

July 29, 2014

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

Re: Comments on the Bay Delta Conservation Plan

Dear Mr. Wulff:

The California Water Association (CWA) represents the interests of approximately 115 investor-owned water utilities that are regulated by the California Public Utilities Commission (CPUC). The CPUC, in turn, jointly cooperates with the California Department of Water Resources and the State Water Resources Control Board (State Board) in the disposition of its regulatory and customer service obligations associated with water supply, water-use efficiency, water rights and water quality.

These CPUC-regulated water companies serve nearly 6 million Californians with safe, reliable, high-quality drinking water. All of CWA's largest members (those with more than 10,000 service connections) receive water directly or indirectly from the State Water Project (SWP). Therefore, CWA has a threshold interest in promoting and maintaining the overall health of the Sacramento-San Joaquin Delta (Delta) ecosystem, in order to provide high quality water utility services to customers throughout California.

Equally significant, CWA's member utilities represent millions of people whose water bills will be affected by the implementations of the Bay Delta Conservation Plan (BDCP or Plan). CWA appreciates the opportunity to comment on the public review draft of the Plan and the associated Draft Environmental Impact Report/ Environmental Impact Statement (DEIR/EIS).

1. Co-Equal Goals

For decades, the State has struggled with how to address the range of challenges facing the Delta. In 2009, more than three years after BDCP planning began, the State enacted comprehensive legislation designed to advance several broad goals of the State with regard to the Delta. The Legislature declared it was a priority of the State to:

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“Achieve the two coequal goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.” (California Pub. Resources Code, § 29702).

Although BDCP planning efforts began prior to enactment of the 2009 legislation, the legislation, in which CWA was actively engaged and supported, has served to reinforce similar BDCP planning goals and to help guide development of the Plan. Clearly, the current operations in the Delta cannot be sustained; the decline of the Delta should not be allowed to continue. Equally clear is the fact that doing nothing is not an option, nor is reducing water supply reliability and quality for 25 million Californians a practical solution.

Thus, CWA views the ultimate purpose of the BDCP as a means to establish a comprehensive solution that achieves California’s co-equal goals of improving water supply reliability and enhancing the Delta ecosystem. Given the very real prospect of continued supply constraints, chronic droughts and increasingly challenging needs to maintain drinking water quality, CWA is supportive of these efforts, and hopes the BDCP ultimately succeeds in solving California’s perpetual water supply and Delta ecosystem concerns.

CWA has reviewed significant portions of the Plan and the DEIS/EIR and is impressed with how the 22 conservation measures are designed to work together to achieve the co-equal goals. As a Habitat Conservation Plan (HCP) under Section 10 of the federal Endangered Species Act, and a Natural Community Conservation Plan (NCCP) under California Fish and Game Code sections 2800 *et seq.*, the BDCP offers a path to regulatory stability for the State and its water users.

To that end, CWA anticipates that implementation of the BDCP will increase water supply reliability by building on the extensive body of scientific investigation undertaken to date, developing a transparent and science-driven process that allows for a range of operational outcomes, and establishing a sound adaptive management and monitoring process throughout the 50-year implementation that will enable the Plan to adapt over time to emerging science and the evolving ecosystem. In particular, CWA appreciates that the Plan allows for enough operational flexibility such that increased storage will be facilitated in wet years, thereby compensating for a lack of water in dry years.

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2. Funding.

CWA notes that Conservation Measure (CM) 1, *Water Facilities and Operation*, is designed to satisfy the first twin goal, water supply reliability, while Conservation Measures 2 through 22 are designed to achieve the second twin goal of ecosystem restoration. Further, CM1 accounts for 65 percent of the BDCP's total cost of nearly \$24.8 billion, while CM2 through CM22 will require 35 percent of the total cost.

CWA agrees with the Legislative Analyst's Office (LAO) that the cost assumptions for design and construction of the dual conveyance system, habitat restoration, fisheries enhancement, tidal and other natural communities restoration, wetlands restoration, and other conservation measures, plus the discount rates used to compare benefits and costs of alternatives, all appear to be reasonable. Legislative Analyst's Office, *Financing the Bay Delta Conservation Plan*, February 12, 2014, p. 3.

CWA also agrees with the LAO that it would have been useful to include financing costs in the Plan's \$24.8 billion price tag. CWA recognizes that certain aspects of the BDCP's financing plan are inherently uncertain, given the reliance on a wide spectrum of contracting agencies, on state funding through taxpayer-funded bonds, and on federal funding approved through Congressional appropriations. However, this risk must be balanced against the risks of not acting to mitigate the potentially catastrophic impacts of land subsidence, saltwater intrusion or seismic events.

CWA has been supportive of the "beneficiary pays" principle for allocating the costs of the BDCP, with costs for each portion of the Plan being paid for by the parties benefiting from that portion of the Plan. In practice, that generally means that supply reliability will be paid for by water users and water customers, while the ecosystem restoration and other public benefits will be borne by the taxpayer.

With respect to the proposed conveyance facilities, the public water agencies participating in the project, that is, the SWP contractors and Central Valley Project (CVP) contractors, will bear the cost of those facilities. Approximately 90 percent of the \$8.73 billion estimated for the costs of conservation, habitat and ecosystem restoration, and other similar measures providing an overall public benefit, will be paid for from public funds (the remaining 10 percent, an estimated \$903 million, will come from water utility customers).

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While the 'beneficiary pays' principle is logical and rational in the context of the BDCP, its practical impacts also should be taken into account. While the Plan estimates a per capita cost of \$580 in undiscounted 2012 dollars for the conveyance facilities (Chapter 8; Table 8-44; p. 8-80), this amount is much higher when financing costs are included, and the estimate is applied on a per customer (service account), rather than per capita, basis.

For example, if the affected average residential customer's bill increases by \$15-20 per month as a result of CM1, this increase will come on top of recent increases all public water systems have experienced, and they have been met with significant resistance from customers. Moreover, the BDCP cost increases absorbed by water utility customers must not "crowd out" the essential local infrastructure investments (pipe replacement, water treatment, storage, recycling, meter replacement, etc.) that are just as important for both water quality and water supply reliability.

CWA hopes the Plan will accommodate the need for these other investments by evaluating 'beneficiary pays' in the context of the continued need in all areas of water infrastructure investments.

3. Water Rights

The California Water Code (Division 2, Section 1000 *et seq.*) prescribes detailed procedures that govern the appropriation of water from a lake, river, stream, or creek. These provisions require any person or agency seeking to use surface water, without an existing riparian right, to apply for and receive approval for such use from the State Board. Water rights permits granted by the State Board include detailed descriptions of the amounts and conditions that apply to proposed diversions.

The SWP and CVP currently operate under water rights permits and decisions issued by the State Board. As conditions of the projects' water right permits and licenses, the State Board requires the SWP and CVP to meet specific water quality, quantity, and operational criteria upstream and within the Delta. The Department of Water Resources and the U.S. Bureau of Reclamation closely coordinate SWP and CVP operations, respectively, to meet these conditions.

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Implementation of the BDCP will require a change in the points of diversion specified in DWR and Reclamation's water right permits. Otherwise, the BDCP should not affect existing water rights. However, this issue is not clearly addressed in the current draft of the BDCP.

Section 5.3.1 of the DEIR/EIS states:

"The water supply analysis [in the BDCP] addresses changes to water supply to SWP and CVP water users in the Delta region, upstream of the Delta Region, and Export Service Areas due to implementation of BDCP conveyance facilities (CM1) and other conservation measures, specifically tidal marsh habitat restoration (CM4). The alternatives would modify the operations of the SWP and CVP facilities but *would not modify the operations of water resources facilities owned and/or operated by other water rights holders*. Therefore, the water supply analysis addresses impacts to DWR, Reclamation, and SWP and CVP contractors, as opposed to other water rights holders, *as the BDCP does not include any regulatory actions that would affect any such water rights holders.*"

DEIR/EIS, § 5.3.1 (emphasis added); *see also id.*, § 5.3.1.1 fn. 16 ("As mentioned in Section 5.3.1, the BDCP does not include any regulatory actions that would affect any water rights holders. Therefore, deliveries to senior water rights holders (pre-1914) are not discussed in this chapter and are not included in discussion of model limitations in this section, although they have the utmost priority in receiving surface water supplies.").

While these provisions suggest that the BDCP will not affect senior water rights holders, such a cursory analysis is inadequate. CWA therefore requests that the BDCP and DEIR/EIS be revised to clarify that implementation of the BDCP will indeed preserve senior water rights. In particular, given that the BDCP is an HCP under federal law and an NCCP under California law, the documents should explain that the Plan will not affect the water rights of any existing senior water rights holders.

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4. Conclusion

CWA supports the ongoing BDCP efforts and is encouraged by the progress made in the draft Plan and DEIR/EIS. Thank you for the time and effort expended on the BDCP stakeholder and public participation process.

CWA appreciates the opportunity to provide these comments. If we can provide additional information regarding any of the issues addressed above, please do not hesitate to contact me at jhawks@calwaterassn.com.

Sincerely,

A handwritten signature in black ink that reads "Jack Hawks".

Jack Hawks

cc: Honorable Catherine J.K. Sandoval; California Public Utilities Commission
Rami S. Kahlon; Director, CPUC Division of Water and Audits
Bruce DeBerry; Program Manager, CPUC Division of Water and Audits
California Water Association Executive Committee