



RURAL COUNTY REPRESENTATIVES
OF CALIFORNIA

October 27, 2015

Secretary Sally Jewell
U.S. Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

Secretary John Laird
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Secretary Penny Pritzker
U.S. Department of Commerce
1401 Constitutional Avenue, N.W.
Washington, DC 20230

Secretary Matt Rodriguez
California Environmental Protection
Agency
1001 I Street
Sacramento, CA 95814

Administrator Gina McCarthy
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
MC 1101A
Washington, DC 20460

Transmit via Email: BDPCComments@icfi.com

RE: Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement

Dear Secretaries Jewell, Laird, Pritzker, Rodriguez and Administrator McCarthy:

On behalf of the thirty-four member counties of the Rural County Representatives of California (RCRC), I appreciate the opportunity to provide comments on selected sections of the Bay Delta Conservation Plan (BDCP)/California WaterFix Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). RCRC also want to express our appreciation that the public comment period, originally scheduled to end on August 31, 2015 has been extended to October 30, 2015.

On July 29, 2014, RCRC submitted extensive comments on the draft BDCP, Draft Environmental Impact Report/Environmental Impact Statement (DEIR/EIS) and the Implementing Agreement (IA). The previously released draft BDCP had been developed to support issuance of long-term incidental take permits that met the requirements of Section

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10(a)(1)(B) of the federal Endangered Species Act, as well as Section 2800 *et seq.* of the California Fish and Game Code, for certain actions proposed within the statutorily defined Sacramento-San Joaquin Delta (Delta) for the term of fifty years. The RCRC July 29, 2014 comment letter can be accessed at:

http://www.rcrcnet.org/sites/default/files/documents/Bay_Delta_Conservation_Plan_Ltr_072_92014.pdf.

As you know, the proposed BDCP has now been recast as two separate efforts – water conveyance under California WaterFix and habitat restoration under California EcoRestore - and the effort to secure federal Habitat Conservation Plan/state Natural Community Conservation Plan (HCP/NCCP) designation has been abandoned. These comments focus primarily on California WaterFix.

Given that the RDEIR/SDEIS is currently the subject of public comment and is yet to be finalized, RCRC questions the timing of the Department of Water Resources (DWR) application to the U.S. Army Corps of Engineers (Corps) for a permit to construct the California WaterFix project. Additionally, RCRC questions the timing of the DWR and U.S. Bureau of Reclamation's (Bureau) Joint Petition to the State Water Resources Control Board (Board) for a change to water rights necessary to allow for the implementation of California WaterFix, specifically the authorization to add three additional points of diversion for both the State Water Project (SWP) and the Central Valley Project (CVP). Both the permit application before the Corps and the petition for change before the Board rely on the recirculated environmental documents for the California WaterFix project. The permit application and change petition for Alternative 4A appears to predetermine the outcome of the ongoing environmental review process. At the very least, this poses a public perception problem.

Alternative 4A, the California WaterFix identified preferred alternative, would include:

- Three intake facilities along the Sacramento River, near the communities of Clarksburg and Hood, with fish-screened, on-bank intake structures;
- Two gravity-flow water conveyance tunnels (North Tunnels) would connect the intakes to an Intermediate Forebay (IF), located northeast of Snodgrass Slough and Twin Cities Road;
- The IF would receive water from the North Tunnels, equalize pressure, and pass the water to the dual gravity-flow Main Tunnels;
- The dual main tunnels would connect the IF to the existing Clifton Court Forebay (CCF). A Pumping Plant would be located at the northeast corner of CCF to pump the water from the tunnels into the forebay;
- CCF would be expanded and divided into two parts, the North Clifton Court Forebay (NCCF) and the South Clifton Court Forebay (SCCF);
- Eleven disposal sites are proposed for tunnel material excavated from both the north tunnels and the dual main tunnels;
- The proposed project would also include a permanent operable barrier at the head of Old River;
- Operations of the three new intakes at up to 3,000 cubic feet per second each; and,
- Re-operation of the intake at the CCF.

RCRC appreciates a number of the changes made to the previous version of the BDCP including the recognition that increased north of the Delta water demand is anticipated. Despite these changes, there are concerns raised by RCRC in our July 29, 2014 comment letter that remain.

RCRC has reviewed the Delta Independent Science Board (DIS Board) draft comments on the RDEIR/SDEIS for California WaterFix dated September 14, 2015, and the DIS Board final comment letter dated September 30, 2015. The DIS Board September 30, 2015 comment letter can be accessed at: <http://deltacouncil.ca.gov/docs/final-delta-isb-comments-partially-recirculated-draft-environmental-impact-reportsupplemental>.

RCRC agrees with many of the DIS Board observations. The DIS Board finds that the RDEIR/SDEIS lacks completeness, defers essential material to the Final EIR/EIS, and retains a number of deficiencies from the BDCP DEIR/DEIS.

The DIS Board identified the following gaps:

- Details about the adaptive management process, collaborative science, monitoring, and the resources that these efforts will require;
- Due regard for several aspects of habitat restoration: landscape-scale, timing, long-term monitoring, and the strategy of avoiding damage to existing wetlands;
- Analyses of how levee failures would affect water operations, and how the implemented project would affect the economics of levee maintenance;
- Sufficient attention to linkages among species, landscapes, and management actions; effects of climate change on water resources; effects of the proposed project on San Joaquin Valley agriculture; and uncertainties and their consequences; and,
- Informative summaries in words, tables, and graphs that compare the proposed alternatives and their principal environmental and economic impacts.

RCRC has also reviewed the DWR statement regarding the DIS Board's comments on the DREIR/SDEIS that was issued shortly after the DIS Board released their draft comments. DWR made the case that since an HCP/NCCP designation is not being pursued, certain issues raised are beyond the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and beyond the scope of an EIR/EIS. While this contention may be technically correct, RCRC agrees with the DIS Board's statement that given that the consequences of California WaterFix are of statewide importance circumstances "*...demand that the California WaterFix EIR/EIS go beyond legal compliance.*"

While the lead agencies contend that they are not required to include certain information in the Final EIR/EIS to meet minimum CEQA and NEPA requirements, California WaterFix will be required to secure a variety of permits and will additionally be required to be found in compliance with the Delta Plan adopted by the Delta Stewardship Council. As California WaterFix and California EcoRestore will not be pursued as an HCP/NCCP, they will not be incorporated into the Delta Plan pursuant to Water Code Section 85320. Instead, the two initiatives will be subject to the consistency certification provisions of Water Code Sections 85225-85225.25. As you may know, consistency certifications can be appealed to the Delta Stewardship Council by any person who claims that an action is inconsistent with

the Delta Plan and, as a result of that inconsistency, the action will have a significant adverse impact of the achievement of one or both of the coequal goals or implementation of government-sponsored flood control programs to reduce risks to people and property in the Delta. Given this fact, RCRC suggests that the proponents of California WaterFix provide decision-makers and the public relevant information that goes beyond the minimum CEQA and NEPA requirements as urged by the DIS Board.

RCRC's primary concern remains the lack of assurances for areas upstream of the Delta and in-Delta as it relates to regional water sustainability, water rights protections, and no negative unmitigated direct or indirect impacts to the water supply, economy, and environment of these areas.

In the U.S. Environmental Protection Agency (U.S. EPA) letter to the National Marine Fisheries Service (NMFS) dated August 26, 2014, the U.S. EPA specifically addressed the issue of upstream/downstream impacts stating on page 3:

"The federal and State water management systems in the Delta are highly interconnected, both functionally and physically. The Draft EIS does not address how changes in the Delta can affect resources in downstream waters, such as San Francisco Bay, and require changes in upstream operations, which may result in indirect environmental impacts that must also be evaluated. We recommend that the Supplemental Draft EIS include an analysis of upstream and downstream impacts."

Additionally, on page 15, the U.S. EPA states:

"Upstream operational changes caused by BDCP implementation could have significant environmental and water supply impacts in the upstream areas, and these impacts must be disclosed in the DEIS."

The August 26, 2014 U.S. EPA letter can be accessed at:
<http://www.ewccalifornia.org/reports/epa-bdcp-deis-comments-8-26-2014.pdf>.

Despite the recommendations of the U.S. EPA noted above, the RDEIR/SDEIS states in the Water Supply, Revisions to Cumulative Impact Analyses section on pages 5-9 the following:

"None of the alternatives would modify water deliveries to non-SWP and non-CVP water rights holders, including in-Delta water rights holders. Therefore the water supply analysis addresses impacts to DWR, Reclamation, and SWP water users and CVP water service contractors, as opposed to other water rights holders, as the BDCP does not include any actions that would affect water availability to any such water rights holders."

Operations at upstream reservoirs including Central Valley Project (CVP) owned and operated reservoirs does impact non-SWP and non-CVP water rights holders. As noted in the RCRC July 29, 2014 comment letter, the 2014 drought year showed that the approach to the operations of the CVP and the SWP needs to be modified to ensure a stable supply of water is maintained in the reservoirs that feed into the CVP and SWP in order to meet the

needs of Northern California while also serving export interests and meeting requirements in the Delta. RCRC urged at that time that state and federal agencies make a commitment that operations will be modernized to accomplish this balance.

Although California WaterFix may improve water supply reliability for water contractors downstream of the Delta, it does not improve reliability for in-Delta or upstream users. RCRC continues to urge that potential impacts on in-Delta and upstream water users be analyzed and mitigated.

Please feel free to contact me if you have any questions at (916) 447-4806 or kmannion@rcrcnet.org.

Sincerely,



KATHY MANNION
Legislative Advocate

cc: Governor Jerry Brown, State of California
Director Mark Cowin, California Department of Water Resources
Director Charlton Bonham, California Department of Fish and Wildlife
Members, State Water Resources Control Board
Members, Delta Stewardship Council
Mr. Ryan Wulff, National Marine Fisheries Service
Regional Director Ren Lohofener, U.S. Fish and Wildlife Service Pacific
Southwest Region
Regional Director David Murillo, U.S. Bureau of Reclamation Mid-Pacific Region
Regional Administrator Jared Blumenfeld, U.S. Environmental Protection Agency
Region 9