Contra Costa County Comments on Draft Bay Delta Conservation Plan

General Comment – Inconsistent naming of alternatives hinders full disclosure of impacts

The DEIR/EIS and Draft BDCP are inadequate because different names are assigned to essentially the same alternatives in the EIR/EIS and BDCP and in different chapters within these documents.

For example, the DEIR/EIS discussed existing conditions with and without Fall X2. The draft BDCP in Chapter 5, Effects Analysis, refers to EBC1 and EBC2, i.e., Existing Biological Conditions without and with Fall X2. The draft BDCP in Chapter 9, Alternatives to Take, uses the term Existing Conveyance High Outflow Scenario which does not appear to be defined anywhere. However, it presumably refers to existing conditions with Fall X2.

The DEIR/EIS refers to No Action Alternatives for the early long term (2025) and late long term (2060). The draft BDCP on the other hand refers to EBC2_ELT which is EBC2 projected into year 15 (2025) accounting for climate change conditions expected at that time (Draft BDCP Table 5C.0-1). Similarly the No Action alternative at late long term is named EBC2_LLT (year 50 or 2060).

Similarly, the DEIR/EIS analyzes a proposed project (Alternative 4) that has four Decision Tree scenarios. The difference between Scenarios H1, H2, H3 and H4 are whether or not Fall X2 and enhances Spring Outflows are included. Scenario H1 includes neither of these and is referred to as the Low Outflow Scenario. Scenario H4 includes both fish protection actions and is referred to as the High Outflow Scenario. The draft BDCP, however, introduces Evaluated Starting Operations (ESO) which includes the high Fall X2 operation and the low spring outflow operation (Page 5C.0-1, line 22). Table 5C.0-1 in the draft BDCP contains specific descriptions of each of the scenarios evaluated.

The use of different names for the same alternative in different sections of the DEIR/EIS and draft BDCP makes it extremely difficult to understand the environmental impacts of proposed alternatives and prevents full disclosure of these impacts. The EIR/EIS and BDCP must be revised with consistent names for each alternative and recirculated for public review and comment.

Executive Summary – Adverse impacts on listed fish species

The BDCP Executive Summary presents an assessment of the adverse effects of the BDCP Covered Activities on Delta smelt, longfin smelt, Sacramento River winter-run Chinook salmon, Central Valley spring-run, fall-run and late fall-run Chinook salmon, Central Valley steelhead, Sacramento splittail, Green sturgeon, and White Sturgeon (Pages 44, 46, 48, 50, 52, 54, 56 and 58). These fish species are listed as threatened or endangered or are State species of special concern.

The Executive Summary acknowledges that there will be near-field and far-field effects of the North Delta diversions on the Chinook salmon runs and steelhead. These adverse impacts will be caused by physical contact with the fish screens and aggregation of predators, and reduced downstream flows that reduce the survival of migrating anadromous fish and lead to greater probability of predation. The BDCP will reduce flows in the Sacramento River downstream of the new north Delta intakes, which may reduce survival of outmigrating young-of-year juvenile splittail. The reduction in migration flows and reduced transport could negatively impact larval green sturgeon and juvenile white and green sturgeon.

The Executive Summary states that diverting water upstream in the Delta on the Sacramento River will lower attraction flows for migrating salmon and steelhead. The proposed project would significantly reduce Rio Vista flows during the September-December period when SWRCB Decision 1641 attraction flow requirements are in effect. Historically, Rio Vista flows have been higher than the D-1641 minimum flow requirements because other SWRCB standards govern and because of flood control releases from upstream reservoirs. The BDCP CALSIM modeling data suggests that with the proposed project the Rio Vista standards will control in many years (see Attachment F "Analysis of other BDCP Project Impacts based on BDCP Modeling Data").

The Draft BDCP (Chapter 5) discloses that the north Delta intakes will harm salmon species by reducing Sacramento flows below Hood and changing the mixture of Sacramento, San Joaquin, eastside stream and seawater water. This would affect the olfactory cues salmonids use to return to their native spawning areas (BDCP pages 3.2-8, 5.5.3-32 and 5.5.3-39).

The salmonids will also be adversely impacted by exposure to in-water construction and maintenance activities. The BDCP states these effects will be minimized by application of avoidance and minimization measures, but the effectiveness of these poorly specified measures is unknown.

The BDCP also acknowledges that the proposed tidal habitat and floodplain restoration will cause local increases in exposure of salmonids to contaminants but the only mitigation proposed for this adverse impact is to study the effects of this contamination resulting from covered activities. The study of effects of contamination is not a mitigation.

The BDCP also acknowledges Delta smelt may be exposed to greater incidence of Microcystis as a result of the proposed habitat restoration. The proposed response to this adverse impact is to study the problem. The BDCP acknowledges there will be adverse impacts on sturgeon due to contaminants such as methylmercury, pyrethroids, and selenium. The proposed response to this adverse impact due to contamination is to study the problem.

The BDCP acknowledges the new north Delta intakes will adversely affect Delta smelt and longfin smelt by reducing the quantity of sediment entering the BDCP Plan Area and potentially increasing water clarity in some areas.

The BDCP Executive Summary attempts to argue that despite these adverse impacts of the new north Delta intakes, overall entrainment would remain at or be less than current low levels. The Executive Summary argues this will be largely due to reduced reliance on the south Delta export facilities because of the north Delta intakes. However, detailed analysis of the BDCP modeling data reveals that exports from the south Delta will actually increase in drier periods, in part because DWR assumed that the U.S. Army Corps of Engineers limits on inflow to Clifton Court Forebay will not apply in the future. There is also no plan to screen Clifton Court Forebay in the proposed project. The BDCP will still rely on the south Delta for 51% of the total exports.

In fact, Figure 11-4-1 in Chapter 11 of the DEIR/EIS shows that the average annual estimated proportion of the larval/juvenile Delta Smelt population lost to entrainment at the SWP/CVP south Delta facilities will increase, not decrease, for the proposed project (Alternative 4). The BDCP proposed project is clearly inadequate under CEQA, NEPA, the Endangered Species Act and as a matter of public policy because it harms rather than improves the abundance of key fish species.

The BDCP is also inadequate because it attempts to rely on additional fish benefits from implementation of an alternative intake for the North Bay Aqueduct. This alternative intake project is not part of the BDCP and the environmental impacts of this separate project are not analyzed and disclosed as part of the BDCP EIR/EIS. The BDCP cannot rely on uncertain future projects to mitigate the adverse impacts of the proposed north Delta intakes and conveyance system.

The BDCP Executive Summary on pages 48, 50, 53 and 55 states that "the BDCP does not propose any changes in Shasta operating criteria, and the BDCP does not affect upstream temperatures or flows in ways that would require a change in Shasta operations. However, the different new facilities and operating scenarios do change the storage levels in Lake Shasta. If the amount of cold water pool is reduced this could adversely impact salmonids below Shasta. This would change the quality (temperature) of upstream habitat, an important biological objective for winter-run Chinook salmon.

A review of the BDCP modeling of Shasta storage for the proposed project Low Outflow scenario suggests that Shasta end-of-month storage will be significantly reduced in most years relative to the existing conditions (with Fall X2). The reductions will be most significant during drier years (see Attachment F "Analysis of other BDCP Project Impacts based on BDCP Modeling Data") and will adversely impact salmonids. The High Outflow scenario, on the other hand, generally increases Shasta end-of-month storage in drier years.

The Executive Summary on page 48 states:

> *The magnitude of benefits for winter-run Chinook salmon at the population level cannot be quantified with certainty. Nonetheless, the overall net effect is expected to be a positive change that has the potential to increase the resiliency and abundance of winter-run Chinook salmon relative to existing conditions.*

Because the winter-run Chinook salmon is listed as endangered under both the state and federal endangered species acts, it is important that any project proposed by DWR and Reclamation to protect and restore this and other key fish species demonstrate, prior to being permitted, that it will substantially increase the resilience and abundance of winter-run Chinook salmon. Merely "expecting" a positive change that has the "potential" to benefit winter-run is not sufficient. In fact the myriad of adverse impacts of the north Delta intakes and the proposed operating rules described in the BDCP Executive Summary and listed above strongly suggest that there is a strong potential for the new north Delta intakes to significantly harm key fish species.

The DEIR/EIS and Draft BDCP must be withdrawn and new alternatives and operation rules developed that will to increase the resiliency and abundance of the key fish species relative to existing conditions that include Fall X2. A new draft EIR/EIS must be prepared and released for public review and comment.

Chapter 5: Effects Analysis

The Draft BDCP (Chapter 5) discloses that the north Delta intakes will harm salmon species by reducing Sacramento flows below Hood, by changing the mixture of Sacramento, San Joaquin, eastside stream and seawater water and affecting the olfactory cues the salmon use to return to their native spawning areas, and by increasing predation (see e.g., BDCP pages 3.2-8, 5.5.3-32 and 5.5.3-39).

The Draft BDCP assumes that the significant adverse impacts of the north Delta facilities will be offset by other conservation measures (CM2 – CM11), and by the benefits of a future relocation of the North Bay Aqueduct intake. The Draft BDCP indicates that the North Bay Aqueduct Alternate Intake Project is part of CM1 (see Table 3.2-1 on page 3.2-13 of the Draft BDCP.) The Alternative Intake Project would expand pumping from the current historical maximum of 140 cfs up to 240 cfs. However, the Draft EIR/EIS (Page 3-175) states: "The BDCP (or an alternative) would cover operations, but not construction, of any new facility associated with the North Bay Aqueduct Alternative Intake Project. It is not yet known for certain when this facility will be constructed, nor have the details of construction been finalized."

The Draft BDCP assumes benefits from an alternative North Bay Aqueduct intake contribute to offsetting any entrainment and impingement at the proposed BDCP north Delta intakes (see page 5.5.2-24). How can the BDCP take credit for NBA benefits when no analysis has been done as part of the BDCP to review the environmental impacts of increasing of moving the NBA intake and increasing pumping to 240 cfs intake?

The BDCP also assumes that reductions in entrainment at the south Delta export facilities will contribute to offsetting any entrainment and impingement at the proposed north Delta diversion facilities (page 5.5.2-24). However, the BDCP is:

(a) proposing to relax the existing US Army Corps of Engineers limits on inflow to Clifton Court Forebay (increasing exports from 6,680-7,180 cfs up to 10,300 cfs),

(b) not planning on screening the intake to the Forebay (even though DWR's November 2009 Conceptual Engineering Report – Through-Delta Facility Conveyance Option contains feasible examples of how this could be done, see Fig. 7-5 of this CER),

(c) proposing to increase reverse flows (OMR) at certain times of the year relative to existing conditions,

(d) relaxing the existing SWRCB Water Rights Decision 1641 export/inflow ratio limits for some alternatives (DEIR/EIS page 5A-B40),

(e) intending to ignore the existing biological opinion limits on the ratio of San Joaquin inflow to south Delta exports (Draft BDCP, Appendix 5C Part 1, page 2-4),

(f) proposing to still use the south Delta for 51% of the SWP and CVP exports

The BDCP and EIR/EIS are inadequate because the proposed north Delta intakes will harm key fish species and the benefits of "reducing" use of the south Delta intakes are likely overestimated. As such it is incorrect to consider the north Delta intakes and conveyance system to be a Conservation Measure. The BDCP and BDCP EIR/EIS must be revised to include new alternatives that increase rather than reduce Delta flows, and reduce rather than increase entrainment at the south Delta export facilities, while still achieving the other co-equal goal of improving water supply reliability for all Californians.

A revised draft BDCP and draft EIR/EIS must then be released for public review and comment.

Chapter 7: Implementation Structure

Contra Costa County is directly impacted by the construction of the twin tunnels and, therefore, must be a part of any decision making entity as the project moves forward. Since BDCP began, Contra Costa County along with the other four Delta Counties has requested a seat at the table. This chapter assigns the County to a "Stakeholder" role that has no ability to meaningfully affect decisions. In fact, the decisions to be made are heavily represented in favor of the BDCP proponents that are motivated by maximizing water exports. There must be a voice on behalf of the Delta and it should be Contra Costa County, in association with the other Delta Counties. The portions of the project that directly impacts the Counties require a decision making role by each County and this must be reflected in the Implementing Agreement.

Chapter 8: Implementation Costs and Funding Sources

General Comment Regarding the Assumption of Public Funding

The estimated funding of the BDCP by entity, sources and plan component from Draft BDCP Table 8-37 are summarized below. The State and Federal export contractors are proposing that the public fund almost 90% of the cost of Conservation Measures 2-21.

Source	Program Administration	Monitoring, Research, Adaptive Management, and Remedial Actions	Water Facilities and Operations (CM1)	Natural Community Protection and Management (CM3, CM11)	Natural Community Restoration (CM2, CM4-CM10, CM12, CM22)	Other Stressors Conservation (CM13-CM21)
State and Federal Water Contractors	$31	$113	$16,027	$266	$269	$224
State Funding	$0	$145	$0	$399	$2,282	$1,291
Federal Funding	$160	$840	$0	$396	$1,062	$1,087
Interest Income	$145	$0	$0	$0	$0	$20
Total	$336	$1,098	$16,027	$1,061	$3,613	$2,623

However, the BDCP proponents are promoting these habitat and other sources actions in lieu of restoring Delta flows to levels necessary to increase and sustain fish populations. According to various scientific expert panels tasked with reviewing the Effects Analysis and other aspects of the BDCP, the effectiveness of this new habitat at this scale in restoring fish populations is uncertain at best.

The new habitat allows additional water to be exported by the BDCP proponents. The public should not be asked to pay the cost of new habitat when the primary benefits are in the form of higher exports to the San Joaquin Valley and southern California.

Contra Costa County understands that the BDCP proponents are negotiating a Water Acquisition Program that would purchase water to provide Enhanced Environmental Flows (Draft BDCP, page 3.4-356). According to a BDCP March 29, 2013 document, "Response Outline of Water Acquisition/Shared Incentives Proposal," some of the purchased water would be used to meet Fall X2 requirements. The SWP and CVP are already required to operate to Fall X2 under the 2008 USFWS biological opinion. The public should not pay for water to provide flows that the BDCP proponents are required to meet.

The intent of the 1959 Delta Protection Act was that no water would be exported by the SWP that was necessary to meet the salinity and water supply needs of the Delta. This same restriction on exports should also apply to the Delta ecosystem needs. The public should not have to pay to buy water to replace exported water that, if needed for the Delta, should not be exported.

If in the future, adaptive management and monitoring finds that more flow, not just wetland habitat, is indeed needed to restore and sustain fish populations, the BDCP proponents must be held responsible for achieving those increased flows.

Unfortunately, the significant adverse impacts on the Delta Counties of taking land out of agriculture and recreational uses for habitat restoration will have already happened.

The Draft BDCP must be revised to eliminate, or at least significantly reduce, the amount of public funding for CMs 2-21 and a new funding plan, with binding funding commitments, developed. A new Draft BDCP should then be released for public review and comment.

Chapter 9: Alternatives to Take

Page 9-36, line 34

Section 9.3.3 attempts to disclose the consistency of different take alternatives with the BDCP Goals. The draft BDCP reiterates that the overall goal of the BDCP is to provide "*a comprehensive conservation strategy for the Sacramento-San Joaquin River Delta designed to restore and protect ecosystem health, water supply, and* ***water quality*** *in the Delta within a stable regulatory framework*." The ability of each take alternative to meet this goal is summarized in Table 9-8.

The draft BDCP only considers the in-Delta water quality improvement goal to apply to aquatic species. The water supply goal is only applied to mean project water deliveries, not to water supplies for senior water rights holders upstream of the Delta or in-Delta water users. Another water quality goal applies to supply water which is not defined but presumably only applies to CVP and SWP export water quality. The water supply reliability goal which is described as helping to protect water supplies from floods, and seismic events, presumably only applies to CVP and SWP export water supplies. Another BDCP goal that is evaluated in Chapter 9 is whether Banks Pumping Plant is at full capacity.

This analysis of the different take alternatives is inconsistent with the 2009 Delta Reform Act and the intent of the legislature because it fails to analyze the effect of each take alternative on water supply for senior water right holders, and in-Delta water users. The analysis also fails to analyze the effects on water quality in the Delta for other water users, not just the CVP and SWP export contractors. A take alternative must be eliminated if it would degrade water quality for other Delta water users and fails to avoid or mitigate those significant adverse impacts. For example, does the take alternative degrade municipal and industrial water quality for CCWD, the City of Antioch or the City of Stockton?

The DEIR/EIS and draft BDCP is also inadequate because Section 9.5, Assessment of Take Alternatives, only analyzes and discloses the differences in consistency of each take alternative with the overall goal of the BDCP relative to the BDCP Proposed Action (i.e., proposed project,

Alternative 4). As acknowledged in the DEIR/EIS, the BDCP proposed project would cause many significant and unavoidable impacts including significant degradation of Delta water quality. Determining in Table 9-8 that another take alternative is slightly worse than the proposed project is irrelevant because the proposed project itself would cause significant adverse environmental impacts and does not meet the requirements of the 2009 Delta Reform Act or state and federal antidegradation statutes (State Water Resources Control Board Resolution 68-16 and 40 C.F.R § 131).

The DEIR/EIS and draft BDCP must be revised to fully analyze and disclose the individual impacts of each take alternative and not the just disclose how one bad alternative compares with another flawed alternative. The revised EIR/EIS and revised BDCP must then be released as new drafts for public review and comment.