enhanced environmental flows to meet standards that are already the responsibility of the SWP and CVP, and could be used to increase exports. The BDCP proponents as the primary beneficiaries must fully fund these BDCP project components.