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July 29, 2014:

Ryan Wulff, National Marine Fishery Service  
650 Capitol Mall, Suite 5-100  
Sacramento, CA 95814

**Subject: Comments on the Draft BDCP and Draft BDCP EIR/EIS**

Delivered via Email on July 29, 2014 to: BDCP.Comments@noaa.gov

Dear Sir:

These comments are submitted on behalf of the Plumas County Board of Supervisors as well as the Plumas County Flood Control and Water Conservation District, hereinafter collectively referred to as "Plumas."

Plumas supports and fully endorses the attached comments previously submitted by San Joaquin County. In this cover letter, Plumas adds other critiques and recommendations, such as:

- The County's and District's unique vantage point as an Area of Origin for the State Water Project (SWP).
- Provider as a State Water Contractor (SWC).
- Service as the local government for a constituency of rural and senior water rights holders.

- The area of Plumas County comprises 72% of the Upper Feather River (UFR) Basin. The UFR Basin is the watershed that drains into Lake Oroville, the largest storage facility in the SWP.
- The Plumas County Flood Control and Water Conservation District is one of 29 State Water Project Contractors,<sup>2</sup> and one of two SWP Contractors that is not represented by the State Water Contractors organization<sup>1</sup> (internet address: [www.SWC.org](http://www.SWC.org)).

**NOTES:**

<sup>1</sup> *The SWC organization is a nonprofit mutual benefit corporation that represents and protects the common interests of its 27 member public agencies in the vital water supplies provided by California's State Water Project ("SWP").*

<sup>2</sup> *The State Water Project Contractors includes the SWC organization's 27 member public agencies plus Butte County Water and Resource Conservation and, Plumas County Flood Control and Water Conservation District.*

**Pertinent Background:**

By way of background, Plumas was involved in the lawsuit against the Monterey Amendments, referenced on page 20 of the attached comments. Plumas is a signatory to the Monterey Settlement Agreement, which among other things, binds the Department of Water Resources (DWR) to an open and transparent decision making process for future amendments to the State Water Contracts. Plumas is also a party in the Federal Energy Regulatory Commission (FERC) hydroelectric relicensing lawsuit against DWR and the SWC in regard to the Settlement Agreement for the Lake Oroville storage facility that is referenced on page 22 of the attached comments.

**Contract Extension Project:**

During the past year, Plumas has participated in the Contract Extension Project negotiations with SWC Inc. and DWR over the governance structure and cost allocation of outstanding debt, continuing maintenance, and future expansion for the SWP.

In good faith, Plumas (and Butte County) brought forth Objective 4 early in the SWP Contract Extension Project, thus:

***Original Objective (April 29, 2013)***

***Butte/Plumas Objective:***

*To ensure that contractors shall have the option and right to opt out of the cost and burdens and benefits of the Bay Delta Conservation Plan and any implementing and related projects.*

***Revised Objective (July 9, 2013)***

***Objective 4: BDCP and DHCCP Participation***

*The Department and some State Water Project contractors are directly participating in the development of the Bay Delta Conservation Plan (BDCP) and the associated Delta Habitat Conservation and Conveyance Program (DHCCP). The details of the financing and repayment, specifically how the Department will charge each SWP contractor for future costs for implementation of the BDCP and DHCCP, has not been determined. Each contractor's participation in the implementation and financing of the BDCP and DHCCP should be voluntary. The Agreement in Principle and subsequent contract amendments should limit each contractor's obligation to fund any implementing and related BDCP and DHCCP projects to only to those contractors that agree to participate in those projects. Butte and Plumas shall not be responsible for any costs incurred by the Department for the BDCP and DHCCP unless each of them agrees to pay for such costs in the Agreement in Principle and subsequent contract amendments to the Statement of Charges.*

Notwithstanding the fact that, following July 9, 2013, some 18 additional public negotiating sessions were available to publicly discuss and evaluate Revised Objective No. 4, the Public Negotiation participants of the Contract Extension Project – over the clear objections of Butte County and Plumas County – did not include Objective 4 in the draft Agreement in Principle (AIP) document that is now being circulated to the SWP Contractors for signature.

The AIP will form the basis for the description of the project in the DEIR for the SWP Contract Extension Project. It is an essential financing assurance for the BDCP. Plumas has been invited to join a future negotiation on cost allocations for the BDCP among SWP Contractor beneficiaries, a process that is presently scheduled to commence sometime in December 2014.

Unfortunately, the schedule proposed for continued cost allocation negotiations among State Water Contractors will prevent even successful outcomes from being analyzed either in this EIR-EIS or in the DEIR that will be circulated for the SWP Contract Extension Project. Furthermore, agreements among the SWP Contractors that may be reached in this future process may not be binding either on DWR or on the Federal CVP contractors.

Accordingly, there is confusion how and when the public will be able to participate in the cost allocation analysis for the BDCP project. Without an opportunity to fully participate in the cost allocation analysis, how can the public influence the final determination of BDCP project costs and benefits?

### **Fair Taxation Concerns:**

Plumas is dismayed to read in the BDCP draft EIS/EIR, as discussed in the attached comments, that the newly released Implementation Plan fails to disclose the real costs of the entire project and how those costs will be apportioned among the State and Federal Contractor “beneficiaries” as well as what costs will be borne by the public through bonds or property tax increases in the export service areas for the SWP and the Central Valley Project CVP. This omission is discussed in the attached comments on Page 9 in the section titled, “Failure to Ensure Adequate and Reliable Sources of Funding”.

Plumas also attaches and incorporates a letter by the Howard Jarvis Taxpayers Association that supports Plumas’s position that costs be clearly described, cost allocations be affirmed by the beneficiaries in a public process, and that liabilities associated with unforeseen and underestimated costs be clearly described and addressed.

As a local government that is bound by the requirement that new taxes be supported by a vote of the beneficiaries/taxpayer, Plumas is concerned that this lack of clarity of costs and cost allocations amounts to a blank check for the proposed “Authorized Entity Group” (AEG).

A vote on the BDCP Tunnels Project by the taxpayers of California is not required. Instead, the California State Legislature created the Delta Stewardship Council in 2009 by enacting SBX7 1, the Delta Reform Act. The Council’s primary mission is to adopt a comprehensive management plan for the Sacramento-San Joaquin Delta (the “Delta Plan”) that achieves the “co-equal goals” of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

Therefore, Plumas recommends that the final EIR/DEIS fully disclose and integrate compliance with the cost of service requirements of the California Constitution Article XIIA and C (Propositions 13, 26, and 218) with the “co-equal” goals for the BDCP Tunnels Project. This has not been accomplished to date, and deferring such decisions to the AEG in the Implementation Agreement does not allow the Delta Stewardship Council to escape their delegated legislative responsibility to uphold California constitutional financing standards.

### **Senior Water Rights Concerns:**

The AEG has also been given the authority in the Implementation Agreement (IA) for the draft BDCP EIR/EIS to use “adaptive management” to amend the mitigations and conservation measures CM2-22. Plumas is deeply concerned that this authority could be used to overturn existing water rights priorities in California, by granting the junior water rights CVP and SWP Contractors immunity from state and federal endangered species and water quality inflow and outflow requirements in the Bay-Delta Estuary. A foreseeable result of new and potentially unlawful authority granted to the AEG in the IA for the BDCP EIR-EIS is that this adaptive management authority could be used to make senior water rights holders, especially in the

Sacramento River and in-Delta portions of the Bay-Delta watershed responsible for providing flows to meet fishery, environmental habitat, and water quality requirements in the Bay-Delta Estuary. Under existing CVP and SWP contracts, the junior water rights holders with contracts to use CVP and SWP project water are responsible for meeting ESA and Water quality standards in the Bay-Delta Estuary that are associated with their water export operations in the Bay-Delta. As discussed in the attached comments on Page 25, *“Although the BDCP and the EIR-EIS simply assume that the project will be benign for holders of water rights, the State Board’s comments on the administrative draft EIR-EIS reveal a problem persisting in the latest draft: ‘implementation of the BDCP project will require changes to water rights and water right requirements. Further, the proposed project may affect other legal users of water through changes in salinity and flows.’ “*

The risk of this outcome is unacceptable, unlawful, and is not avoided by simply ignoring it in the EIR-EIS. Plumas strongly recommends that a clear discussion of the IA and the CM-1’s affects on senior water rights be included or the EIR-EIS analysis is fatally deficient and vulnerable to legal challenge.

As the attached comments describe in detail in Exhibit A, the BDCP and the BDCP EIR-EIS is a project with considerable uncertainties about its environmental benefits, about its overall costs and cost allocations to CVP and SWP contractors as well as to the California taxpayers.

### **Conclusion**

In conclusion, Plumas vigorously opposes the BDCP project and the BDCP EIR-EIS as currently presented. Plumas recommends that the EIR-EIS document, its proposed CM-1 project and its proposed IA governance structure be withdrawn, redesigned, reanalyzed, and re-circulated for at least 120 days of public comment.

Signed on behalf of the Board of Supervisors for the County of Plumas and on behalf of the Plumas County Flood Control and Water Conservation District, by:



Robert A. Perreault, Jr.

Director of Public Works, Plumas County and

Co-Manager, Plumas County Flood Control and Water Conservation District

### Enclosures:

- A. County of San Joaquin Comments, dated June 23, 2014, on the Draft BDCP and Draft BDCP EIR/EIS; including other related documents (101 Pages)
- B. Letter, dated April 11, 2014, from Howard Jarvis Taxpayers Association to California Resources Agency (2 Pages)