



Keeping Northwest California wild since 1977

July 29, 2014

BDCP Comments
Ryan Wulff, NMFS
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Sent via email transmission to BDCP.Comments@noaa.gov

RE: Comments on Draft BDCP and BDCP Draft EIR/EIS

Dear Mr. Wulff,

The Environmental Protection Information Center (EPIC) works to protect and restore ancient forests, watersheds, coastal estuaries, and native species in Northern California. EPIC uses an integrated, science-based approach, combining public education, citizen advocacy and strategic litigation. On behalf of over 20,000 EPIC members and supporters, and the 8,889 individuals who signed the [petition to stop the Bay Delta Conservation Plan](#), we respectfully request that the Bay Delta Conservation Plan and Draft EIR/EIS be abandoned.

The Draft Environmental Impact Report/Statement (DEIR/S) for the Bay Delta Conservation Plan (BDCP) uses models based on over-allocated water rights to analyze the plan's impacts, which would result in severe environmental consequences. Building more irrigation infrastructure, as the BDCP proposes, is not going to fix drought problems in California, instead these projects will exacerbate drought conditions. The proposed plan would result in impacts to endangered fish by reducing flows to impaired watersheds, draining estuaries that are essential to healthy river ecosystems, and allowing the continued operation of pumps that will kill fish that are protected under the Endangered Species Act. As proposed, the "conservation plan" is flawed and should be abandoned or revised to reduce exports that take water out of rivers, it should instead prioritize delta recovery, and improve water conservation, recycling and storm water capture measures.

The 40,000 page BDCP document fails to disclose cumulative effects to our rivers and salmonids. The BDCP contains major flaws resulting in irreversible environmental impacts, and for the many reasons outlined below, the plan must be rejected.

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1. Policy must be written into the BDCP to prevent environmental rollbacks from occurring during drought emergencies.
2. In order to mitigate impacts to protected species, delta exports must be reduced, not increased.
3. The BDCP is not consistent with its own biological objectives and the requirements of the federal and state Endangered Species Acts because operation of the tunnels would contribute to the decline of numerous fisheries, which have already decreased by 90% or more since the inception of the State Water Project.
4. Habitat restoration project funding and success must be assured prior to construction of the twin tunnels, because of the uncertainties expressed by the scientific community. No commitment can be made to invest in tunnel costs or construction until restoration actions have demonstrated a benefit to the delta, as called for in the 2009 Delta Reform Act.
5. The BDCP fails Endangered Species Act requirements for ecological benefits to the proposed seasonal floodplain inundation of the Yolo Bypass and impacts to salmonids.
6. In order to avoid take of listed species, the BDCP must be amended to require improvements to fish screens and salvage operations to mitigate reverse flow impacts on fisheries at the existing South Delta export facilities at Jones and Banks that would continue to pump during dry years.
7. In order to comply with the Clean Water Act Section 401 and 303, the BDCP must establish science based flow criteria that restore the Delta through in-stream water rights that provide legal protection for the flow needs of sensitive waterways and the species they support.
8. The Plan's "Conservation Measures" are inadequate and must be amended to include adaptations to climate change that are supported by quantitative data. Policies must be amended to include cost effective climate change responses such as water efficiency, water conservation and demand reduction.
9. DEIR/S Chapter 11 Page 11-55 says that the flow impacts on key fish species migration cannot be determined. This is unacceptable, as the public and scientific community cannot properly assess the validity of a document addressing impacts on endangered fish species the plan is supposed to recover if the impacts to protected species are undetermined.
10. BDCP water operations modeling erroneously assumes that the High Outflow Scenario (HOS) water would all come from Oroville, which does not comply with the Coordinated Operations Agreement between DWR and Reclamation. It is likely that Shasta, Trinity and Folsom would see their cold water pools depleted by the HOS.
11. BDCP modeling assumptions that there will be no changes or impacts to the Trinity River are unsubstantiated because there are no specified limits to the amount of water that can be exported from the Trinity River Basin. To avoid

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significant environmental impacts, the plan must include specific limits of water that can be exported from the Trinity River Basin.

12. The information provided in Chapter 8 does not provide assurances that adequate funding will be provided to implement conservation actions to minimize effects to threatened or endangered species to satisfy the federal Endangered Species Act (USC 1539(a)(2)(A)) or the Natural Community Conservation Planning Act ([Fish & Game Code 2820(a)(10)).
13. BDCP documents must be amended to include specified limits to the amount of water that can be exported from the Trinity River Basin in order to avoid cold water pool depletion.
14. Total consumptive water rights claims for the Sacramento and Trinity River basins exceed annual average unimpaired flows by a factor of 5.6 acre-feet of claims per acre-foot of flow. The Central Valley Project and the State Water Project have failed for decades to have enough water to fulfill the contract-based demands of their numerous contractors in the Central Valley and southern California. The proposed project uses modeling based on water rights that allocate more water than exists. If the project is carried out based on this data, it will result in significant environmental impacts to rivers and fish that have not been disclosed in the DEIR/S.
15. The absence of clearly analyzed and legally reliable water availability for aquatic resources means that the state and federal fishery agencies risk incidental take of protected species for the benefit of the Applicants.
16. The BDCP must outline how new Trinity River management approaches address over allocated water rights and water management for the benefit of fish and the Trinity River watershed communities.
17. The BDCP DEIR/S must be amended to assure that the Trinity River and its beneficial uses will be protected for existing or future CVP and SWP operations to keep viable fish populations below Trinity and Lewiston Dams.
18. Page 5-60 of the BDCP must be amended to prevent catastrophic loss of cold water storage and basic flows to keep fish in good condition below Trinity and Lewiston Dams.
19. In order to protect fish listed under the Endangered Species Act, the proposed project must be amended to include pumping constraints in the Delta that will minimize the risk of losing cold water from the Trinity and Lower Klamath rivers stored in Trinity Lake to out of basin export.
20. BDCP models must be amended to acknowledge the 50,000 acre-feet Humboldt County area of origin reservation of water.
21. Comprehensive Trinity River Basin Plan temperature objectives must be fully described, analyzed and incorporated in the BDCP environmental documentation and policy, as well as the Bureau of Reclamation's state water permits.
22. The BDCP must be amended to include policy that incorporates the NMFS 2000 Biological Opinion for the Trinity River, which includes a minimum carryover

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storage on September 30 of at least 600,000 AF and requires re-consultation if storage falls below that level.

23. Fracking should not be considered a reasonable use of water under the BDCP. As proposed, the BDCP considers fracking a reasonable use of water. Since the BDCP facilitates fracking, it must also disclose the environmental impacts of fracking. One hydraulic fracking well uses 3 to 8 million gallons per day. California's water is already over allocated and fracking puts water supplies at risk, especially when developers drill through aquifers en route to gas reserves in shale. Waste water from Fracking is so contaminated it cannot be recovered, and the chemicals are left in the ground.
24. The BDCP must address and mitigate impacts to listed species in the Sacramento River including winter and spring run Chinook due to habitat loss and incidental takes such as mortalities caused by pumping facilities, low water quality, and loss of habitat.

In order for the Trinity River to be protected, BDCP and its EIR/EIS must at a minimum include a recommendation that the SWRCB convene a Trinity-specific water right hearing as directed in SWRCB Water Quality Order 89-18. The water right hearing shall license Reclamation's eight Trinity River water permits as follows:

- Conformance with the in-stream fishery flows contained in the Trinity River Record of Decision.
- Provision for release of Humboldt County's 50,000 AF in addition to fishery flows per the 1955 Trinity River Act.
- Inclusion of permit terms and conditions to require Reclamation to comply with the Trinity River temperature objectives contained in the Water Quality Control Plan for the North Coast Region (NCRWQCB) for all relevant time periods and for all uses of Trinity water diverted to the Sacramento River.
- A requirement to maintain an adequate supply of cold water in Trinity Reservoir adequate to preserve and propagate all runs of salmon and steelhead in the Trinity River below Lewiston Dam during multi-year drought similar to 1928-1934.
- Eliminate paper water in Reclamation's Trinity River water rights.
- Require Reclamation to solve the temperature issue in Lewiston Reservoir through a feasibility study and environmental document to follow up on the 2012 preliminary technical memorandum by Reclamation.

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In summary, the Bay Delta Conservation Plan is inadequate for many reasons and if implemented, it would result in major environmental impacts to rivers and estuaries that are already impaired and several fish species that are protected under the Endangered Species Act. Building two giant tunnels to transport water from the San Joaquin Delta is not going to carry out either of the plan's two main goals: to reliably transport more water to San Joaquin farms and Southern California cities, or to restore the fisheries and ecology of the delta. The risks of the proposed project are too great. Please abandon the Bay Delta Conservation Plan before irreparable damage is done.

Please send me a copy of your response to my comments, and put me on the notification list for any future communications, notices and public comment periods etc. related to the Bay Delta Conservation Plan and related Draft or Final Environmental Impact Statements / Reports.

Respectfully,



Amber Shelton
Conservation Advocate

Attachment 1 – List of individuals who signed petition to “Stop the Bay Delta Twin Tunnels Project and the Pristine Northern California Watersheds” at:

<https://takeaction.takepart.com/actions/stop-the-bay-delta-twin-tunnels-project-and-protect-the-pristine-northern-california-watersheds>