APPENDIX G6: 2008 INDIVIDUALS PRELIMINARY SCOPING COMMENTS

Kathy Hunn

From: Amanda Beck [papuzabeck@gmail.com]
Sent: Wednesday, May 28, 2008 12:36 PM
To: Kathy Hunn
Subject: Re: ND CARES

Kathy,

I am not sure exactly what I said, but the steering committee should have a record of the comments as they are part of the administrative record for the project. The administrative record should be publically available.

However, my questions surrounded why the habitat restoration was being planned, who owned the land that was being "restored", how the land was being aquired, and whether the land was being planned as mitigation for the planned conveyance system.

Thanks and take care,
Amanda

On 5/27/08, **Kathy Hunn** <phunn@frontiernet.net> wrote:

> Hello Interested Citizens,
>
> Recently I sent you an email requesting a printed copy of the statements you made at the Scoping meeting in Clarksburg on Wednesday, April 30th. We have a deadline this week to send any and all comments to the Scoping Committee and we are trying to reconstruct in writing all the statements that were made that night. Would you be willing to email me a copy of your statements as closely as possible to what you presented that evening by today, May 27th, or tomorrow at the latest? Thank you for your time and effort on this.
>
> Kathy Hunn
>
> No virus found in this outgoing message.
> Checked by AVG.
> Version: 7.5.524 / Virus Database: 269.24.1/1468 - Release Date: 5/26/2008 3:23 PM

No virus found in this incoming message.
Checked by AVG.
Version: 7.5.524 / Virus Database: 269.24.1/1470 - Release Date: 5/28/2008 7:20 AM

My name is Andy wallace and I live here in Clarksburg. I am the third generation and my kids are the 4th generation of Wallaces to live in Clarksburg. By Clarksburg standards, that makes us newcomers.

Procedural Comments

1. It is important to the people of Clarksburg, and the people who are interested in the project from around the state, to keep our comments in the record in their entirety, and not reduce our individual comments into general or combined comments.

2. The documented and undocumented impacts of this plan directly and indirectly affect the people of Clarksburg, yet the people of Clarksburg carry the burdens, but get none of the benefits of this project.

3. This admirable goal or "fixing the delta" is meaningless if, at the end of the day, it ends up creating just enough smelt to keep transferring more water to Southern California. There is nothing "co-equal" in California water politics, the delta and ITS people are always going to come last.

4. The nature and character of the delta today is recognized as valuable in this document, yet our re-development interests are specifically rejected by this document, replaced with the unbridled growth of Southern California. This is an arbitrary and capricious attempt to shift the burden of development on the very people who are themselves not able to develop.

Technical Issues

1. Tidal marsh wetlands have significant odor problems, as anyone who has driven by one knows, which create objectionable and nuisance odors for the community. How will these be mitigated?

2. By improving habitat for delta smelt, other listed species could begin using the area, and potentially be creating new legal issues for the community, further reducing our ability to exercise our property rights. How will the community be protected from the consequences of this likely impact? Consider this a request for a Clarksburg Safe Harbor Agreement.

3. If West Nile Virus increases in this area, it is expected to have significant impacts on native birds. How are these impacts analyzed and mitigated for?

4. Water transfer should be delinked from this process and the health of the watershed should be the primary focus of these efforts. Let's prove that the species that use the delta can be managed sustainably, over droughts, before we begin discussing water transfer.

5.Converting freshwater habitat to brackish water habitat will have negative influences on the ecosystems that have adapted to the upper delta, leaving this area as one of the last reservoirs of species, such as listed turtles and birds. Now the state wants to reduce their habitat for a fish that is largely limited by Southern California's water intakes? The sole purpose of this document is an attempt to commingle the issues of habitat restoration and water supply.

6. Loss of farmland in the delta will have ripple effects with ag equipment suppliers, truck dealers, seed suppliers, etc., where good paying stable jobs will be directly impacted and lost. How will this plan mitigate for the losses of those jobs?

Andrew S. Wallace
52652 Clarksburg Road
Clarksburg, CA 95612
916-744-1225

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

-- Comment Card --

Date: 05/26/2008

PLEASE PRINT

Name: Debbie Kuhagen Organization : Landowner/Farmer

Telephone: 916-775-4665 e-mail: debbie@consoft.net

Address: P.O. Box 775

City: Walnut Grove State: CA Zip: 95690

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

My vineyard and home is located at 42494 Waukeena Road, Clarksburg, CA 95612. My family homesteaded this land before the levees were developed and, through four Kuhagen generations, have kept our land alive with crops, grapes and wildlife.

Flooding our Clarksburg land will be devastating to both us and the environment:

- Downing the cotton tails/jack rabbits which are finally making a come back from extinction, thus playing a domino eliminating the food supply of other rodents for the red tail, white tail and Swainson's hawks, barn owls and horned owls.
- Harming or even possibly killing humans due to the West Nile and other mosquito infestations.
- Killing our very, very old oak trees which have been homes to the owls and hawks for years.
- Killing our prime grape vineyard which is our only income for survival.
- Destroying our over 100-year old home.
- Creating job losses for our field personnel and family memers.

If you want to eliminate all of the negative results listed above, then flood the Yolo Bypass where it is designed to handle the overflow of water during heavy rains and high river/slough waters. And, once you have flooded it, you will find out as a result from your other flooded conservation areas, the birds, fish, and wildlife will not go/survive there and will end up like another half partially dried swamp.

You can help the Clarksburg people and the environment by stop taking over land that you cannot even legally prove or even have proven in the past will benefit the area/environment. Northern California is in a drought situation. The water level in our slough is becoming very low which is beginning to affect our irrigation pumps for sand/mud is getting sucked up along with the river water for field irrigation. The Sacramento River's low water table also affects our ground water. Please don't waste what little water we have on menial environmental issues.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

Good evening and thank you for allowing us this opportunity to speak this evening.

My name is DJ Andriessen and I have lived in Clarksburg for the last 20 years.

I am a survivor of West Nile Virus. Although I still suffer some of the lingering effects of the illness, I consider myself fortunate because I survived. I understand that one in four victims doesn't. It's a devastating disease, for which we have no cure and we don't even have a handle on controlling it. Raptor birds are still dying, our chickens are contracting it, and people are still getting sick.

Creating a shallow water refuge in our area would be tantamount to creating a West Nile Virus *incubator*, affecting the entire Sacramento Valley, not just Clarksburg.

If you propose to eradicate the anticipated mosquito population with 'Evergreen Crop Protection EC 60-6', the current broad spectrum pesticide being used by the vector control agencies, then you will be killing all of the insects in the 'refuge,' beneficial or otherwise; and that would eliminate the food source of the purported reason for the project, the Smelt.

These plans need to go back to the drawing board and more workable plans developed.

Submitted by Don Fenocchio

. Good evening---------- My name is Don Fenocchio. I have lived in Clarksburg for over 55 years. My mother's family came to Clarksburg long before that. She was born in our area over a hundred years ago. Her family farmed, fished and hunted in the area. I came back to work in the school system here because I felt a dedication to the Delta. A dedication to the small towns and to the people who inhabit them. I served as an educator for almost 40 years right here in the Delta; from Clarksburg to Rio Vista.

This Delta is more than a watershed; more than a delivery system to areas south of us. It is home to a large number of people who have made their homes here----have made their living here----have raised their children here and who have worked hard to make the Delta a wonderful place to live----a wonderful place to raise their children. It is the location of a number of small historical towns. Towns that have survived the difficulties of being in a flood plain. All of the citizens of the Delta have contributed to the preservation of a way of life that has developed into a strong society.

The plan to change this historic place----these historic towns appalls me. This kind of plan stops any kind of growth and progress that is necessary to maintain the character of these small towns. The plan that I see being presented will destroy the character of these Delta towns.

YOUR EIR SHOULD----AND MUST----STUDY PLANS TO PROTECT THESE EXISTING COMMUNITIES. THE EIR MUST STUDY THE IMPACTS ON A MYRIAD OF COMMUNITY ISSUES----INCLUDING, BUT NOT LIMITED TO---- SUCH ISSUES AS DECLINING POPULATION----THE EFFECT OF SUCH A PLAN ON SCHOOLS, THE EXISTING COMMUNITY HABITATS, HEALTH, THE EXISTING ENVIRONMNET, SOCIAL ACTIVITIES----INCLUDING CHURCHES, SCOUTING, FIRE SERVICES, LIBRARIES, POLICE PROTECTION AS WELL AS COMMUNITY SOCIAL ACTIVITIES.

THESE EXISTING DELTA COMMUNITIES CANNOT BE DISCOUNTED. THEY ARE AN IMPORTANT ASSET TO THE STATE. YOUR EIR MUST ADDRESS THESE AND OTHER COMMUNITY CONCERNS. HOW WILL YOU PROTECT THE PEOPLE OF OUR IMPORTANT COMMUNITIES???????

Submitted by Father Dan Madigan
May 26, 2008

I would like to address my remarks not to the presenting panel from whom we received vague generalities nor to the local politicians who spoke to us but to the Clarksburg farmer/landowners.

First, I would like to say how much I admired our farming people who just addressed us. They spoke with clarity, integrity and total honesty.

A number of speakers said they were second, third and even fourth Delta farming people. I, too, come from farming stock. My people in Ireland have operated the same land for generations. However some years ago, the local government there destroyed our pristine countryside by inflicting on my family and their neighbors a huge polluting factory.

Sure their government officials gave notice of community meetings, but they did so in the same manner as our presenters did this evening. They advertised in abstract papers, not read by the local community. And so before my family and their neighbors woke up to what was going on, the abomination with which they now live with was imposed upon them.

I appeal to you my neighbors to not let this happen here in our Delta area. Send a clear message to the staff sitting here before us tonight, one they can take back to their bosses and that is – we will in no way tolerate any underhanded shenanigans by way of hidden agendas.

Tell them we are a very close knit community which is very much evident from our attendance here tonight. After all most of us had only 10 or so hours notice of this meeting.

~THANK YOU MY NEIGHBORS.

Marshall, Paul

From: Frances Mathews [mathewsfran@sbcglobal.net]
Sent: Thursday, May 22, 2008 9:39 AM
To: Marshall, Paul
Subject: BayDelta Conservation Plan

Dear Mr. Marshall
I have read your website about the BDCP and am wondering how it is related to the Governor's Delta Vision Task Force. The task force seems to be recommending progress on all fronts, with a final report due later this year. Does the BDCP address the conservation part of the Governor's Task Force? Are they related in any way? Would they be funded as part of the same whole moneys, or is the BDCP entirely separate, and would be looking for separate funding.
I would appreciate if you could clarify these points. Thank you for any help you can give.
Frances Mathews

Kathy Hunn

From: DandGMERWIN@aol.com
Sent: Friday, May 23, 2008 10:05 AM
To: phunn@frontiernet.net
Subject: Re: email to you

Gary Merwin
3rd Generation Clarksburg Farmer
Trustee Reclamation District 999

This panel in front of us is here to listen to comments from the public on their possible plans to save a sick Delta. Let's go to the Sacramento Bee and look at some facts available to us every day. The snow pack in the Sierra's is at approximately 66% of average. The Dams for water transfer are at 50% to 66% of where they need to be for water exporters to fulfill their contracts. There is more water flowing out of these dams right now than is flowing in and this should be the peak of the runnoff season! The Central Valley Project and DWR have never upheld their part of the contract with North Delta to provide an extra 5 million acre feet of water to help restore and keep the Sacramento San Joaquin Delta healthy. So now without ever upholding their end of the contract you want to turn our area into a tidal wetland under the false assumption that is the natural way this area was centuries ago. The historical fact is this was never a tidal wetland. This area wes seasonal swamp and overflow land that only flooded during the wettest of years. Even on wet years This area dried up at the end of Spring.

Now after never fulfilling the contract with North Delta to provide an extra 5 million acre feet of water for a healthy Delta you are going to try to fix the Delta by creating a tidal wetland. That is trying to fix a problem by attacking a symptom. Your ideas are like Nyquill. Instead of working on the symptom,You should be attacking the problem of an ailing Delta. The problem is staring you in the face! 6.5 million Acre Feet of water is contracted to export from the Delta with a Water Shed that will not support it.

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Date: 5/24/08

PLEASE PRINT

Name: HERBERT F. HEFFNER Organization:

Telephone: (916) 7441095 e-mail: herbheffner@yahoo.com (some Fmcs)

Address: P.O. Box 448

City: Clarksburg State: CA Zip: 95612

☑ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

The range of the alternatives seems limited to variations on a single theme. To better meet legal and regulatory requirements for an EIS/EIR these alternatives should be expanded to include other actions to meet the same goals. These should include at a minimum the greater regulation of land use in Southern California and the greater regulation of water usage, including establishment of water markets, metering, monitoring and a system of both fines and denial for over use; naturally there would be impacts from potential conservation and rewards for less (non-use of water in homes, industry and agriculture.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Date: 5/27/08

PLEASE PRINT

Name: Herbert F. Heffner Organization :

Telephone: (916) 744 1053 e-mail: herbheffner@yahoo.com

Address: P O Box 448

City: Clarksburg State: CA Zip: 95612

☑ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

Since a stated result of the proposed action is to create "tidal" wetlands where there were none, the potential impact on present flood zones and flood protection measures (levees, drainage, bypass basins, etc.). The shifts of tidal waters upriver to where there were none would be expected to significantly raise the risk of flooding for such communities as Davis, West Sacramento, Sacramento and Stockton plus a host of smaller rural communities.

The analysis of the above should/must include sea water levels under current scientific review due to climate change over next 50-250 years; the worst case scenario should be used to assure public safety as such levels fluctuate over time.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Date: 5/28/08

PLEASE PRINT

Name: Herbert F. Heffner Organization:

Telephone: 916.744.1095 e-mail: herbheffner@yahoo.com

Address: PO Box 448

City: Clarksburg State: CA Zip: 95612

☑ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

Your Public Participation process appears limited, to the point of not meeting legal and regulatory communities. While the Public Notice was appropriate in media placement, it was less than informative as to the extent (and nature) of the proposed action. Nor did it seem much attention was paid to the communities involved being rural with little mass media penetration and even less sophistication with federal and state environmental public policy actions. Strongly urge an assessment of the communities involved by a recognized professional (member of IPP) and the creation of a truly informative and collaborative public communications plan with measureable actions.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Date: 5/25/08

PLEASE PRINT

Name: Herbert F. Heffner Organization: (semi-retired)

Telephone: 916.7441095 e-mail: bertheffner@yahoo.com

Address: PO Box 448

City: Clarksburg State: CA Zip: 95612

☑ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

The extent of the action seems limited: it fails to include technological alternatives that could achieve the same end perhaps at lower cost in the long-run. These alternatives to be included should include desalinization using the variety of methods currently existing and proposed – those which have reached the point of sufficient maturation to allow cost and price forecasting in usage units that could be compared to existing methods and usage. Since this project will take a relatively long period to accomplish, the technological and scientific inputs should include those now in their infancy but sufficiently mature to allow economic assessment. All sources, including wastewater treatment, sewage treatment and reuse and the establishment of desalwater systems should be included.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Date: 5/26/08

PLEASE PRINT

Name: Herbert F. McFarer Organization:

Telephone: 916.7441095 e-mail: herbmcfarer@yahoo.com (some times)

Address: P O Box 440

City: Clarksburg State: CA Zip: 95612

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 30, 2008.

The proposed action includes flooding lands currently in use for agricultural, will.fl habitat and human habitation. The impact analysis should include which laws and regulations will be violated or at least impaired by this flooding, including the Delta Protection Act, also the Clean Air and Clean Water Acts, the Endangered Species Act and their Cal.Fornia equivalents.

Also analyzed should be the specific impact of this flooding on adjacent groundwater hydrology with specific attention to residential and fire source water. And, since the proposed flooding will - you state - lead to prime agricultural land being flooded, the impact on the creation of "greenhouse gases" should be analyzed since such a land use change is the 2nd largest source of these gases throughout the world.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 30, 2008.**

On April 30, 2008, in Clarksburg, I spoke before the Scoping Committee with regard to the BDCP plan.

I related to the committee that when Home Depot and the Klotz Family were developing properties at the corners of Freeport Blvd and Pocket Roads, a requirement was made to pay for the relocation of any Swainson Hawks or Burrowing Owls that might be found on the property designated for development; The cost of such relocation to be $3,000.00 per bird. No permits would be issued for any project without the property first being inspected for bird count and the relocation fees paid. This was required by the City of Sacramento to be in compliance with state and federal regulations because these birds were on the endangered species list; To my knowledge they still are.

My questions to the Committee:

1. What happens to these birds when the hawk loses its forage and the owl is flooded from its home?
2. If relocated, who will pay the cost?

Jane Klotz

Kathy Hunn

From: altaramar@att.net
Sent: Monday, May 26, 2008 8:56 PM
To: phunn@frontiernet.net
Subject: Scoping meeting input

Hi Kathy, Here' s my best recall as to what I said at the meeting. Feel free to get your red pen and modify as necessary. Jayne

My name is Jayne Alchorn. I live on River Rd in Courtland, CA.
Being in a wheelchair and unable to reach your podium makes it overwhelmingly evident that I am physically challenged. I am a victim of one of the more rare forms of West Nile Virus-I have polio as a result of being bitten by a very sick mosquito. Five weeks in the hospital- several CAT scans, several MRI's and finally, a spinal tap brought forth the diagnosis and the fact that never again will I walk unaided.
My life changed literally overnight.
As a spokesperson for the Sacramento-Yolo Vector Control District I am all too aware of the dangers lurking in standing water and flooded areas. The idea that limitless acres would deliberately be made breeding grounds for disease is unthinkable.
Also, the impact on our agro business would be devastating. Clearly, the individuals who are putting forth these ideas have no knowledge of our area, our way of life or the intelligence and fortitude of the people they purpose to impact. Thank you.

1490 Via Isola
Monterey, CA 93940
May 27, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P. O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown:

I first learned about the Bay Delta Conservation Plan only three weeks ago. Although I own land on Merritt Island, I was never notified of *any* plan that might so radically impact my land and our family. Had I known, I certainly would have attended public meetings.

It is my understanding from reading the proposal, that Merritt Island could be flooded, and returned to a wetland. The project is now at the Environmental Impact Report stage. We have until May 30th to submit EIR Scoping Comments. The Scope of the Environmental Impact Report should include:

Under eminent domain:

- Cost of buying land planted in vineyard and other permanent crops
- Cost of buying long-term contracts with wineries, some for as many as twenty years

Decreased habitat for the Swainson's Hawk, an endangered species

Livelihood of residents:

- Bogle Winery, internationally known, first winery in Yolo County
- Vineyards are only means of making a living for many residents - thousands of dollars invested in grapes and drip irrigation

Unique micro-climate for growing grapes:

- Fertile land
- Access to water
- Western breeze that cools grapes

History of Merritt Island:

- Land bought from state as early as 1859 (I'm fifth generation to own my land)
- Some family homes well over a hundred years old

Impact on town of Clarksburg:

- If also flooded, there would be more eminent domain implications
- If not flooded, economic impact of neighboring area under water - a ghost town?
- Impact on local school district – where would students need to be transported?

Please submit the above comments for inclusion in the Environmental Impact Report.

Sincerely,

Jeanne Turner

jturner215@comcast.net

831-373-7671

Jerry Spain
Bullet Point Comments
BDCP April 30, 2008, meeting
Clarksburg

1. If it were not for one alert Clarksburg citizen, we would not have known about this meeting.

2. The report fails to address or mention the "human inhabitants" of the Delta.

3. The study cites the DWR model for potential sea level elevations. There are multiple models each stating different levels.

4. The list of stakeholders, in the information handed out by BDCP, shows the lack of local participation/representation. The stakeholders list is also devoid of elected officials. Who is accountable to the citizens of the affected areas?

5. I am concerned with any plan that has a time line of 50 to 100 years. No one knows the future. When I was in high school I had a teacher that felt the best thing we could do for mankind was to find ways for humanity to cope with global cooling (the impending "little ice age").

6. I am concerned with the; Taking of Species, the Taking of Land and the Taking of a way of Life.

May 29, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

I am a resident of Clarksburg. My husband of 34 years is a third generation farmer in the area. He farms with his brother and cousin. Currently, they farm approximately 3,500 acres located in three different counties, Yolo, Sacramento, and Solano. The number of acres they farm fluctuates from year to year depending upon the leases they are able to negotiate over time. Their operation employs around thirty five people, all of whom live year round in various homes around the area. This scenario repeats itself all throughout the north Delta region. Farmers, ranchers, and many other people live in rural areas around the districts as well.

My comments center on the environmental impact of moving all of these people out of their homes. It has been stated by members of your committee and in writing that a ring levee would be built around the towns up and down the Delta. By doing so, you create a situation where the towns will eventually die. The schools, which in many cases are the centerpiece of these Delta towns, will be fatally impacted by such a move. As you well know, schools receive money based on Average Daily Attendance (ADA), and with a drastic cut in students, the schools would cease to exist.

Many of the residents in the Delta towns are school teachers, aides, custodians, secretaries, and other employees of the schools. They would need to move away from the towns in order to make a living. Many of the residents are also employed by various farming related businesses throughout the region. From an environmental standpoint, you are causing yet another area in these currently thriving towns to dry up and cease to exist. Homes would be vacated with no one desiring to purchase them under such circumstances. Blight and crime, which is currently mimimal to non-existent, would increase.

Thank you for taking my comments under consideration. Please recognize that the American farmer and its related agro-economic and human impact is important to protect.

Sincerely,
Kathy Hunn
P.O. Box 382
Clarksburg, CA 95612
(916) 744-1609
phunn@frontiernet.net

From: Wklywdr@aol.com [mailto:Wklywdr@aol.com]
Sent: Friday, May 30, 2008 2:26 AM
To: Brown, Delores
Subject: Scoping Comments for BDCP EIR/EIS

SCOPING COMMENTS FOR BDCP EIR/EIS, MAY 30, 2008 from

Laura Schneider
1501 South Edgewood Street
Unit 579
Arlington, VA 22204
703-553-0497
wklywdr@aol.com
May 30, 2008

Dear Ms. Brown:

The following items should be addressed by those persons undertaking a study of the impact of the BDCP on the environment.

1. How would this "tidal marsh wetland" be managed to avoid the encroachment of non-native weed species? What would be the cost in terms of personnel and materials, and to the environment, to keep such weeds under control?

2. It has been advised that grocery stores buy locally to avoid the added expense of trucking in produce. The extremely fertile northern delta farm land is well situated to provide food crops to the Sacramento Metro area. Would permanently removing this land from agricultural production impact the future availability of locally grown produce for the people of Sacramento?

3. How would the "tidal marsh wetland" function to assure that the species of endangered fish would thrive? Would not the river otters, beaver, and birds (particularly the pelicans) feast upon the fish and would not these animals become too numerous and then have to be controlled? What assurances are there that the creation of this "tidal marsh wetland" would have the intended outcome?

4. How would the climate change by creating a vast marsh near the Sacramento area? Would the air become more humid? What would happen to the "delta breeze"?

5. What would happen to the mosquito population if this gigantic marsh was created? Would there be enough fish to eat the mosquito larvae? Would the incidence of West Nile Virus increase in the Sacramento area? What threshold of the incidence of West Nile Virus must be met before spraying the marsh would begin? What impact would such spraying have on the environment and the people still living in the delta?

6. If adopted, literally thousands of acres of prime farm land would be flooded. What would be the impact to those families currently farming this land? Of what strategic importance is this farm land to the security of the United States and this country's ability to feed its citizens?

7. The area to be flooded is referred to as a "tidal marsh wetland." In the northern delta, near Sacramento, would the tide action be sufficient to create the intended effect, or would the marsh become a gigantic pool of stagnant water?

Thank you for reading my comments. I grew up on my parents' farm one mile north of Clarksburg in the Lisbon District. I visit often to help maintain their property.

Sincerely,

Laura Schneider

Bay Delta Conservation Plan
E.I.R./E.I.S. Scoping Meeting
Clarksburg
30 April 2008

Questions:

1) Is the BDCD consistent with the Delta Protection Act legislation and management plan in all respects?

2) How much water will this plan consume month-by-month on an annual basis?

3) How will public health and nuisances from increased insect populations be dealt with, especially considering prevailing wind patterns and proximity to small and large population centers?

4) How will invasive species be reliably excluded from new tidal wetlands and shallow water habitat?

5) What mitigation measures will be taken for each of the known invasive species that already inhabit the Delta if they become established in any new tidal wetlands or shallow water habitat?

6) Considering the increase in the amount of habitat recommended and the desired connectivity of the various habitat types, how will invasive species be reliably excluded from the tributaries to the Delta?

7) What mitigation measures will be taken for each of the known invasive species that already inhabit the Delta if they become established in any of the tributaries of the Delta?

8) How will the increase in number and concentration of tunneling and burrowing animal species that will derive from the increased available habitat effect infrastructure in and around the edges of the Delta?

9) What are the projected labor requirements and projected costs, with and without overhead costs included, for the management of the new habitat that is proposed? What formulas and assumptions will be used in calculating these costs?

10) What is the financing structure going to be for all phases of the proposed physical and management changes for the BCDC plan?

Mark Wilson
50404 Gaffney Road
Clarksburg, CA 95612

Kathy Hunn

From: mary mctaggart [cavelanding@yahoo.com]
Sent: Tuesday, May 27, 2008 10:48 AM
To: Kathy Hunn
Subject: April 30 BDCP Scoping Meeting comments

BDCP Scoping Meeting - April 30, 2008

Comments submitted by Mary McTaggart, local resident, representing 90+ year-old parents having small farm holdings in the Lisbon and Pierson Districts of the Delta.

To quote the November 2007 draft of the Delta Vision Report, "When levees were built, most celebrated the new farmland, and few thought of what might be lost"(p.3). The big danger I see in the BDCP process is that once again, in our zeal to, in this case, return large areas of the Delta to their former state, people will lose sight of what will now be lost - some of the richest, most productive farmland anywhere. To further emphasize the point, consider a news item appearing in today's Sacramento Bee ("Biofuel divides grocers, growers") quoting three international food scientists who said that countries need to rethink diverting farmland to non-food uses because we are in the midst of a world-wide food crisis. They were referring to ethanol production, but the same could be said of the present project proposing to flood farmland.

Another issue concerns me, which is the promotion of wildlife-friendly farming practices. I'm skeptical whether economically viable agriculture results from such arrangements. The instituting of conservation easements on farmland requires the farmer to take on another, perhaps not-so-silent, partner in his farming, with the result that decisions regarding that farming will no longer focus primarily on production. If you had driven around this area two years ago, you would have seen hardly a field of wheat anywhere. Today, there are wheat-fields all over the place because of the great need on the world market for this commodity. If a farmer has as his partner in a conservation easement a government entity, how quickly will he be able to make such decisions, given that government has the reputation of taking years to get things done?

Kathy Hunn

From: mary mctaggart [cavelanding@yahoo.com]
Sent: Thursday, May 29, 2008 11:17 AM
To: delores@water.ca.gov
Cc: Kathy Hunn; Laura Schneider
Subject: Scoping Comments - BDCP EIR/EIS

May 27, 2008

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown:

I am a resident of the Lisbon District (RD 307) and represent as well my parents, who own small farm parcels in this district as well as the Pierson District (RD 551). Below are summarized some of my concerns and suggestions regarding the scope of the EIR/EIS process. However I would like to state at the outset that I feel that the bulk of most Delta planning and research to date, including this process, has been marked by unaccountable lacks of interest in and input from those who are closest to the actual land and waters of the Delta and who potentially have the most to lose: Delta residents, communities, landowners, growers. and water users. To ensure that the BDCP has the best chance of succeeding in its stated goals, these lacks should be remedied ASAP.

1) To quote from the BRTF Delta Vision report (November 2007 draft), "When the levees were built, most celebrated the new farmland, and few thought of what might be lost." [emphasis mine] Please assure that the EIR/EIS process study in depth and breadth impacts to existing and future agricultural activities and economies, and the impacts on the Delta riverfront farming communities - their existing and continued economic vitality and historical/cultural/social/recreational value to those who live in the Delta and to urban dwellers in the State at large.

2) A close reading of many documents produced to date by Delta planners yields the strong impression that Delta farmers will be asked to do many things with/on their land alongside or instead of producing crops (i.e. protecting wildlife, reducing subsidence, sequestering greenhouse gasses, and providing recreation and "scenic green open space" for the urban population,etc.). The EIR//EIS must examine the extent to which these "working landscape" requirements could inhibit the optimum production of agricultural product, any diminishing of which might in this era of global food shortages be considered a national security issue as well as detrimental to the agricultural economy of the State. (see Sacramento Bee, April 30, 2008 - "Bio fuel divides grocers, growers" for discussion of whether it is a good idea to divert farmland to the production of ethanol, another non-food product. See also Sacramento Bee, Commentary - May 20, 2008 - "Future of farming: Local, organic, home-delivered" - "We're a business...All of my beliefs about how farming should be done don't mean a thing if we are out of business." - Thaddeus Barsotti, Capay Valley farmer.)

3) The BDCP planners appear to have in mind a fairly extensive transfer of private land to public ownership and/or management. The wisdom of this land transfer alone, regardless of whether the land becomes tidal marshes or is managed to achieve some of the goals in 2) above must be thoroughly studied to determine whether government, State or Federal, has either the financial means or political

will to serve as a successful long-term steward of such a complex and vital resource. (See Sacramento Bee, May 21, 2008 - "State Parks on list of top endangered sites - underfunding threatens the California system, preservation group says"). The EIR/EIS should examine the extent to which the State and Federal governments can actually fund and carry out the Plan in view of examples to the contrary including the failed CAL-FED process, the recent Prospect Island fiasco, the inability of Stone Lakes NWR to successfully control invasive species, and some 10 years of planning (and money spent) on the North Delta Flood Control & Ecosystem Restoration Project with little funding yet in sight to carry it out (DEIR hearing February 21, 2008). Other impacts of private-to-public land transfer, such as those on funding for and operations of local reclamation districts, County services, fire districts, water agencies, State water quality and water rights programs, local school districts, etc. must be carefully looked at both for each individual entity and for the social/economic/cultural impacts on the fabric of Delta community life.

4) BDCP should treat the Delta north of Walnut Grove differently from lands to the south. North Delta lands, for example, are higher, have much less history of flooding, have mineral soils instead of peat, and tend to have a higher population density than lands to the south. Most of the Delta legacy towns are to the north. The building of large "tidal" marshes might eventually depopulate these areas due to health and aesthetic effects as well as physically disrupting existing social interconnections. Farming in the area of these marshes could also be hampered by humidity changes, invasive species, disruption of the essential movement of farm equipment, and new seepage issues. If ring levees were built around these towns, there could also be disruption to traffic circulation, essential public safety services, degradation of air quality, etc., resulting in further depopulation. (If eventual depopulation of the Delta is an unstated goal of the BDCP or any of its parties, that goal should be made public.)

5) What might be the effects of higher humidity caused by manufactured tidal marshes on local weather patterns, including for nearby urban areas? Please see Sacramento Bee, October 7, 2007 "No guarantees on Delta breeze - earthquake, flood could tum off our air conditioner, experts say" for the effect of new large bodies of water in the Delta on cooling breezes in the Sacramento area. This loss of cooling would increase A/C energy costs and have unforeseen impacts on public health, agricultural production, and terrestrial species in and near the Delta.

Thank you for your consideration.

Mary McTaggart
34840 S. River Road
Clarksburg, CA 95612
916-744-1945
cavelanding@yahoo.com

Russell E. van Loben Sels
P.O. Box C
Courtland, CA 95615

May 29, 2008

Paul A. Marshall
Bay Delta Office
California Department of Water Resources
1416 Ninth Street
Sacramento, CA 95814

Re: Scoping comments for Bay Delta Conservation Plan

Dear Mr. Marshall,

I have divided my comments into two categories, conveyance and wetlands/tidal wetlands.

Conveyance:

For options 3 and 4 each of which contain a peripheral aqueduct and alternate aqueduct route and all other options which convey and export water from the Delta, the EIR must answer the following questions

1. How will seepage from the new channel be evaluated and mitigated?
2. What will be the cost for seepage mitigation?
3. How will removal of water from the Delta Common Pool affect water quality downstream from the peripheral aqueduct?
4. Will water quality down stream from the peripheral aqueduct conform with the requirements of the contract between the State of California Department of Water Resources and North Delta Water Agency (for the assurance of a dependable water supply of suitable quality) dated January 28, 1981?
5. Will the State cease all exports from Delta channels when water quality in the North Delta does not meet contractual requirements?
6. Will the aqueduct and any other export from Delta channels be conducted in accordance with recital (g) of the above referenced contract? (i.e. will exports be conducted in a manner to conform with part 4.5 of Division 6 of the California Water Code which affords a first priority to provision of salinity control and maintenance of an adequate water supply in the Delta for reasonable and beneficial uses of water and relegates to lesser priority all exports of water from the Delta to other areas for any purpose?)

7. Will conveyance be conducted consistent with provision number 6 of the above referenced contract? (i.e. will the state mitigate for seepage damage and repair any erosion damage caused by SWP flows?)
8. Will exports of water from Delta Channels be conducted in accordance with the law of the State of California, which requires protection of the areas within which water originates and the watersheds in which water is developed?
9. What is the cost difference between conveying export water through the Delta vs. A peripheral aqueduct?
10. Won't it be necessary to convey water through the Delta for an extended period of time even if a peripheral aqueduct is considered, so why do both?
11. In order to export water from Delta channels will the State develop new upstream water?
12. If upstream water is not developed, is the supply adequate to meet the area of origin needs to include the ecosystem and continue exporting from Delta channels?
13. How will damages be determined and financed for any breach of the contract between the State of California Department of Water Resources and North Delta Water Agency dated January 28, 1981?
14. What will the damages be and how much will they cost for each of the four options under consideration?
15. How will removing fresh water from the North Delta impact the ecosystem and water supply in the balance of the Delta?

Wetlands/Tidal Wetlands:

1. How will flood control and drainage be impacted within Reclamation Districts where wetlands are created?
2. Is it feasible to create wetlands within the borders of reclamation districts where water is the common enemy?
3. Who will pay for reconfiguration of Reclamation Districts and how much will it cost for levee and drainage infrastructure?
4. What will be the seepage impacts where wetlands are created and what will it cost for mitigation?
5. How will the BDCP mitigate for loss of very productive farmland in the North Delta to include negative impacts on the wine and Bartlett pear industries and what will it cost?
6. What will be the indirect cost of wetland conversion to the Delta economy, Delta employment and Delta communities?
7. Will the BDCP mitigate for loss of Swainson's hawk habitat and what will it cost?
8. What other terrestrial and avian species will be adversely affected, will the BDCP mitigate and what will it cost?
9. How will the BDCP acquire property for conversion to wetlands and how much will it cost to include permanent crops such as grapes, pears, and cherries?

10. Is it appropriate to establish wetland and tidal wetland zones for the four options under consideration without input from the areas being considered for conversion?
11. Is it appropriate to establish wetland and tidal wetland zones based on elevation and not consider how the land is presently being used?

Finally, rather than spending billions of dollars on water conveyance and associated impacts, wouldn't it be more productive to develop and finance projects which help create regional self sufficiency? The water supply for millions of Californians will be more secure and reliable not by circumventing the Delta, but by reducing dependence on the Delta.

Thank you for your consideration.

Sincerely,

Russell E. van Loben Sels

Good Evening Committee Members

I'm Stephen F. Heringer, 5th of 6 generations of the Heringer family to farm Clarksburg soils. Many families in the Delta have farmed for multiple generations and over the years have grown a large variety of field and row crops. We have had to evolve and adapt our operations in order to maintain economic viability to insure the sustainability of the **family farm** for future generations. .

During the last four decades, growers have planted over 17,000 acres of our upper Delta region into premium wine grapes. Our crops have proliferated in quality and yield and the Clarksburg Delta has earned the reputation of being the "Banana Belt" for premium wine grapes among California's wineries. We have invested heavily in vineyards which have a life expectancy of 25 to 30 years and can stay economically viable for up to a century.

In 2005 the UC Cooperative Extension published costs to establish and produce wine grapes in our region. The study documents the requirement of in excess of $16,000 per acre to develop a vineyard. During the past 3 years of dramatically increasing steel, vine, labor, and fuel costs, that investment will easily be in excess of $20,000 per acre today. That equates to a total investment in vineyards and infrastructure alone exceeding $340 Million dollars in District 17, the Upper Delta region.

The California Association of Winegrape Growers completed an economic impact study last year of California wine and grape grower's contribution to the State and US economy. Extrapolating those economic impacts to just our 17,000 acres of wine grapes, we create in excess of 11,000 full time equivalent jobs in California and an additional 13,500 jobs nationwide. This generates $357 million in California wages and almost $900 million in wages throughout the USA. Taxes generated from our winegrape acres exceed $107 million to the State of California and an additional $64 million nationally. In excess of 700,000 visitors with tourism expenditures exceeding $71 million are attributable to our 17,000 acres of grapes.

Our Yolo County Supervisors have partnered with us to keep our unique upper Delta area agricultural. We adapted sustainability generations ago to assure the farming and enjoyment of our Delta region for the benefit of all of the people of our Great State. We will not now, stand by idly, as the objects of an environmental experiment based on presumptions. We will, however, stand with you to fully utilize existing flood control infrastructure such as the Yolo Bypass to assure better flood protection for the Sacramento area.

Stephen F. Heringer
916-744-1094

-----Original Message-----
From: woody alspaugh [mailto:hope0001@comcast.net]
Sent: Fri 5/30/2008 8:12 AM
To: bdcpcomments
Cc: w_als2004@yahoo.com
Subject: Water-Delta

Flag this message

Fw: Delta

Wednesday, May 28, 2008 1:41 PM
From:
"woody alspaugh" <woody_alspaugh2002@yahoo.com>
View contact details
To:
lruhstaller@sjgov.org
Cc:
"Woody" <w_als2004@yahoo.com>
Message contains attachments
Delta.doc (24KB), Epiphany.doc (28KB)

“Epiphany”
Notes: Wilkerson, landfill, fallow, (in summer-fill). One parcel, (“Island”). Fill whith water allowing free flow of fresh water, dam preventing back flow from tide, in late winter, after no chance of flood. To be used as a flood control if needed. Let water stand for one year. Repeat the same whith another parcel.
Must do much work, research and investigation, (land-fill). These are my notes. . + Electric, money/ greed-
I just learned that up to 20% of electricity used here in the valley goes to water pumps. I had forgotten that “farmers” hate to irrigate, not because of the saving of water, but that it cost money to operate the pumps, not to mention the pumps that are used to ship our Delta water south! (You can always tell where there is a water pump out in the country, just look for electric poles whith three wires. You see, they all use three phase motors).

Mr. Wilkerson and Sunny Rd. Stockton is the bottom of an old swamp. Sunny road is below sea level. Mater of fact it was the bottom of the swamp, therefore the soil is Adobe, which, in the hot and dry summer months, become a cracked waste land, except it is not waste but some of the most fertile soil in the world. At first, water was available about 5 to 6 feet deep as were the, up to 3’ crakes in the Adobe, and then there was the “hard pan”. (Note; I know this is poor writing-but-)
Mr. Wilkerson’s place was at the start of the road. He collected all the garbage from all the people on Sunny Road, except for us as we had four acres and had dug a big hole in which to throw away all the “garbage”, (to which, my brother and I used it for a sess pool, at that time there was no services, used it to raise the ground level, paved it over and then made a “Trailer Park”. That is how I got the idea how to raise the ground level of the Delta!
Now let us take e a look as what is “garbage”? All past and present life, man, animal and plants, are a “bio” hydrocarbons. In other words, molecules of carbon, hydrogen and oxygen. No matter what it is, egg shells, fruit peels, paper and yes even “Tin” cans, (not bio, but iron, which is a valuable element in the creation of living things). Not to mention grass clippings and tree/ bush trimming. Therefore, soil is what everything is made, (of), “Bio”. It may even possible not to have to remove the soil in order to recover the land, but mix it in the present soil.

APPENDIX H: COPIES OF COMMENTS, LETTERS, EMAILS, AND COMMENT CARDS FROM 2009 SCOPING PROCESS

APPENDIX H1: 2009 FEDERAL AGENCIES SCOPING COMMENTS

DEPARTMENT OF THE ARMY
SOUTH PACIFIC DIVISION, U.S. ARMY CORPS OF ENGINEERS
1455 MARKET STREET
SAN FRANCISCO, CALIFORNIA 94103-1399

REPLY TO
ATTENTION OF

May 14, 2009

Regional Business Directorate

Ms. Lori Rinek
Army Federal Register Liaison Officer
Sacramento Fish and Wildlife Office
2800 Cottage Way, W-2605
Sacramento, CA 95825

Dear Ms. Rinek:

Thank you for the opportunity to provide comments and perspective on behalf of the U.S. Army Corps of Engineers (Corps) regarding the Bay Delta Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta, Environmental Impact Statement/Environmental Impact Report (EIS/EIR). This letter incorporates comment from the South Pacific Division Headquarters, our San Francisco District and our Sacramento District.

The Corps recognizes and embraces our role as a cooperating agency in the preparation of the proposed EIS/EIR (IAW 33 CFR Part 325). The mission of the Corps includes Flood Risk Management; Environmental Protection and Restoration; Navigation; and Emergency Preparedness and Response. We anticipate that the BDCP actions may impact these mission areas. As a result, multiple Corps permissions may be required.

The Corps' regulatory jurisdiction in the BDCP project area primarily falls under three authorities:

1. Section 404 of the Clean Water Act for the discharge of dredged or fill material in waters of the U.S.; (33 USC 1201 et seq.) (Section 404)
2. Section 14 of the Rivers and Harbors Act of 1899 (33 USC 408) for the alteration of a Federal project (to include sea wall, jetty, dike, levee, wharf, pier, or other work);
3. Section 10 of the Rivers and Harbors Act for work in navigable waters. (33 USC 403) (Section 10)

We envision using the BDCP EIS/EIR as a programmatic document; tiering additional NEPA documents for Corps permit actions from it. In addition, it is important that you are aware of ongoing initiatives in the Delta with which the Corps is currently involved.

The Corps' responsibilities include the Federal flood risk reduction system, which involves, in part, the operation of a system of reservoirs. The BDCP actions may have a significant impact on the flood risk reduction system in the Central Valley and the Delta. Any changes or modification to the flood risk reduction system and its operation must be analyzed and may require reauthorization by Congress. Actions and impacts on the levee system will also need to be consistent with the CA Levee Roundtable Framework (Flood System Improvement Framework).

We anticipate that some or all of the proposed projects would result in discharges into waters of the U.S. Accordingly, authorization under Section 404 of the Clean Water Act would be required. In developing alternatives, we encourage you to consider an appropriate range. With a range of alternatives, we are able to use them in subsequent NEPA document(s) that evaluate compliance with the Clean Water Act Section 404(b)(1) Guidelines. Please note that the Corps may only authorize the least environmentally damaging alternative (LEDPA).

Under both Section 10 and Section 404, the Corps performs a public interest review. We expect that the NEPA process will provide adequate information for us to undertake our review in subsequent document(s), but encourage you to continue to keep us informed of the development of alternatives and impact analyses.

In addition to the Regulatory Permits requirements, the Corps has a robust Civil Works project program, with many projects directly or indirectly impacting the Delta. These projects are managed by the two following South Pacific Division Corps Districts, the San Francisco and Sacramento Districts. The Corps recognizes that the scope of the project EIS/EIR must take into account potential project impacts while appropriately balancing environmental issues in its analysis. Three Corps projects the BDCP should coordinate with the San Francisco District staff include: (1) the San Francisco Bay to Stockton navigation improvement study, (2) the Sacramento River Deep Water Ship Channel (DWSC) navigation improvement study, and the (3) the Delta Dredged Sediment Long Term Management Strategy (Delta LTMS).

San Francisco Bay to Stockton navigation improvement study:

The San Francisco Bay to Stockton navigation improvement study is composed of two ship channels with a combined length of more than 85 miles. The John F. Baldwin (JFB) ship channel extends from outside the Golden Gate to the eastern end of Suisun Bay. The JFB channel includes the West Richmond Channel, Pinole Shoal Channel, and the Suisun Bay Channel portion of the JFB Ship Channel. The West Richmond Channel is located within the North Ship Channel just south of the Richmond – San Rafael Bridge and west of the City of Richmond. The area of interest for deepening the Stockton DWSC extends to the Port of Stockton. All channel segments are currently maintained to the water depth of at least 35 feet mean lower low water (MLLW). The proposed project is evaluating deepening the West Richmond and Pinole Shoal Channels to a possible maximum depth of 45 feet MLLW and the remaining segments to a maximum depth of 40 feet MLLW. The total volume of material generated from this project is expected to be up to 31 million cubic yards of material.

The project website, http://www.sfbaytostockton.org, provides a project description and map. For coordination the lead environmental manager for the project is Ms. Nancy Ferris (nancy.m.ferris@usace.army.mil); the project manager is Mr. David Patterson (David.R.Patterson@usace.army.mil).

Sacramento River Deep Water Ship Channel:

The Sacramento Deep Water Ship Channel extends 46.5-miles along a route starting at the confluence of the Sacramento and the San Joaquin Rivers and ending at the Port of West Sacramento. The channel

runs along the Sacramento River, into Cache Slough and along a man-made channel to the Port. Construction of a 35-foot deep channel was initiated in 1989, but work was suspended in 1990. Two of the six construction contracts had been completed at that time, from River Mile 43 to 35. The remaining channel is 30 feet deep. The current project is evaluating the resumption of the 35 feet deepening work. The total volume of material generated from this project is expected to be between 6 to 7 million cubic yards of sediment.

The project website, http://www.sacramentoshipchannel.org, contains a project description and map of the study area. For coordination, lead environmental manager for the project is Dr. Bill Brostoff (William.N.Brostoff@usace.army.mil); the project manager is Mr. Craig Conner (Craig.S.Conner@usace.army.mil).

The BDCP should coordinate with the Corps on SF Bay to Stockton and Sacramento deep water ship channel projects regarding several modeling efforts. Hydrodynamic and salinity modeling is currently under way for both the SF Bay to Stockton and Sacramento studies. Dissolved oxygen and water quality modeling is being conducted for the Stockton DWSC. These modeling efforts include assumptions about future conditions with and without implementing the BDCP based on the best information available at the time when modeling was initiated. The technical lead for these modeling efforts is Dr. Frank Wu, available via email at Frank.Wu@usace.army.mil.

Delta Dredged Sediment Long Term Management Strategy:

The Delta Long-Term Management Strategy (LTMS) is a cooperative effort to coordinate, plan, and implement beneficial reuse of sediments in the Sacramento and San Joaquin River Delta (Delta). Five agencies (Corps, US Environmental Protection Agency, California Department of Water Resources, California Bay Delta Authority, and Central Valley Regional Water Quality Control Board) are examining dredging, reuse, and disposal needs in the Delta. The goals of the LTMS are to collectively manage dredging activities to support and maintain Delta channel functions for navigation, flood control, water conveyance, and recreation, maintain and stabilize Delta levees that protect land-based activities, water conveyance, and terrestrial ecosystems, and protect and enhance water quality for Delta water supply and ecosystem function. The project website is http://www.deltaltms.com/.
The Delta LTMS program manager is Mr. Al Paniccia (Al.Paniccia@usace.army.mil), the study manager is Dr. Bill Brostoff (William.N.Brostoff@usace.army.mil).

For coordination on the Delta LTMS regarding current research on threatened and endangered fish species and the permitting process, please contact Dr. Bill Brostoff (415) 503-6867 or Ms. Nancy Ferris at (415) 503-6865.

The Corps projects that the BDCP should consider and coordinate with Sacramento District include: (1) Delta Islands and Levees Feasibility Study, (2) CALFED Levee Stability Program, (3)the Lower San Joaquin River feasibility Study, (4) the Central Valley Integrated Flood Management Study, (5) the Sacramento River Bank Protection Project, and (6) the Sacramento River Flood Control Project.

Delta Islands and Levees Feasibility Study:

The Delta Islands and Levees Feasibility Study (DILFS) will incorporate elements of the State's Delta Risk Management Strategy (DRMS), while reevaluating some of the results, to develop a combined ecosystem restoration and flood risk management plan for Corps involvement in the Delta vision. The Corps and the California Department of Water Resources (DWR) signed a Feasibility Cost Sharing Agreement (FCSA) in May 2006

For coordination, appropriate points of contact are the project manager, Mr. Russ Rote at (916) 557-6672 or the lead planner, Ms. Brooke Schlenker, at (916) 557-5299.

CALFED Levee Stability Program:

The Levee Stability Program (LSP) allows the Sacramento District to construct high priority levee rehabilitation projects identified in the Sacramento District's "2006 Report to Congress". The small projects are considered interim emergency type repairs to the most fragile reaches of levee. The authorized project purposes include flood risk management, ecosystem restoration, water supply, conveyance, and quality. The DWR has indicated a willingness to partner by providing construction grants to the Reclamation Districts (RDs) for cost sharing on the Federal projects. Projects that will be implemented will first be proven to be consistent with the latest version of the Delta Vision (DV) and other state visioning efforts.

For coordination, appropriate points of contact are the project manager, Mr. Russ Rote at (916) 557-6672 or the lead planner, Ms. Brooke Schlenker, at (916) 557-5299.

Lower San Joaquin River feasibility Study:

The Lower San Joaquin River study is being conducted by the Corps of Engineers in partnership with the San Joaquin Area Flood Control Agency. The study will evaluate the feasibility of implementing flood risk management and ecosystem restoration improvements along the lower San Joaquin River and its tributaries and distributaries. The study is being coordinated with the State of California, San Joaquin County, and various Reclamation Districts.

The study area is located along the lower (northern) portion of the San Joaquin River system in the Central Valley of California. The river flows west to the Central Valley, where it is joined by the Merced, Tuolumne, Stanislaus and Calaveras Rivers, and other smaller tributaries, as it flows north to the Sacramento-San Joaquin Delta. The Lower San Joaquin River study area includes the main stem of the San Joaquin River from the Mariposa Bypass downstream to and including the city of Stockton. The study area also includes the distributary channels of the San Joaquin River in the southern most reaches of the Delta.

For coordination, the project managers are Mike Morgan (Michael.R.Morgan@usace.army.mil) and Claire Marie Turner (Claire.Marie.Turner@usace.army.mil). The lead planner is Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

Central Valley Integrated Flood Management Study

The Central Valley Integrated Flood Management Study is being conducted in partnership with the State of California (Central Valley Flood Protection Board and the Department of Water Resources). It is a multi-objective study that will balance flood damage reduction, ecosystem restoration, and other water resource purposes and provide a long-range management program to improve the flood carrying capacity, while restoring and protecting environmental features. It will provide a framework for a management plan that can be effectively implemented and supported by local, state, and Federal agencies.

The study area includes the entire Sacramento River Basin, San Joaquin River and the Delta Basin in Central California. It encompasses about 43,000 square miles, 1,613 miles of federal levees, 1,200 miles of floodways, 56 flood control features, and 1/3 of the state water supply. Numerous projects are within the study area including the Sacramento River Flood Control Project, Sacramento River Bank Protection Project, Folsom Dam, West Sacramento, and the Lower San Joaquin River and Tributaries Project.

For coordination, the project manager for this study is Mr. David VanRijn (David.P.VanRijn@usace.army.mil).

Sacramento River Bank Protection Project:

The Sacramento River Bank Protection Project is a long term project that protects the integrity of the Sacramento River Flood Control Project (SRFCP) through construction of bank protection and set back levees. The State of California's Central Valley Flood Protection Board is the non-Federal project partner. The existing Sacramento levees are seriously threatened by erosion and unless continued corrective measures are taken, levee failures may occur with resultant catastrophic damage and possible loss of many lives.

The project extends from River Mile (RM) 0.0 on the Sacramento River at Collinsville to RM 194.0 above Red Bluff. Existing levees are seriously threatened by erosion that could result in levee failures. Areas protected by levees comprise over 1 million acres, 50 communities, $38 billion of improvements, and 2.3 million people.

Sac Bank received authorization in Water Resources Development Act of 2007 for an additional 80,000 linear feet. The 2007 authorization adds to the previously authorized project. There are 154 identified erosion sites on the system, totaling approximately 150,000 linear feet. The Corps is designing and will award for construction approximately 9,000 linear feet of bank protection this year at 13 sites. Planning and environmental compliance is underway for Sacramento River Bank Protection Project, Phase II, which is the additional 80,000 linear feet authorized in WRDA 2007. Planning efforts have also begun on Phase III. This phase will look more comprehensively at protecting the integrity of the SRFCP.

For coordination, the project manager for Sac Bank is Mr. Mike Dietl (Michael.L.Dietl@usace.army.mil). The lead planner is Mr. Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

Sacramento River Flood Control Project System Reevaluation

The Sacramento River Flood Control Project general reevaluation study will evaluate the condition and performance of this flood risk management system, with particular attention to levees in rural areas. The Sacramento River Flood Control Project is located on the Sacramento River and lower reaches of its principal tributaries in north-central California. It includes a comprehensive system of levees, overflow weirs (including the Sacramento and Fremont Weirs), drainage pump plants and flood bypass channels (including the Yolo Bypass). Most of the project facilities are over 50 years old and were originally locally constructed. They were later upgraded and incorporated into the project after Federal authorization in 1917. Following the floods of 1986, a five-phase program was developed by the Corps of Engineers which divided the flood control system into five study areas the purpose of which was to examine the levees and determine how the system was performing. This study focused particularly on urban areas.

For coordination, the project manager is Mr. Mark Ellis (Mark.A.Ellis@usace.army.mil). The lead planner is Mr. Miki Fujitsubo (Miki.Fujitsubo@usace.army.mil).

These projects geographically overlap the BDCP proposed project footprint and may share both baseline conditions and impacts analysis needs for water quality, hydrodynamics, as well as other environmental and biological effects. BDCP's alternative formulation should consider these projects when creating and evaluating conveyance, infrastructure, restoration, and mitigation options.

We anticipate that the BDCP will appropriately consider and address any hazardous, toxic, and radioactive waste (HTRW) impacts from the proposed project.

We look forward to coordination with the BDCP team to discuss elements of the Draft EIS/EIR. Ms. Cindy Tejeda (Cindy.L.Tejeda@usace.army.mil), lead watershed planner, USACE South Pacific Division Headquarters, is coordinating a technical meeting to be scheduled in the near future. Please note that our detailed comments provided are focused on areas of particular interest to the Corps given the information available in the NOI and at the scoping meeting held March 19, 2009.

Sincerely,

Andrew Constantaras

Andrew Constantaras, P.E.
Director, Regional Business Directorate

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

May 14, 2009

Lori Rinek
U.S. Fish and Wildlife Service
Sacramento Office
2800 Cottage Way, W-2605
Sacramento, CA 95825

Subject: Scoping Comments for the Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta, CA.

Dear Ms. Rinek:

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Register Notice published February 13, 2009 requesting comments on the U.S. Fish and Wildlife Service (USFWS), U.S. Bureau of Reclamation (USBR), and National Marine Fisheries Service (NMFS) decision to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the above action. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

As you know, the U.S. Environmental Protection Agency (EPA) agreed to be a cooperating agency in the preparation of this EIS/EIR in its letter dated November 12, 2008.[1] We had previously been following the development of the Bay Delta Conservation Plan (BDCP) over the past two years as an "interested observer," and submitted a short scoping letter in response to the initial Notice of Intent (NOI) issued jointly by the NMFS and the USFWS on January 24, 2008. We also reviewed, but did not comment on, the subsequent NOI issued by those agencies and the USBR on April 15, 2008. In that many of our previous comments are still relevant, we are enclosing copies of the earlier correspondence.

All parties involved in Bay Delta issues recognize that California is at a critical juncture in water resources management. The current multi-year drought has highlighted the fragility of the system's ability to meet both environmental and water supply goals. EPA believes that a

[1] In our letter agreeing to be a cooperating agency, EPA emphasized that our role as a cooperator was technical, and that it did not abridge or otherwise affect our independent NEPA review responsibilities under Section 309 of the Clean Air Act and the related CEQ Regulations. We reiterate that caveat here, and note that recent litigation brought by some parties against state and federal agencies and others participating in the development of the BDCP does not affect our Section 309 responsibilities. See 54 FR 12735 (March 28, 1989)(CEQ accepts EPA's Section 309 "referral" of the CVP contract renewals even though the NEPA issues had been raised in federal defensive litigation.).

successful BDCP could be a useful component of a broader governmental response to water management for all uses.

We understand that the team tasked with preparing the EIS/EIR is developing criteria for evaluating alternatives that will be carried into the EIS/EIR analysis. Given that the alternatives analysis is the "heart" of an EIS/EIR,[2] we urge the action agencies to choose alternatives carefully and strategically. With that in mind, we offer the following observations and suggestions:

I. Clarify the Purposes of this NEPA Document

EPA believes that the action agencies need to decide and clearly articulate what state and federal actions they want to cover in this NEPA document. As a regulatory agency, we are especially concerned about the need to identify probable regulatory permits, licenses, etc., that will need to be secured in order to move forward with the BDCP process, and to make early decisions about whether those permits, licenses, etc., are intended to be covered by this NEPA document. Those decisions need to be made in conjunction with selecting a range of alternatives, so that any particular requirements of the anticipated permits can be addressed in the NEPA document.

The BDCP program, as it stands now, includes two major components: a large scale habitat restoration program and a major construction project to reconfigure export water conveyance in or around the Delta. The NOI anticipates the potential adoption of a Habitat Conservation Plan (HCP) under the federal Endangered Species Act (ESA), as well as possibly an ESA Section 10 permit. These federal actions will be the primary subject of the EIS/EIR. At the same time, however, implementing this program will most likely require several other permits that are subject to NEPA and the California Environmental Quality Act (CEQA), including:

(1) Clean Water Act Section 404 (33 U.S.C. 1344) permits for discharges of dredge or fill material into waters of the United States ("404 Permits."). This permitting program is administered jointly by the U.S. Army Corps of Engineers (Corps) and EPA pursuant to a series of interagency agreements and regulations.[3]

(2) Rivers and Harbors Act Section 10 permits (33 U.S.C. Section 403) authorizing modifications to the "course, condition or capacity" of any navigable water. This program is administered by the Corps.

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[2]CEQ Regulations Section 1502.14.

[3]Generally, the Corps issues the 404 permits, subject to oversight and potential veto by the EPA. See CWA Section 404(c). See also 73 Fed. Reg. 54398 (09/19/08)(EPA vetoes proposed Corps 404 permit for Yazoo Straits drain project).

(3) Permits for Modifying Corps Projects under Rivers and Harbors Act Section 14 (33 U.S.C. Section 408). This program is administered by the Corps.[4]

(4) Clean Water Act Section 401 water quality certifications, issued in California by the State Water Resources Control Board, which would ordinarily be required for the issuance of a 404 permit, a 408 modification, and/or a Rivers and Harbors Act permit.

This list is not intended to be exhaustive. Our point here is that the BDCP process needs to clarify which permits are intended to be covered in this EIS/EIR, so that the relevant agencies can make sure that their program requirements for NEPA/CEQA coverage are met.[5] We urge the action agencies to consider entering into memoranda of agreement with any relevant permitting agency, which could allow the agencies to clarify roles and responsibilities in developing an adequate EIS/EIR.

II. Clarify the Level of Analysis for this EIS/EIR

In a related issue, EPA urges the BDCP process to clarify the level of analysis intended for this EIS/EIR. Is this a programmatic document, or is it intended to serve as both the programmatic document and the site-specific document for some or all of the major projects emanating out of the BDCP? Although we note that a single site-specific level document for a project of this scale is rare, EPA is deferring to the action agencies in deciding the level of analysis. We do believe, however, that this decision must be made explicit now so that the alternatives analysis can reflect the chosen level of analysis.

III. Address the Following Broad Scoping Comments

There are a number of major issues that need to be addressed in this EIS/EIR. We are highlighting three of them below:

Water Quality Impacts

Many of the ecosystem enhancement and conveyance changes proposed in the BDCP will likely have significant water quality impacts within the Bay Delta watershed. Proposed conveyance reconfiguration, for example, could significantly alter the relative proportions of tributary waters entering the Delta and the transport routes and times. As a consequence, export and in-Delta water quality would be affected. We understand that the EIS/EIR analysis will evaluate the effects of alternatives on the salinity regime in the system ("X2"). Salinity is a valid parameter for water quality analysis, but it is insufficient to assess all potentially significant

[4] See generally Policy and Procedural Guidance for the Approval of Modification and Alteration of Corps of Engineers Projects, October 23, 2006. Under this guidance, Section 408 approval will generally require a public interest determination as well as appropriate NEPA documentation.

[5] EPA is not suggesting that the BDCP EIS/EIR is *required* to provide NEPA/CEQA coverage for all ensuing permits. Action agencies can chose to deal sequentially, rather than simultaneously, with their permit obligations, and may have legitimate programmatic or legal reasons for doing so.

water quality issues. For example, the CALFED Programmatic Record of Decision identified several water quality constituents for evaluation, including--in addition to salinity--boron, total organic carbon, dissolved oxygen, pesticides, mercury, selenium, and toxicity of unknown origin.[6] Moreover, substantial additional work on Delta water quality has been done by the State Water Resources Control Board, Central Valley Regional Water Quality Control Board (Regional Board), California Department of Public Health, and CALFED Science Program since the Record of Decision in 2000.

For additional parameters, EPA suggests that the EIS/EIR team build upon the approach to water quality indicators begun in the CALFED Program, adding contaminant topics where appropriate (e.g., ammonia). The CALFED Water Quality Program, in 2008, suggested using organic carbon, bromide, and methylmercury as primary indicators. These parameters were chosen because they reflect conditions of different beneficial uses of Delta waters and are expected to show responses to management actions[7] The Water Boards' Strategic Workplan for Activities in the Bay-Delta recognizes the importance of continued work on these parameters. In the case of methylmercury, a Delta methylmercury TMDL is well underway. With respect to sources of drinking water, the Regional Board is developing a Drinking Water Policy.[8] Both the Drinking Water Policy process and the Delta Regional Ecosystem Restoration Implementation Program (DRERIP), a multi-agency effort, have developed conceptual models for water quality constituents that should serve as useful tools in the BDCP EIS/EIR analyses. We understand that some DRERIP models are being used to evaluate ecosystem restoration proposals for BDCP. DRERIP models could also help evaluate effects of actions under consideration in the BDCP and determine the indicators of greatest relevance for impact assessment and monitoring.[9]

We note that these broad indicators may still be insufficient to capture particular, localized water quality issues of interest. Ammonia and dissolved oxygen, for example, are site-specific water quality problems that should also be evaluated in the EIS/EIR.

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[6] CALFED Bay-Delta Program, Programmatic Record of Decision, Volume 1, at p.36 and p. 65.

[7] More information about these indicators and the process used to identify them can be found in A Guide For Understanding Implementation of the Phase 2 Performance Measures Process, CALFED Bay-Delta Program Water Quality Subgroup, Draft, March 18, 2008 (available from the California Bay Delta Authority). The CALFED Program's decision to start with methylmercury levels as an indicator of ecosystem and public health was based on availability of information that supported this topic as a priority for monitoring and reporting.

[8] In August 2008, the Central Valley Regional Water Quality Control Board initiated scoping for a Basin Plan Amendment and CEQA compliance on its Drinking Water Policy. See: Central Valley Regional Water Quality Control Board, "Development of a Drinking Water Policy for Surface Waters of the Central Valley," Staff Report, July 2008. The categories of pollutants addressed are organic carbon, salinity (with bromide), nutrients, and pathogens.

[9] The conceptual models for the four categories of constituents of concern for drinking water are available online: http://www.swrcb.ca.gov/rwqcb5/water_issues/drinking_water_policy/. For DRERIP, the conceptual models are documented at: http://www.science.calwater.ca.gov/drerip/drerip_index.html. Chemical stressors, pyrethroids, and mercury directly address water pollutants. The sediment model is also directly relevant to sediment-bound pollutants.

Where a proposed alternative (or operations associated with that alternative) may affect water quality, the alternative should incorporate appropriate plans for monitoring, assessment, and reporting those effects. Monitoring should be coordinated with the Regional Board's efforts to establish a Delta Regional Monitoring Program. In some cases, an adaptive approach to implementation may be included in the alternative - for example, in design and management of wetland habitats (associated with conservation measures) that have potential for methylmercury production. EPA recommends that the EIS/EIR analysis rely on the protocols, metrics, and targets already included in programs and policies of the state and regional boards, so that the interested public has a consistent frame of reference for understanding the water quality discussion.

Sea Level Rise and the Design of New Facilities

The Governor's Delta Vision Blue Ribbon Task Force recommended to the Governor that planning assumptions for state investments should assume a sea level rise of 16 inches by year 2050 and of 55 inches by year 2100.[10] This recommendation is in accord with recent California Department of Water Resources evaluations of the impacts of climate change on California water planning, released recently in a draft report from the California Climate Change Center.[11]

As you know, sea level rise and climate change projections suggest a number of long term challenges in the Delta, especially in terms of increased salinity intrusion, decreased Delta outflow, and potentially greater flood events. Furthermore, the sea level rise itself would increase the hydrostatic pressures on Delta facilities.

With these problems on the horizon, EPA believes it would be important for the EIS/EIR to evaluate the design of the proposed Delta conveyance improvements to assure that they are appropriate. The current design appears to rely on unlined canals, many parts of which are substantially below current sea levels. This issue was discussed in depth at the June 27, 2008 Delta Vision Blue Ribbon Task Force meeting. A number of issues were raised by the Task Force about this design, including seismic safety, excess evaporation from a wide, shallow canal, export water quality problems caused by infiltration, environmental impacts of a large structure in the sensitive areas of the Delta, and the overall issue of construction of a major critical facility below sea level.[12]

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[10] See Letters from Phillip L. Isenberg, Chair, to Gov. Schwarzenegger dated September 4, 2008 and March 24, 2008, and accompanying material (available on Delta Vision website at http://www.deltavision.ca.gov/BlueRibbonTaskForce/Communications/SLR_Followup_Letter_To_Governor_9-4-08.pdf).

[11] See Using Future Climate Change Projections to Support Water Resource Decision Making in California, California Climate Change Center, Draft, April 2009 (Available on DWR Website at http://www.water.ca.gov/pubs/climate/using_future_climate_projections_to_support_water_resources_decision_making_in_california/usingfutureclimateprojtosuppwater_apr09_dwr_web.pdf).

[12] The Webcast of this and other Blue Ribbon Task Force meetings are available on the Delta Vision web site.

EPA believes that these issues need to be explored and addressed in the EIS/EIR. Although some of these issues may not be direct environmental concerns, we believe that the integrity of the structural design for the below-sea-level Delta conveyance component is an important consideration in the Section 404 public interest determination.

Reductions in Inflows and Exports

EPA fully appreciates that there is a substantial debate over the likely future scenario of water export regulation in the Bay Delta. In fact, the BDCP process may be one forum for resolving that debate. Generally, NEPA documents analyzing issues with uncertain outcomes will make sure that the range of alternatives at least brackets the range of potential outcomes, and EPA recommends that approach in this EIS/EIR.

Even disregarding different predictions about future regulatory scenarios, however, EPA believes that the EIS/EIR will need to include a significant analysis of alternatives reflecting reduced Delta inflow and reduced exports. Recent Department of Water Resources (DWR) studies of the potential impact of climate change on the Bay and Delta watershed predict significantly reduced inflow and reduced diversions over the next century. Holding regulatory, structural, and operating rules constant, the DWR study estimated climate-change induced reductions in Delta exports and reservoir carryover storage ranging from 7% to 19% at mid-century, and of 21% to 38% by year 2100.[13] Delta inflows will also be restricted in future years (compared to the historical record) due to changes in Trinity River diversions into the Sacramento River system and due to upstream water resource development by senior water rights holders.[14]

Given these predicted developments outside of the regulatory debate, EPA believes that reduced inflow and reduced export scenarios are not just reasonable alternatives to evaluate, but represent a likely future for the Bay Delta basin that needs to be reflected in the EIS/EIR.[15]

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[13] See Possible Impacts of Climate Change to California's Water Supply, California Climate Center, Summary Sheet, April 2009 (Available on DWR web site at http://www.water.ca.gov/pubs/climate/climate_change_impacts_summary_sheet__april_2009/climate_change_impacts_summary_sheet_4-16-09_lowres.pdf).

[14] See, for example, discussion of CVPIA Programmatic Environmental Impact Statement analyses on USBR's web site. (Summary of Impact Assessment, p. 12; http://www.usbr.gov/mp/cvpia/docs_reports/fpeis/index.html).

[15] EPA understands that there is an ongoing discussion, at least in the legal community, about the California Supreme Court's decision in In re Bay-Delta Programmatic Environmental Impact Report Coordinated Proceedings, 43 Cal. 4th 1143 (June 5, 2008). One extreme interpretation of that case is that action agencies have unlimited discretion to define multiple project purposes, and that they need not look at alternatives that do not meet all of the stated purposes. Regardless of whether that is a proper reading of the state case, it is not determinative of the federal NEPA obligations in this upcoming EIS/EIR. Federal courts examining NEPA documents do grant significant discretion to action agencies to define the project purposes, but that discretion is not unfettered. See, for example, Simmons v. USCOE, 120 F.3d 664, 666 (7th Cir. 1997)(Rejecting "single-source" definition of project purpose for water supply, noting that "[i]f

IV. Establish the Baseline

Over the past several years, EPA has worked closely with the USFWS, USBR, and NMFS on a number of large-scale NEPA reviews. One lesson learned in these efforts is that defining the "baseline" for evaluating project impacts is often a complex and contentious issue. EPA suggests that the action agencies establish a workgroup to draft and secure agency agreement on a "baseline report" so that baseline issues can be identified and, if necessary, elevated for resolution. This approach was successfully employed in developing a common baseline for NEPA and ESA evaluation purposes when the Department of the Interior prepared the Central Valley Project Improvement Act Programmatic Environmental Impact Statement.

Conclusion

We look forward to our continued constructive involvement in developing the BDCP EIS/EIR. Please send subsequent notices and three copies of the Draft EIS to the address above (mail code: CED-2). If you have any questions about our comments, please call Laura Fujii, the lead NEPA reviewer, or Carolyn Yale, the Water Division lead, for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov. Carolyn can be reached at (415)972-3482 or yale.carolyn@epa.gov.

Sincerely,

Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Karen Schwinn, Associate Director
Water Division

Attachments: EPA March 17, 2008 BDCP Scoping Letter
EPA November 12, 2008 Cooperating Agency Letter

cc: Ted Meyers, National Marine Fisheries Service
Rosalie del Rosario, National Marine Fisheries Service
Patti Idlof, U.S. Bureau of Reclamation

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the agency constricts the definition of the project's purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role."). See also Border Power Plant Working Group v. DOE, 260 F. Supp. 3d 997 (S.D. Cal., 2003)(Rejecting and broadening agency's definition of project purpose.); Similarly, Davis v. Mineta, 302 F.3 1104 (10th Cir. 2002). For the reasons outlined above, EPA believes that analyzing alternatives with reduced exports is both factually and legally appropriate and pragmatically necessary to move the BDCP process forward.

Mike Jewell, U.S. Army Corps of Engineers
Dorlores Brown, California Department of Water Resources
Scott Cantrell, California Department of Fish and Game
Karen Scarborough, California Natural Resources Agency
Thomas Howard, State Water Resources Control Board

Proj file

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

March 17, 2008

Rosalie Del Rosario
National Marine Fisheries Service
650 Capitol Mall
Suite 8-300
Sacramento, CA 95819

Subject: Scoping Comments for the Bay Delta Conservation Plan for the Sacramento-San Joaquin Delta, CA.

The U.S. Environmental Protection Agency (EPA) has reviewed the Federal Register Notice published January 24, 2008 requesting comments on the National Marine Fisheries Service (NMFS) and Fish and Wildlife Service (FWS) (Services) decision to prepare an Environmental Impact Statement (EIS) for the above action. Our comments are provided pursuant to the National Environmental Policy Act (NEPA), Council on Environmental Quality (CEQ) regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act.

The Bay Delta Conservation Plan (BDCP) is being prepared through a collaboration between a number of State and Federal agencies, nongovernmental entities, and "Potentially Regulated Entities" (primarily Delta water diverters) to meet the requirements of the Federal Endangered Species Act (Federal ESA) and California Natural Community Conservation Planning Act. The BDCP may or may not include a Habitat Conservation Plan (HCP) under the Federal ESA. The California Department of Water Resources intends to apply for Incidental Take Permits from the Services based upon the BDCP. These incidental take authorizations would allow the incidental take of threatened and endangered species resulting from covered activities, including those associated with water conveyance and the operations of the California State Water Project and Federal Central Valley Project.

The Points of Agreement (November 16, 2007) of the participants in the BDCP process appear to organize the BDCP process around the question of conveyance in the Delta (existing conveyance, isolated facility, or dual conveyance). To meet the requirements of the Federal ESA, the BDCP EIS would presumably address construction, operations, and species protection measures for each of the possible conveyance alternatives, and would also make provisions for species protection during the multi-year "interim period" prior to the implementation of an alternative conveyance, if any.

Our staff has discussed the Notice of Intent (NOI) with several staff at the Department of the Interior and at NMFS. We understand that there is some discussion of issuing a revised NOI as the planning for environmental compliance for the BDCP advances. EPA believes that a revised NOI is desirable. The project purpose and need statement, proposed federal action, and intended covered activities need significantly greater definition before the interested public can meaningfully comment on the scope of the environmental analysis. We believe the federal action agencies should, at a minimum, discuss the following issues within the context of a revised NOI:

(1) What are the proposed federal actions?

The revised scoping notice should clarify the description of the proposed federal action(s) and the broader project purpose. Although the FWS and NMFS action is, literally, signing a permit, the environmental analysis and review will be of the permitted activities. The revised scoping notice should provide more specificity as to what activities (construction and operation of the existing or new facilities) are intended to be covered by the federal permit.

(2) Who are the appropriate lead agencies?

Given the substantial emphasis on new conveyance alternatives in the Points of Agreement, we believe the BDCP participants should consider whether additional or alternative federal lead agencies are necessary. Most observers of Delta conveyance alternatives believe that the US Bureau of Reclamation (or, potentially, the US Army Corps of Engineers (Corps)) will need to be involved in the construction and operation of at least some part of any new conveyance alternative. To streamline the environmental review process, these agencies should be included as lead agencies in this and any subsequent environmental reviews.

(3) What is the purpose of the document?

Construction of any new conveyance alternatives, as well as significant modification of operations of existing facilities, may trigger the need for a number of federal permits. In particular, Corps permits under Clean Water Act (CWA) Section 404 and Section 10 of the Rivers and Harbors Act will likely be required for implementation of either conveyance changes or many projects under the BDCP. In addition, depending on the configuration of new conveyance alternatives, a CWA Section 401 certification may be necessary. Similar permitting issues under state law may confront state agencies proposing to take action under the BDCP. To avoid unnecessary duplication and delay, EPA recommends that the lead agencies coordinate with the potential regulatory agencies to assure that the proposed EIS meets the needs of regulatory agency NEPA/California Environmental Quality Act (CEQA) compliance.

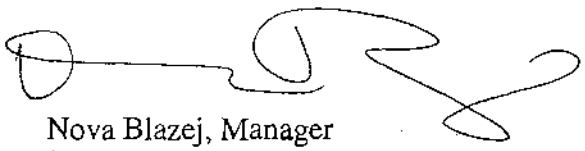
(4) What is the intended level of review of the proposed EIS?

The revised NOI should clarify the proposed level of review of this document. Typically, large projects include some kind of programmatic review with subsequent documents tiering from the programmatic review to deal with site-specific issues or particular problems. The lead agencies should clarify whether this EIS is intended to serve as a single environmental review covering both programmatic decisions (such as, what form of conveyance will be used, at what size) and site specific issues (actual alignment, rights of way, site specific mitigation). If a tiered or supporting document approach is intended, the lead agencies should discuss their proposed division of issues between the programmatic and the site-specific documents.

EPA appreciates the leadership and significant resources being invested in this effort by the BDCP participants. It is clear that the current condition and uses of the Sacramento-San Joaquin River Delta are unsustainable. We recognize that developing a response to the multiple environmental and water supply problems facing the Delta is a massive undertaking, and that the environmental review process will be similarly complex. EPA believes that "re-scoping" the project to clarify the issues raised above will enable the process to move forward more defensibly and expeditiously.

We appreciate the opportunity to provide comments on the preparation of the EIS. We look forward to continued participation in this process as more information becomes available. Please send subsequent scoping notices and three copies of the Draft EIS to the address above (mail code: CED-2). If you have any questions, please contact me at (415) 972-3846 or Laura Fujii, the lead reviewer for this project. Laura can be reached at (415) 972-3852 or fujii.laura@epa.gov.

Sincerely,



Nova Blazej, Manager
Environmental Review Office
Communities and Ecosystems Division

Cc: Lori Rinek, US Fish and Wildlife Service
Agency Coordination Team

project file

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

November 12, 2008

John Engbring
Assistant Regional Manager
Water and Fisheries Resources
California and Nevada Region
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2606
Sacramento, CA 95825-1846

Subject: EPA Cooperating Agency Status on Bay Delta Habitat Conservation Plan

Dear Mr. Engbring:

Thank you for your recent letter inviting the U.S. Environmental Protection Agency (EPA) to be a cooperating agency for preparation of the Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Bay Delta Habitat Conservation Plan (BDCP) for the Sacramento-San Joaquin Delta. As you know, EPA has for many years worked with the Department of the Interior and other federal agencies to address the environmental and water management challenges in the Bay and Delta. We believe that a Habitat Conservation Plan (HCP) developed under the federal Endangered Species Act (ESA) could be a useful complement to the other ongoing programs aimed at restoring this important resource. In this spirit, we accept the invitation to participate in the development of the environmental analysis and documentation, consistent with our expertise and jurisdictional interests.

At this point in time, we anticipate involvement of staff from two EPA offices: the Environmental Review Office (ERO, within the Communities and Ecosystems Division) and the Water Division. The corresponding areas of expertise would be (1) compliance with the National Environmental Policy Act (NEPA), (2) protection of the entire range of designated uses as articulated in the Clean Water Act (CWA), (3) protection of drinking water quality under the federal Safe Drinking Water Act (SDWA), and (4) implementation of the CWA Section 404 program, which we cooperatively implement with the U.S. Army Corps of Engineers (Corps).

We have been informally following the development of the BDCP over the past two years. We have also reviewed the initial notice of intent (NOI) issued jointly by the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) on January 24, 2008, and the subsequent NOI issued by those agencies and the U.S. Bureau of Reclamation (USBR) on April 15, 2008. In response to the first NOI, EPA submitted a short scoping letter to NMFS and USFWS, a copy of which is attached. We believe that many of our previous scoping comments are still applicable.

EPA continues to be concerned about the broadly stated purpose of the proposed program. Under NEPA, action agencies must examine a reasonable set of alternatives to the proposed action. The range of alternatives will generally mirror the range of the proposed actions. At present, the proposed set of actions is extremely ambitious, and we are concerned that the NEPA evaluation of alternatives could overwhelm the proposed schedule.

We understand from your representative at the October CALFED Agency Coordination Team meeting that the federal action agencies intend to "re-scope" this NEPA document in 2009, after release of the draft Conservation Strategy in late 2008. This release would also roughly coincide with the release of a federal agency BDCP purpose and need statement. Additional scoping would afford an opportunity to consider more specifically the proposed actions, alternatives, and potential impacts. EPA proposes that we meet with the federal action agencies after the above documents are released to discuss specifically where EPA could most usefully apply its expertise and limited resources in this NEPA analysis.

In accepting your invitation to become a cooperating agency, we also offer the following considerations:

First, as you know, EPA's resources are extremely limited. In the event that we identify a significant technical role for EPA in developing parts of the proposed analyses, we will need to work with you to identify the resources for that activity.

Second, you suggest in your letter that this EIS/EIR should serve as the NEPA compliance document for any federal permit actions envisioned in the proposal. Identifying and evaluating the "least environmentally damaging practicable alternative" (LEDPA) under the CWA 404 program requires an alternatives analysis as described in the CWA Section 404(b)(1) Guidelines. This CWA 404 alternatives analysis process could potentially be coordinated with the EIS/EIR effort. EPA will discuss this suggestion with the Corps (co-regulators in the CWA 404 program).

Third, EPA has ongoing review and approval obligations for changes to water quality standards under CWA Section 303. Historically, this review and approval function has involved consultation under the ESA. In some cases, it may be useful to coordinate ESA consultations with the NEPA review process, if doing so can expedite both processes.

Finally, we would like to emphasize that our role as a cooperating agency during document preparation will be technical in nature, and that this assistance does not abridge or otherwise affect our responsibilities for independent review of the Draft and Final EIS under Section 309 of the Clean Air Act and the related Council on Environmental Quality regulations.

The lead contact for our work will be Carolyn Yale; in the Water Division (415-972-3482; yale.carolyn@epa.gov). She will be coordinating with Laura Fujii in the ERO, which implements our independent NEPA/309 review obligations. At this time, we do not anticipate the need for a memorandum of agreement formalizing our participation.

We look forward to working with USFWS, NMFS, USBR and the other participating agencies in this important effort.

Sincerely,

Kathleen M. Goforth, Manager
Environmental Review Office
Communities and Ecosystems Division

Karen Schwinn, Associate Director
Water Division

Attachment: EPA March 17, 2008 BDCP Scoping Letter

cc: Ted Meyers, National Marine Fisheries Service
Susan Fry, U.S. Bureau of Reclamation
Mike Jewell, U.S. Army Corps of Engineers
Dorlores Brown, California Department of Water Resources
Scott Cantrell, California Department of Fish and Game

United States Department of the Interior

FISH AND WILDLIFE SERVICE

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May 13, 2009

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

Re: Comments Regarding Environmental Impact Report and Environmental Impact Statement (EIR/S) Project Scoping for Bay Delta Conservation Plan.

Ms. Brown,

I am writing regarding the scope of the Environmental Impact Report and Environmental Impact Statement of the Bay Delta Conservation Plan. The eastern alignment of the proposed conveyance channel runs adjacent to the Stone Lakes National Wildlife Refuge (Refuge) and then crosses the lower third of the Stone Lakes National Wildlife Refuge Project Boundary. The Refuge Project Boundary encompasses the Bufferlands area around the Sacramento Regional Wastewater Treatment Plant and extends south from Freeport between the former Southern Pacific Railroad and along I-5 south to Twin Cities Road (see attached map).

I believe there are a number of issues that have not been adequately addressed in the scoping process including impacts to terrestrial biological resources, potential changes in local hydrology and water quality, and impacts to local agricultural operations. Our primary concern regarding the potential environmental impacts is the loss of habitats for a variety of species that would result from this project, particularly the eastern alignment, including some state and federal special status species and the loss of agricultural lands in the region.

The Refuge, administered by the U.S. Fish & Wildlife Service (Service), was established to protect 18,000 acres of Central Valley agricultural lands and natural habitats to support a wide variety of migratory birds and special status species. The Service completed an EIS in 1994 that established Stone Lakes as the 505th National Wildlife Refuge and approved the legal Project Boundary within Sacramento County. Over 8 million dollars of private and public funds have now been invested in protecting about 6,000 acres of wetlands, grasslands, riparian habitats and

agricultural lands within the Project Boundary with an eventual goal of linking with the Cosumnes River Preserve to the south. In 2007 the Service completed a Comprehensive Conservation Plan (CCP) for the Refuge that included public review on management activities for the next fifteen years. This Refuge is part of a national network of lands and waters in the National Wildlife Refuge System for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of the present and future generations of Americans.

The scoping process needs to address the potential impacts the eastern alignment of the project could have on over 75 bird species that are currently found on the Refuge, including the following state and federal listed or species of concern: greater sandhill crane, Swainson's hawk, white faced ibis, long billed curlew and western meadowlark. The project could also potentially affect vernal pool species located in the proposed alignments including the federally listed vernal pool fairy shrimp and vernal pool tadpole shrimp, the giant garter snake and the valley elderberry long horned beetle. Furthermore, over one million birds winter in the Central Valley, and the loss of agricultural lands and open space and associated activities with the construction and operation of the canal would likely impact populations and migratory patterns of waterfowl and waterbirds in southern Sacramento County.

The Service has been actively managing wetland and grassland habitats since 1997 and have monitored local movements of migratory waterfowl and waterbirds, particularly white-fronted geese, black-bellied plovers, greater sandhill cranes, long-billed curlews, and white-faced ibis; the last three species being candidates for federal listing. Our observations indicate these species regularly feed and roost both on the Refuge and in winter wheat, corn, clover, and pasture on private lands outside currently managed lands and the Project Boundary. In the case of waterfowl, the birds that roost at the Refuge may be found feeding at the Yolo Wildlife Area in the morning and at Cosumnes River Preserve or private land in the afternoon. We have documented daily movements of greater sandhill cranes between the refuge and privately-owned agricultural fields to the west within Reclamation District 744 (Scribner's Bend). We have also observed movement by white-fronted geese and black-bellied plovers between the refuge and wheat and clover fields within RD 813 to the southwest.

Specifically in the case of the sandhill crane, the refuge and surrounding agricultural fields are critically important. Greater sandhill cranes have a wintering range of as little as one to three square miles, do not tolerate disturbance and require shallow wetlands for night roosting and loafing sites and a mix of agricultural fields such as alfalfa, corn and irrigated and dry pastures and wetlands for foraging. Already, sandhill cranes have been displaced from traditional feeding grounds because of urbanization. The agricultural lands surrounding the Refuge are vital to maintaining a healthy population of these magnificent birds, because the Refuge cannot provide all the habitat requirements needed by these birds. I am concerned the construction and maintenance activities of the canal could cause major changes in the migratory patterns of these birds pushing them into less suitable habitat, and believe the scoping process has not adequately addressed potential impacts the eastern alignment would have on this species.

The scoping process does not adequately address potential increases in flooding caused by the construction of a large canal and levee system. An increase in flooding could affect the

Refuge's infrastructure and its' ability to meet goals and objectives, including the restoration and management of wildlife habitat, public uses including hunting, fishing, environmental education, interpretation, photography and wildlife observation, and maintaining agricultural activities. Increases in stormwater run-off are already projected to double in the Beach-Stone Lakes area with the continued development south of Elk Grove between Interstate 5 and Highway 99. The construction of a 30' high levee would likely alter the flooding pattern, frequency and duration in the Stone Lakes Basin.

The scoping process also did not adequately cover potential mitigation areas and impacts. Mitigation efforts should remain in the general area of impact. For example, mitigation and conservation efforts to protect greater sandhill crane habitat should remain within the current footprint of sandhill crane habitat and not be placed elsewhere in the Delta. This area would include the Stone Lakes Project Boundary as well as Cosumnes River Preserve, Woodbridge Crane Reserve and the privately owned properties between the two conservation areas.

I am also concerned that the impacts of enhancing and developing tidal marsh habitats on species that currently depend on the Delta have not adequately been addressed. Establishing a canal and tidal marsh conservation measures could displace several migratory bird species that relay on conservation and agricultural lands in the Central Valley. Several of the sites being considered as Restoration Opportunity Areas include conservation areas in addition to the Refuge such as the Yolo Bypass Wildlife Area, Cosumnes River Preserve and Woodbridge/Isemberg Sandhill Crane Preserve which provide habitat for waterfowl, shorebirds, raptors and other grassland and shallow wetland dependent birds. The BDCP must incorporate existing plans and goals and obligations these various conservation areas have already developed in the planning process. Lastly, the impact of upstream diversions coupled with continued salt water intrusion and less run-off as a result of climate change will change the current Delta hydrology and salinity thereby affecting farming and the available waste crop in Delta used by cranes and other migratory birds.

In closing, I believe the Bay Delta Conservation Plan needs to address a variety of issues before choosing any alignment and moving forward with this project. Thank you for the opportunity to comment on this document. We look forward to continued communication with you and other concerned interests on this and other projects related to biological resources in the Stone Lakes Basin.

Respectfully,

Bart McDermott
Project Leader

Attachments:
Stone Lakes NWR Project Map (CCP figure 2)

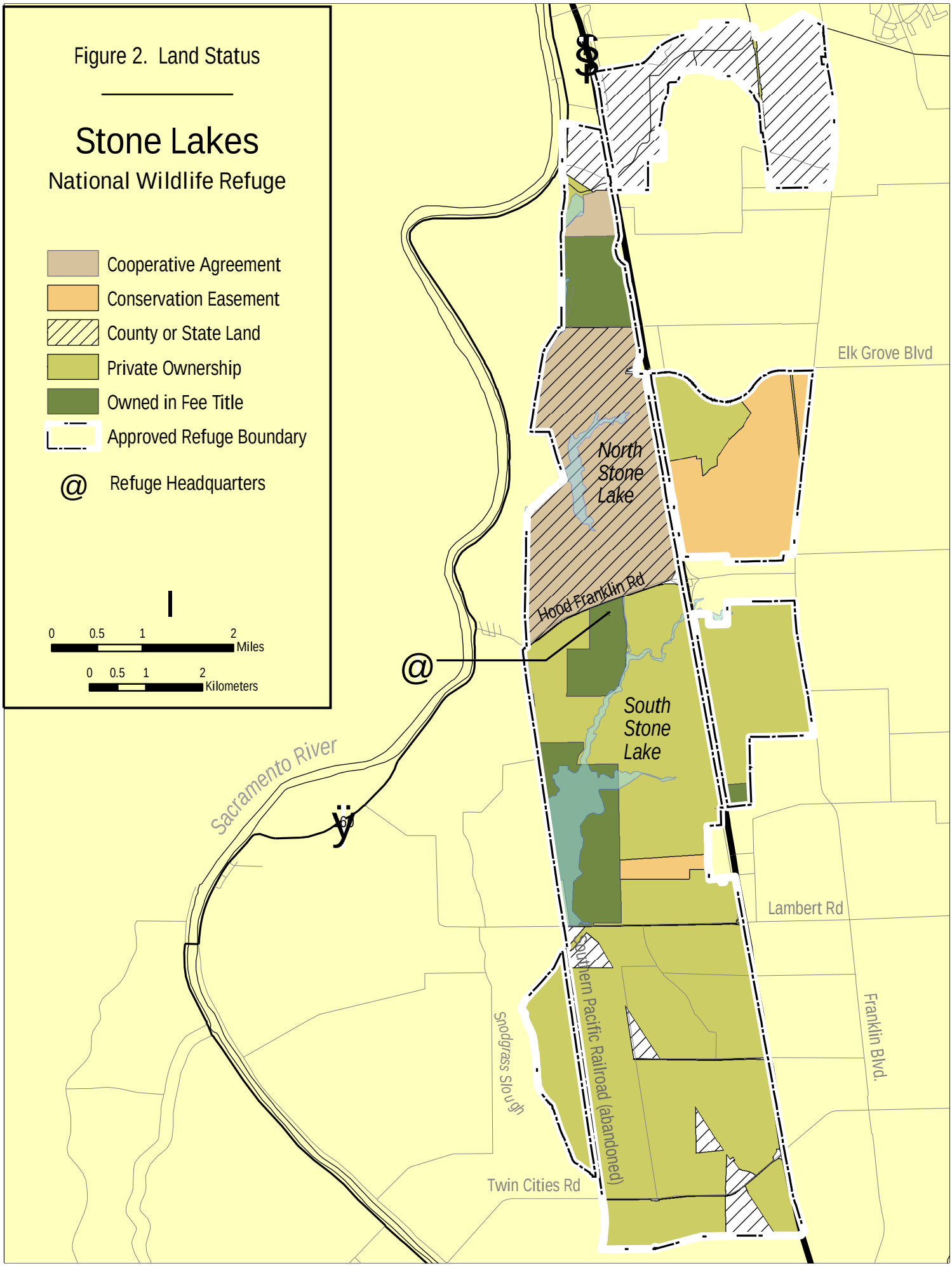
Figure 2. Land Status
Stone Lakes
National Wildlife Refuge
Cooperative Agreement
Conservation Easement
County or State Land
Private Ownership
Owned in Fee Title
Approved Refuge Boundary
Refuge Headquarters
0 0.5 1 2 Miles
0 0.5 1 2 Kilometers
Elk Grove Blvd
North Stone Lake
Hood Franklin Rd
South Stone Lake
Sacramento River
Lambert Rd
Southern Pacific Railroad (abandoned)
Snodgrass Slough
Franklin Blvd.
Twin Cities Rd

APPENDIX H2: 2009 TRIBAL NATIONS SCOPING COMMENTS

Sacramento

Hoopa Valley Tribal Council

HOOPA VALLEY TRIBE

Regular Meetings on the First and Third Thursday of Each Month

P.O. Box 1348 • HOOPA, CALIFORNIA 95546 • Phone 625-4211 • Fax 625-4594

Clifford Lyle Marshall, Sr.
Chairman

Commcnts of the Hoopa Valley Tribe Regarding
the Delta Conservation Plan EIR/EIS
Presented March 19, 2009

For thousands of years the Hoopa Valley Tribe (Tribe) has resided on the Trinity River. The Trinity River is the focal point of our culture, religion and economy. In its natural course the river is a tributary of the Klamath River. With the Bureau of Reclamation's completion of the Trinity River Division (TRD) of the Central Valley Project (CVP) in 1963, the Trinity River also became an artificial tributary of the Sacramento/San Joaquin watershed and the only source of imported water to the Central Valley. The TRD enabled irrigation of substantial areas on the west side of the San Joaquin Valley.

Contrary to law that prohibited diversion of Trinity River water required for in-basin needs, the Bureau of Reclamation diverted up to 90 percent of the annual flow of the Trinity River into the Central Valley for use as far south as the west side of the San Joaquin Valley. For 45 years, that diversion has brought enormous wealth to water and power beneficiaries in the Central Valley, as well as having provided significant benefits to the State and National economies. The price of the transfer of wealth from the Trinity River to the San Joaquin Valley was severe reductions in Trinity River fish populations and economic and cultural devastation to the Hupa people and the north coast communities who rely on the Trinity River.

Decades of bipartisan effort by our Tribe and many others, supported by past and present members of Congress and successive Administrations, have produced critical legislation intended to restore the Trinity River. The centerpiece of the restoration effort is the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575 Title XXXIV, October 30, 1992, 106 Stat. 4706). The CVPIA makes environmental restoration a CVP purpose and requires CVP water and power contractors to pay restoration costs.

In 2000, the Tribe and Secretary of the Interior signed the Trinity River Restoration Record of Decision (ROD However, judicial and administrative attacks from water and power contractors delayed the start of restoration by four years. San Joaquin water contractors have filed administrative appeals to impede individual Trinity River fish habitat improvement projects as late as 2006. In addition, failure by the Department of the Interior to enforce restoration repayment provisions, fishery restoration remains a distant goal and restoration science and program management have suffered. The depressed state of Klamath and Trinity fish populations is so serious that in July , 2006, the Secretary of Commerce's declared a Fishery Resources Disaster for California's north

coast and southern Oregon fishery A real twist of bureaucratic irony occurred when the National Marine Fishery Service recently informed the Tribe that our situation in 2006 does not qualify for federal economic assistance under their guidelines since the economy of our Trinity River fishery was destroyed in the late 1970s. Unlike the agricultural industry that typically receives federal subsidies, funding for water banks and the like, our tribal fishery has never received any type of federal economic assistance even though federal regulations completely close down our commercial fishing rights in 1978 due to depressed fish populations.

The ongoing environmental issues associated with conveyance of federal and state water supplies through the Bay Delta reached crisis proportions with recent judicial decisions restricting pumping to avoid harm to endangered species. The cost of resolving those issues bears directly on the funds available for ongoing Trinity restoration needs. Those issues also implicate Trinity River water supplies required by statute, federal contract and state permit to be made available for use from the Trinity River Division.

The Department of the Interior has a federal trust responsibility to implement the Trinity River restoration program while deliberations on addressing the problems in the Delta move forward. The Ninth Circuit Court of Appeals characterized the federal trust responsibility for the Trinity River in the following terms.

> As a part of its harms-balancing analysis, the district court concluded that "the government is also in breach of its general and specific independent federal trust obligation to the Hoopa and Yurok Tribes." Order, 275 F. Supp. 2d at 1232. It also stated that the purpose of the CVPIA § 3406(b)(23) was to "fulfill[] the federal government's trust obligation to the Indian Tribes." Id. at 1234. These statements are significant in that they provide support for the court's order implementing portions of the Preferred Alternative as injunctive relief.

Westlands Water Dist. v. U.S. Dept. of Int., 376 F. 3d 853, 877. (9th Cir. 2004).

The trust responsibility bars the United States from putting itself in opposition to its fiduciary responsibility to the Hoopa Valley Tribe. Moreover, it requires the federal trustee not to act in conflict with its tribal beneficiary on an issue of fishery restoration that also affects thousands of non-Indians who are dependent on fishing. We are concerned that the Federal agencies, who have a responsibility to protect our tribal interests, have been silent on how they plan on protecting Trinity River funding and water supply as the plans for addressing problems in the Delta evolve.

We are committed to work with State and Federal agencies on solutions to California's water issues that honors the trust responsibility, secures needed restoration funding, and assures timely implementation of restoration.

On a related mater, the 110th Congress adopted Pay-As-You-Go (PAYGO) rules for new program authorizations. As the Administration and Congress consider solutions for the

Delta crisis, they should not subordinate ongoing and prior responsibilities for Trinity River restoration. PAYGO should not be a constraint on Trinity River restoration because section 3406(b)(23) of the CVPIA requires CVP contractors to pay the full cost of the restoration program as part of the annual operation and maintenance charges for use of CVP water and power. The fact that the Department of the Interior has not included mandatory cost reimbursement provisions in water contracts does not excuse that obligation.

Recommendations:

1) Full and timely implementation of the Trinity River Record of Decision and reform ROD administration.

2) Funding for Trinity River restoration at the levels identified in the February 26, 2007 determination of costs by the Secretary of the Interior in consultation with the Hoopa Valley Tribe. (attached)

3) Full integration of the fish and wildlife restoration Central Valley Project purpose established in the CVPIA based on the best science available and adjust deliveries to water contractors accordingly.

4) Implementation of CVPIA contract reform provisions, particularly those in section 3404 requiring contractors to pay for environmental restorations and in section 3406(b)(23), which make the costs of Trinity restoration fully reimbursable operation and maintenance costs.

5) Ensure transparent implementation of the CVPIA so that no Tribal Governments are excluded from deliberations affecting California Water Resources.

6) Ensure that decision making respects the senior priority of Indian rights in natural resources and the federal responsibility for the resources that the United States holds in trust for the Hoopa Valley Tribe.

7) Fulfill obligations under the 1955 Trinity River Division authorization requiring annual availability of 50,000 acre feet of TRD water for uses in the Trinity River, as set forth in contracts and permits.

8) Remedy the adverse impacts on CVPIA implementation due to the double-counting provision contained in the San Joaquin Settlement, S. 22 Sec. 10007(2), 111thCong., 1st Sess. The Tribe concurs with the analysis of the Bureau of Reclamation and U.S. Fish and Wildlife Service regarding CVPIA implementation funding that " the amount available for CVPIA activities will be reduced sooner" following enactment of the San Joaquin Settlement Agreement by Congress. (CPAR at 14).

We appreciate the opportunity to present our views on the Delta Plan. If you have questions or are in need of further information please contact me at the above address.

Contact: Daniel Jordan, Self Governance Coordinator 530 625-4211 ext 106

Trinity River Restoration Program
Projected Costs for Construction and O&M: FY2008 to FY2030[1]
(all dollars in millions)

	FY2008	FY2009	FY2010	FY2011	FY2012	FY2013	FY2014	Average Annual FY2015-FY2030
Construction	6.6-6.8[2]	6.6-9.8	5.9-6.6	6.2-7.8	3.1-4.3	0.0-0.2	0.0-0.2	0.0-0.2
First 5-Year Construction Average[3]	6.4							
Operations and Maintenance[4]	9.5-10.2	10.1-10.3	9.5-9.5	9.6-9.9	10.4-10.8	11.7-11.8	11.0-11.6	10.8-11.0
First 5-Year O&M Average	10.0							
Total Costs	16.1-17.0	16.8-20.2	15.3-16.1	15.7-17.6	13.6-15.0	11.8-11.9	11.2-11.6	10.8-11.2
First 5-Year Average All Costs	16.4							

[1]These cost estimates are companion to a drafting service provided by the Department of the Interior in response to a request from Senator Feinstein's office, regarding legislation proposed by the Hoopa Valley Tribe. As such, the estimates they are unconstrained by the typical limitations on the Program's appropriation requests.

[2]These ranges in cost estimates reflect different assumptions and/or methodologies used by the Hoopa Valley Tribe and DOI/Reclamation. Initial differences in projected costs were largely resolved during several review sessions. Each entity has figures at the upper and lower end of the ranges, depending on the fiscal year in question.

[3]A five-year average was developed for use in the draft legislation, which would specify a construction component and an operations and maintenance component. FY2012 represents the last year when major construction activities would be expected to occur.

[4]Amounts for Construction and Operations and Maintenance would be reviewed annually according to provisions in the proposed legislation.

Sacramento

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— Comment Card —

Please Print

Name: Daniel Jordan Organization: Hoopa Tribe

Telephone: 530 / 625-4211 X106 e-mail:

Address: P.O. Box 1348

City: Hoopa State: Ca. Zip: 95546

☐ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

Cultural & Historic Issues

There are 109 federally recognized Indian Tribes in California. The 1937 CVP specifically provides that one of the Purposes of the CVP is to provide for the water needs of Indian Land. There is not a single water contract today between the Bureau of Reclamation and an Indian Tribe or individual Indian allottee.

Many Tribes and Indian allottees possess Senior water rights, however the Federal Government has ignored them when allocating CVP water.

The Federal Government has a Trust obligation to determine how these water rights will be provided in water allocations

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. Comments must be received by May 14, 2009.

APPENDIX H3: 2009 STATE AGENCIES SCOPING COMMENTS

Gold Fields District
7806 Folsom-Auburn Road
Folsom, CA 95630

May 14, 2009

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P Street, Bonderson Building, 4th Floor
PO Box 942836
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project within the Delta, projects (such as tidal gates) to improve salinity conditions and other potential facilities.

The Gold Fields District of California State Parks owns and/or manages five State Park units or properties within the BDCP project area. These park properties include Delta Meadows, the Locke Boarding House, Brannan Island State Recreation Area (SRA), Franks Tract State Recreation Area and State Park property within the Stone Lakes Wildlife Refuge which is managed by the U.S. Fish and Wildlife Service. All of these park properties could be affected directly or indirectly by the BDCP project. Additionally, the Gold Fields District manages Folsom Lake State Recreation Area, which could be affected by the BDCP Project if the BDCP Project results in changes to the operation of the Folsom Dam and Reservoir which is part of the Central Valley Project (CVP).

State Parks concerns with the BDCP Project broadly include potential impacts to recreation use and facilities, impacts to the natural and cultural resources within all of these park units, and the potential loss of portions of the State Park units within the Delta to the facilities proposed as part of the BDCP Project. Below are some specific concerns regarding the park units within the Gold Fields District.

Delta Meadows is a 470-acre property adjacent to the Town of Locke and along portions of Snodgrass and Meadows Sloughs. State Parks acquired and manages the property primarily to preserve and protect one of the last remaining areas of the northern Sacramento-San Joaquin River Delta that exhibits remnants of the natural conditions that existed prior to Euro-American Settlement. The property contains important riparian and oak woodland habitat. Delta Meadows is enjoyed by an estimated 10,000 to 12,000 visitors annually. State Parks is concerned with the potential

impacts of BDCP project construction and operation on the natural resources of the Delta Meadows property.

The Locke Boarding House is an historic structure within the Town of Locke which was acquired by State Parks in 2005. State Parks has restored the Boarding House and it now serves as a visitor and interpretive center in the Town of Locke. State Parks is concerned with the potential impacts to access to the Locke Boarding House due to traffic and circulation impacts during the construction phase of BDCP Project facilities.

Brannan Island SRA is a 336-acre park unit on the southern end of Brannan Island which provides camping, picnicking, boat launching and other recreation activities to approximately 130,000 visitors annually. Brannan Island is an important recreation amenity in the Delta region. State Parks is concerned that the BDCP Project could impact recreation use and facilities at Brannan Island SRA either directly or indirectly, both during construction of BDCP facilities and during operation.

As part of the Franks Tract Project, the Department of Water Resources has already initiated planning and is considering locating one or more tidal gates which could directly or indirectly impact recreation use and facilities at Brannan Island. State Parks submitted a November 20, 2008 letter to DWR in response to the NOP for that project (SCH #2008092081). State Parks is unclear regarding the relationship of the Franks Tract Project and the BDCP Project, which also seems to include the potential for tidal gates in the vicinity of Brannan Island SRA. If the BDCP project is now encompassing the proposals made in the Franks Tract Project, please consider November 20, 2008 letter sent to DWR regarding the Franks Tract Project as part of our comments for this NOP. A copy of this letter is attached.

Franks Tract SRA is a 3,500-acre property consisting primarily of two flooded islands within the Delta, Franks Tract and Little Franks Tract. All types of boating, fishing, waterfowl hunting are the primary recreation activities at Franks Tract SRA. Visitation is estimated to be between 15,000 to 20,00 visitors annually. Again, State Parks is concerned how the BDCP may impact recreation use at Franks Tract. It is our understanding that tidal gates or other types of operable barriers across some of the sloughs connected to Franks Tract may be considered as part of the BDCP Project.

Folsom Lake SRA is comprised of the 17,300 acres of federal property around Folsom and Nimbus Dams and the two reservoirs, Folsom Lake and Lake Natoma. The SRA also includes and additional 2,200 acres of State-owned lands. California State Parks manages Folsom Lake SRA through and agreement with the U.S. Bureau of Reclamation. Folsom Lake SRA is one of the most heavily visited park units in the State Park System with approximately 1.5 million visitors annually. The SRA provides a wide range of recreation opportunities and facilities, but water dependent recreation activities account for about 85% of the park visitation. The extent of lake access and the quantity and quality of aquatic recreation opportunities available at Folsom Lake are directly connected to the operation of the reservoir and Folsom Lake levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP Project could result in changes in CVP operations which would affect Folsom Lake levels, State Parks is extremely concerned about potential impacts on recreation and revenues.

Because the BDCP Project potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, impacts to recreation use and water access due to operable barriers or other facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are addressed in the environmental analysis. Potentially significant effects, to recreation or resources, would need to be mitigated.

If you have any further questions regarding this matter, please contact the Gold Fields District Planner Jim Micheaels at (916) 988-0513. Thank you.

Sincerely,

Scott Nakaji
District Superintendent

Attachment to BDCP NOP letter 5/14/09 —

State of California • The Resources Agency
Arnold Schwarzenegger, *Governor*
DEPARTMENT OF PARKS AND RECREATION
Ruth Coleman, *Director*

Gold Fields District
7806 Folsom Auburn Road
Folsom, CA 95630
(916) 988-0205, FAX (916) 988-9062

November 20, 2008

Mr. Ajay Goyal, Project Manager
California Department of Water Resources
1416 Ninth Street, Room No. 252-18
Sacramento, CA 94236-001

RE: Notice of Preparation, Environmental Impact Statement/Environmental Impact Report for the Franks Tract Project – SCH #2008092081

The purpose of this letter is to provide comments regarding the Notice of Preparation for the Franks Tract Project for the Gold Fields District of California State Parks. The Gold Fields District manages Brannan Island State Recreation Area (SRA) and Franks Tract State Recreation Area. The Franks Tract Project is assessing five potential locations for flow control gates in the Delta, along Three Mile Slough and False River. Two of the proposed locations would directly involve portions of Brannan Island SRA. State Parks staff has had several meetings with Department of Water Resources (DWR) project managers regarding the Franks Tract Project. State Parks has granted a right of entry permit to DWR data gathering and geotechnical investigations at Brannan Island SRA associated with the environmental review of this Franks Tract Project.

State Parks supports the goals of the Franks Tract Project of improving the water quality conditions in the Delta and protecting and enhancing for fish species of concern which are dependent on the Delta environment. However, this project does have the potential to impact both existing and future recreation use and facilities at Brannan Island SRA and Franks Tract SRA.

Affected State Park Units

Brannan Island SRA is 328 acres of land owned by State Parks located at the confluence of Three Mile Slough and the Sacramento River. The average visitor attendance at Brannan Island SRA over the past dozen years is 130,000 visitors annually. Facilities at Brannan Island include a six lane paved boat ramp and parking, a small marina, a developed campground with 140 sites, a large group picnic area, a day use picnic and beach area, a group campground and a small visitor center. Camping, picnicking, swimming, beach use, and boating access for fishing and other aquatic recreation are all important recreation activities at Brannan I SRA. The management of Brannan Island SRA is guided by several planning documents including the "General Plan for Brannan Island and Franks Tract State Recreation Areas" (February 1988) and the "Recreation Assessment, Brannan Island State Recreation Area" (June 2008). State parks can provide copies of these documents to DWR.

Franks Tract is 3,522 acres of primarily water, a flooded former reclaimed Delta island, also owned by State Parks. Franks Tract is only accessible via boat and the primary recreation uses are fishing and waterfowl hunting. Over the past twelve years attendance at Franks Tract has averaged 14,000 visitors annually.

As delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Parks system and may also be a responsible agency for this project.

Potential Land Use and Construction Impacts

As previously mentioned, two of the proposed flow gate locations would involve lands within Brannan Island SRA along Three Mile Slough and would have impacts to existing and future facilities and uses. Site 2 in the Franks Tract NOP would have impacts to the existing campground at Brannan Island SRA. Site 1 would impact an existing dirt service road which is used as an informal trail. Fishing and other informal use of the Three Mile Slough shoreline occurs in the area of both Sites 1 and 2. Use of Site 1 may have impacts to potential future facilities and use of this area for group camping area or trails. In addition to the potential direct impacts to facilities and future use of these areas for the purposes of the SRA, the construction of the flow gate facility may have impacts on public access to and recreation use of Brannan I SRA.

The construction of the gate facility at either Site 1 or 2 may involve impacts to vegetation within Brannan Island SRA, including elderberry which is the host of the federally listed Valley Elderberry Longhorn Beetle.

Potential Operational Impacts – Boating and Recreation Use

State Parks understanding of the operation of the flow gates is that they may be closed on a daily basis for periods of hours depending upon tides and season. We also understand that the gates would include a lock system to allow boating traffic to pass through the gate when closed. The operation of the gates, including the delays involved in use of the lock, has the potential to have substantial impact to recreational boating traffic along Three Mile Slough and the use of Brannan Island SRA as a launching point. This could have long term impact to the recreation use of Brannan Island SRA which in turn would impact revenues generated from park user fees. A gate facility at Sites 1 or 2 may affect the quality of the camping and other upland recreation experiences at Brannan Island SRA, including noise, lighting and other issues associated with the facility.

The operation of the flow gates could also impact boating access to and use of Franks Tract SRA, particularly if a gate were constructed at the False River site.

Mitigation for Impacts to Recreation Use and Facilities

State Parks believes there may be options to mitigate the impacts to recreation use resulting from project construction and operation. This could include development of new recreation facilities or improvements to existing facilities at Brannan Island SRA such as assistance with the development of a new small visitor center or other improvements to the existing day use or overnight facilities. State Parks believes that interpretation and education regarding the purpose of the flow gate, the resources it is designed to protect and the complex ecology, hydrology and human use of the Delta would help the recreating public better understand and accept the flow gate facility which will have impacts on recreation and boating use. A new visitor center would provide a better opportunity to provide this education and interpretation. State Parks could envision an ongoing partnership or collaboration with DWR regarding such a visitor center. Another option is to provide improved facilities for boating, such as improvements to the boat launch or marina which may help mitigate impacts to boating use. State Parks is interested in further exploring

mitigation possibilities with DWR.

State Parks looks forward to working with DWR and participating in the environmental review process for this project. If you have any questions regarding this letter, please contact Jim Micheaels, Senior Park and Recreation Specialist on the Gold Fields District at (916) 988-0513. Thank you.

Sincerely,

Scott Nakaji
District Superintendent

PO Box 942896
1416 9th Street
Sacramento CA 94296-0001

May 14, 2009

Delores Brown
Division of Environmental Services
California Department of Water Resources
901 P Street, Bonderson Building, 4th Floor
PO Box 942836
Sacramento, CA 95814

Dear Ms. Brown,

This letter is in response to the Notice of Preparation (NOP) for the Bay Delta Conservation Plan (BDCP) Environmental Impact Report/Environmental Impact Statement (EIR/EIS) (SCH#2008032062). This project may include the development of new conveyance and diversion facilities, habitat restoration projects, changes in the operation of both the Central Valley Project and the State Water Project, and other potential facilities.

The Gold Fields District of California State Parks has already written to you outlining its recommendations about assessing the BDCP's potential impacts on the State Park units or properties that it manages within the BDCP project area. In my role as California State Parks' planning division chief, I am writing to alert you to other State Park units that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include these units at SWP or CVP reservoirs:

- Bethany Reservoir SRA. This State Park unit is comprised of 609 acres. About 45,000 visitors are estimated to recreate at this State Park annually.
- Castaic Lake SRA. This State Park unit is operated by Los Angeles County.
- Lake Del Valle SRA. This State Park unit is operated by the East Bay Regional Park District.
- Lake Oroville SRA. This State Park unit is comprised of 29,446 acres, including 902 acres owned by State Parks. Almost 1.05 million visitors recreate at this State Park annually.
- Lake Perris SRA. This State Park unit is comprised of 6674 acres, including 1429 acres owned by State Parks. Over 702,000 visitors recreate at this State Park annually.
- Millerton Lake SRA. This State Park unit is comprised of 6079 acres, including 303 acres owned by State Parks. Almost 312,000 visitors recreate at this State Park annually.
- San Luis Reservoir SRA. This State Park unit is comprised of 26,035 acres. About 542,000 visitors recreate at this State Park annually
- Silverwood Lake SRA. This State Park unit is comprised of 2201 acres owned by State Parks. Over 354,000 visitors recreate at this State Park annually.

These State Park units provide a wide range of recreation opportunities and facilities, but water-dependent recreation activities account for most of the parks' visitation. The extent of lake access and the quantity and quality of aquatic recreation opportunities available at these units are directly connected to the operation of the reservoirs and the reservoirs' water levels, particularly during the primary recreation season, from April through October. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect lake levels, State Parks is extremely concerned about potential impacts on recreation, other park resources, and revenues.

Other State Park units are located on rivers that may be affected by potential changes in CVP or SWP operations that may result from the BDCP. These include William B. Ide State Historic Park, Woodson Bridge SRA, Bidwell-Sacramento State Park (SP), the state park property at Butte City, Colusa-Sacramento SRA, and Great Valley Grasslands SP. To the extent that the BDCP could result in changes in CVP or SWP operations which would affect river flows suitable for recreation, State Parks is concerned about potential impacts on recreation and revenues at these units. The affects on other park resources caused by changes in river flows attributable to the BDCP should also be assessed.

Finally, California State Parks is completing its *Central Valley Vision Implementation Plan*, a 20-year plan for improving the State Park System in the Central Valley. The plan outlines potential projects to improve recreation and resource protection at existing State Park units in the Central Valley and identifies areas potentially suitable for addition to the State Park system. A draft of the plan is posted online at http://www.parks.ca.gov/default.asp?page_id=23483. Opportunities should be considered for synergies between the Central Valley Vision Implementation Plan's recommendations and the habitat restoration or other projects recommended in the BDCP. The implementation plan's recommendations may include some actions that might offset impacts to recreation or other park resources attributable to the BDCP.

Because the BDCP potentially involves State Park units, as delineated in the California Environmental Quality Act Guidelines (Section 15386), California State Parks is a trustee agency for the park units within the State Park System and may also be a responsible agency for this project.

California State Parks requests that the lead agencies, DWR and Reclamation, consider both the direct and indirect impacts to recreation to all of the State Park units potentially affected by the BDCP, both during construction and operation. This could include direct use of State Park lands for BDCP facilities, temporary and permanent impacts to recreation use resulting from changes to traffic routes and circulation, or impacts to recreation use and water access due to new water management facilities on waterways connected to State Park units. Additionally, State Parks requests that the potential impacts to the natural and cultural resources of any affected State Park units are

addressed in the environmental analysis. Potentially significant effects to recreation or resources would need to be mitigated.

If you have any further questions regarding this matter, please contact Dan Ray, Chief, Planning Division, California State Parks at (916) 651-0305. Thank you.

Sincerely,

Dan Ray
Chief, Planning Division

State Water Resources Control Board

Executive Office
Charles R. Hoppin, Chairman
1001 I Street • Sacramento, California • 95814 • 916.341.5615
P.O. Box 100 • Sacramento, California • 95812-0100
Fax 916.341.5621 • www.waterboards.ca.gov

Linda S. Adams
Secretary for
Environmental Protection

Arnold Schwarzenegger
Governor

ELECTRONIC MAIL
May 15, 2009

Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 95236
delores@water.ca.gov

Dear Ms. Brown:

COMMENTS ON FEBRUARY 13, 2009 REVISED NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT AND ENVIRONMENTAL IMPACT STATEMENT FOR THE BAY DELTA CONSERVATION PLAN

This letter responds to the California Department of Water Resources' (DWR) February 13, 2009 Revised Notice of Preparation (NOP) of a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Bay Delta Conservation Plan (BDCP). As a responsible agency under the California Environmental Quality Act (CEQA) for this project, the State Water Resources Control Board (State Water Board) appreciates the opportunity to provide comments on the revised NOP and additional comments related to this project. Previously, the State Water Board provided comments to you on the March 17, 2008 NOP for the BDCP by letter dated May 30, 2008. The State Water Board reaffirms all of the comments in its May 30, 2008 letter and incorporates them by reference. I will not repeat those comments here.

Since the March 17, 2008 NOP was issued, additional information concerning the BDCP project has been made available. Specifically, as referred to in the revised NOP, a draft conservation plan for the BDCP was released. However, many specifics regarding the proposed project are still not available. Accordingly, the State Water Board continues to reserve the right to provide additional comments on the environmental review for the BDCP as additional information becomes available. Again, this information may be provided in writing or through participation in the BDCP Steering Committee, technical teams, workgroups, or environmental coordination team meetings.

Implementation of the BDCP will likely result in new water conveyance and habitat restoration measures. In addition to changes in water right terms and conditions to facilitate these measures, the State Water Board may need to consider changes to the Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta

Estuary (Bay-Delta Plan) and to water rights implementing that plan to ensure that beneficial uses are protected in light of those measures. Thus, as indicated in the State Water Board's May 30, 2008 letter, the State Water Board will have discretionary approval over aspects of the BDCP project related to potential changes to the State Water Project's (SWP) and Central Valley Project's (CVP) water rights (such as changes to the points of diversion and operational requirements) and to water right conditions associated with water quality requirements for the two projects. In order for the State Water Board to consider any water quality and water right applications or petitions related to these aspects of the project, environmental documentation must be prepared that evaluates the environmental effects of the proposed actions, identifies a reasonable range of interim and long-term alternatives that would reduce or avoid the potential significant environmental effects of the actions, and discusses the significant effects of the alternatives. Similarly, any environmental analysis associated with changes to the Bay-Delta Plan must evaluate the significant environmental impacts of any such changes and identify a reasonable range of potentially feasible alternatives to such changes. The State Water Board and BDCP lead agencies will need to continue to coordinate their activities to assure that adequate environmental documentation is prepared to address the State Water Board's and BDCP's environmental review needs.

One issue in particular that will require coordination is environmental review of the SWP's and CVP's interim and long-term exports from the Delta. As noted in the State Water Board's May 30, 2008 letter, a reduced diversion alternative should be analyzed to inform the State Water Board and others of the potential tradeoffs between delivering water for consumptive uses and protection of fish and wildlife beneficial uses. While SWP and CVP exports are not the only factor contributing to the current degraded state of the Bay-Delta ecosystem, exports remain an important factor requiring analysis. Uncertainty remains concerning the amount of water that can be diverted from the estuary without significantly impacting fish and wildlife beneficial uses. These impacts must be analyzed under CEQA before significant changes are made to the plumbing and hydrology of the Delta. In addition, independent of CEQA, the State Water Board has an obligation to consider the effect of the proposed project on public trust resources and to protect those resources.

A reduced diversion alternative should be lower than diversions allowed for in the current delta smelt biological opinion and soon-to-be released salmonid and green sturgeon biological opinions for the Long-Term CVP and SWP Operations, Criteria, and Plan. This reduced diversion alternative should be low enough to assure not only continued existence of the species, but also some level of rehabilitation for the estuary. To determine what this level should be, State Water Board staff suggests reviewing historic fisheries data and water export data to arrive at a low export level that is reflective of the quantity of water that could be diverted from the Delta with reasonable confidence of not causing significant or long term impacts to the estuary. Through environmental analysis of such an alternative and higher export alternatives, the State Water Board and other responsible agencies will have information on which to consider the various environmental tradeoffs related to export restrictions. Once the salmonid

and green sturgeon biological opinion has been finalized, staff would be willing to provide technical assistance to the BDCP environmental review team.

Combined with analyzing potential reductions in exports, an alternative for changes to Delta outflows (and potentially inflow requirements) should also be analyzed that reflects a more natural hydrograph. Current outflows and operations have tended to flatten the natural hydrograph and produce more static flow conditions in the Delta. Outflows and export regimes that support a more natural variable hydrograph should be analyzed, including both the naturally high outflow and naturally low outflow ends of the hydrograph for both the interim and long-term. One way to conduct this analysis would be to analyze the effects of providing various percentages of the unimpaired Delta inflow and outflow, and managing storage releases and exports to attempt to parallel this pattern.

As the State Water Board previously commented on the first BDCP NOP, the State Water Board is currently conducting a review of the southern Delta salinity and San Joaquin River flow objectives included in the Bay-Delta Plan. This review is not necessarily intended to address or inform the evaluation of any similar issues (i.e., salinity or other issues) that may arise during the BDCP process. Accordingly, the BDCP environmental review will need to address any southern Delta salinity or other issues associated with the BDCP project that are not addressed by the State Water Board in its water quality control planning review.

Finally, in order to assure that the environmental review and permitting activities associated with the BDCP project for which the State Water Board has regulatory authority are adequately addressed (water rights application and petitions, water quality certification pursuant to Clean Water Act section 401, and potentially others), State Water Board staff request additional focused discussions with the environmental review team on these issues.

State Water Board staff look forward to continue working with the BDCP environmental review effort for this project. If you have any questions concerning this matter, please contact Diane Riddle, Staff Environmental Scientist with the Division of Water Rights at (916) 341-5297 or driddle@waterboards.ca.gov .

Sincerely,

Dorothy Rice
Executive Director

cc: See next page.

cc: (First Class Mail)

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Clarksburg

BDCP

BAY DELTA CONSERVATION PLAN
ENVIRONMENTAL IMPACT REPORT/ENVIRONMENTAL IMPACT STATEMENT

— *Comment Card* —

Please Print

Name: JACK BROADBENT Organization: CALTRANS

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Address: 8665 RIVER ROAD

City: SAC State: CA Zip: 95832

☒ Yes, I would like to be added to your e-mail list.

Your input on the BDCP EIR/EIS is greatly appreciated. Please write your comments below, including comments on the extent of the action, range of alternatives, methodologies for impact analysis, types of impacts to evaluate, and possible mitigation concepts. Comments will be accepted until close of business on May 14, 2009.

WORK WITH CALTRANS ON THE VISUAL IMPACTS OF YOUR PROPOSAL AS YOU WILL BE IMPACTING A ~~SCENIC~~ SCENIC HIGHWAY RT 160.

Please submit your comments at station 6 at this scoping meeting, or fold this form in half, seal with tape and mail to:
Ms. Delores Brown, Chief, Office of Environmental Compliance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236.
You may also e-mail your comments to BDCPcomments@water.ca.gov. **Comments must be received by May 14, 2009.**

STATE OF CALIFORNIA – THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

DELTA PROTECTION COMMISSION
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March 13, 2009

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

SUBJECT: Notice of Preparation for the Bay Delta Bay Delta Conservation Plan Draft Environmental Impact Report (SCH# 2008032062)

Dear Ms. Brown:

The staff of the Delta Protection Commission (Commission) has received the subject document dated February 13, 2009.

As cited in the May 30, 3008 letter from staff of the Commission to you, the proposed project site is in the Primary and Secondary Zones of the Legal Delta. Therefore, the project is subject to consistency with the policies of the Delta Protection Act, and the Land Use and Resource Management Plan for the Primary Zone of the Delta. The May 30, 2008 letter is enclosed for your convenient reference and consideration in the processing of the subject proposal.

Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions about the Commission or the comments provided in the May 30, 2008 letter.

Sincerely,

Linda Fiack

Linda Fiack
Executive Director

Enclosure

cc: State Clearinghouse

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May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission's Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment

- Finding 1: The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- Finding 5: While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- Finding 7: The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.

- Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960's; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.
- Finding 9: There is no Delta regionwide management plan for wildlife resources.
- Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.
- Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.
- Recommendation 2: Wildlife habitat on the islands should be of adequate size and configuration to provide significant wildlife habitat for birds, small mammals, and other Delta wildlife.
- Recommendation 3: Undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management, such as planting native plants and removing exotic plants. Some larger, reclaimed channel islands may be suitable for mixed uses, such as recreation and habitat. Any development on channel islands must ensure long-term protection of the wildlife habitat.
- Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.
- Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.

- Recommendation 6: Management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife should be encouraged. Appropriate incentives, such as conservation easements, should be provided by nonprofits or other entities to protect this seasonal habitat through donation or through purchase.
- Recommendation 7: Lands currently managed for wildlife habitat, such as private duck clubs or publicly-owned wildlife areas, should be preserved and protected, particularly from destruction from inundation.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Utilities and Infrastructure

- Finding 2: High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.
- Recommendation 4: Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta. Impacts to wildlife caused by storage of dredged materials should be mitigated.
- Recommendation 7: Natural gas production will continue to be an important use of Delta resources. Structures needed for gas extraction should be consolidated to minimize displacement of agriculture and wildlife habitat. In compliance with existing laws, facilities no longer needed for gas extraction should be completely removed to allow restoration of agriculture or wildlife habitat uses. Counties should ensure that there are appropriate buffers between gas processing and storage facilities and residential and recreational uses to protect lives and property.
- Policy 1: Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights-of-way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

Land Use

- Recommendation 1: A program by non-profit groups or other appropriate entities should be developed to promote acquisition of wildlife and agricultural conservation easements on private lands with the goal of protecting agriculture and wildlife habitat in the Delta.

- Recommendation 2: Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Recommendation 3: Multiple use of agricultural lands for commercial agriculture, wildlife habitat, and, if appropriate, recreational use, should be supported, and funding to offset management costs pursued from all possible sources. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

Agriculture

- Finding 11: Programs at State and federal level support land management to enhance habitat values on private agricultural lands. Some programs will result in permanent conversion of agricultural land. Examples include: creation of wetlands on agricultural lands; seasonal flooding of agricultural lands; deferred tillage; deferred harvesting of grains; enhancement of field edges as habitat; and planting native plants along roadways and between fields. However, many of the existing programs do not reflect the unique Delta resources and opportunities.
- Policy 7: Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta-wide habitat management plan.

- Policy 8: Local governments shall encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as sequential flooding in fall and winter, leaving crop residue, creation of mosaic of small grains and flooded areas, controlling predators, controlling poaching, controlling public access, and others.

Water

- Goal: Protect long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as all other designated beneficial uses.
- Finding 13: Water is needed to enhance seasonal and year-round wildlife habitat in the Delta such as flooding agricultural fields in fall and winter. Seasonal flooding is of particular value to migratory waterfowl.
- Finding 17: Transport of State and federal project water through the Delta does result in levee erosion and reverse flows and may detrimentally affect some fish species.
- Policy 1: Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.
- Recommendation 3: Programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported.
- Recommendation 5: Water for flooding to provide seasonal and year-round wildlife habitat should be provided as part of State and federal programs to provide water for wildlife habitat.

Recreation and Access

- Finding 5: The Delta waterways are recognized as valuable habitat for resident and migratory species, including fish, amphibians, birds, and mammals.
- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to: difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.

- Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.
- Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tribytulin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

- Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.
- Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.
- Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.
- Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.

- Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.
- Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.
- Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission's Management Plan that pursuant to the Commission's adopted 2006-2011 Strategic Plan and in response to the Governor's recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission's policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,

Linda Fiack
Executive Director

DELTA PROTECTION COMMISSION
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May 6, 2009

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, California 94236

Dear Ms. Brown:

SUBJECT: Revised Notice of Preparation for the Bay Delta Conservation Plan Draft Environmental Impact Report/Environmental Impact Statement (SCH# 2008032062)

The staff of the Delta Protection Commission (Commission) has reviewed the subject Notice of Preparation. Based on the information received at this time, staff has determined that portions of the potential area to be covered by the proposed Bay Delta Conservation Plan (Plan) will be located within the Primary and Secondary Zones of the Legal Delta (see enclosed maps). Pursuant to the Delta Protection Act (Act), approvals for projects in the Primary Zone shall take into consideration consistency with the provisions of the Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta (Management Plan).

The Commission serves as an appeal body in the event the actions of a local entity on a project within the Primary Zone are challenged as being inconsistent with the provisions of the Act or the policies of the Management Plan. While actions for approval or denial of projects in the Secondary Zone are not subject to appeal to the Commission, the analysis of the proposed project Plan scope should address any potential impacts to the resources of the Primary Zone resulting from activities in the Secondary Zone.

The May 30, 2008 comment letter from staff of the Commission relevant to the scope of the proposed Plan and potential area involved within the Primary and Secondary Zones is enclosed for your reference and consideration in the environmental review process.

Additionally, please consider the Commission's comments provided to the Delta Vision Blue Ribbon Task Force on September 29, 2008 (cited below) relative to characteristics that should be taken into consideration when proposing to convert lands to habitat.

> *Programs proposing the conversion of lands to habitat should take into consideration characteristics of highly productive agriculture lands, and compatible uses, such as: nationally recognized wine growing regions; islands mapped out of the 100-year flood zone; lands with well/deep well drained soils; areas where permanent trees and vines are planted; levees maintained with state-of-the art systems; areas of highly maintained water quality; outstanding crop yields regionally recognized; and lands supporting existing homes, shops and value added ag components.*

Please note that the Commission is in the process of revising the policies of the Management Plan and it is anticipated that amendments will be considered for adoption by the Commission by the end of the year. It is therefore recommended that you take into consideration the intent of the draft revisions (available on the Commission's website) in addition to adhering to the existing policies for consistency.

I am available at (916) 776-2292 or lindadpc@citlink.net if you have any questions about the comments provided herein or in the May 30, 2008 letter.

Sincerely,

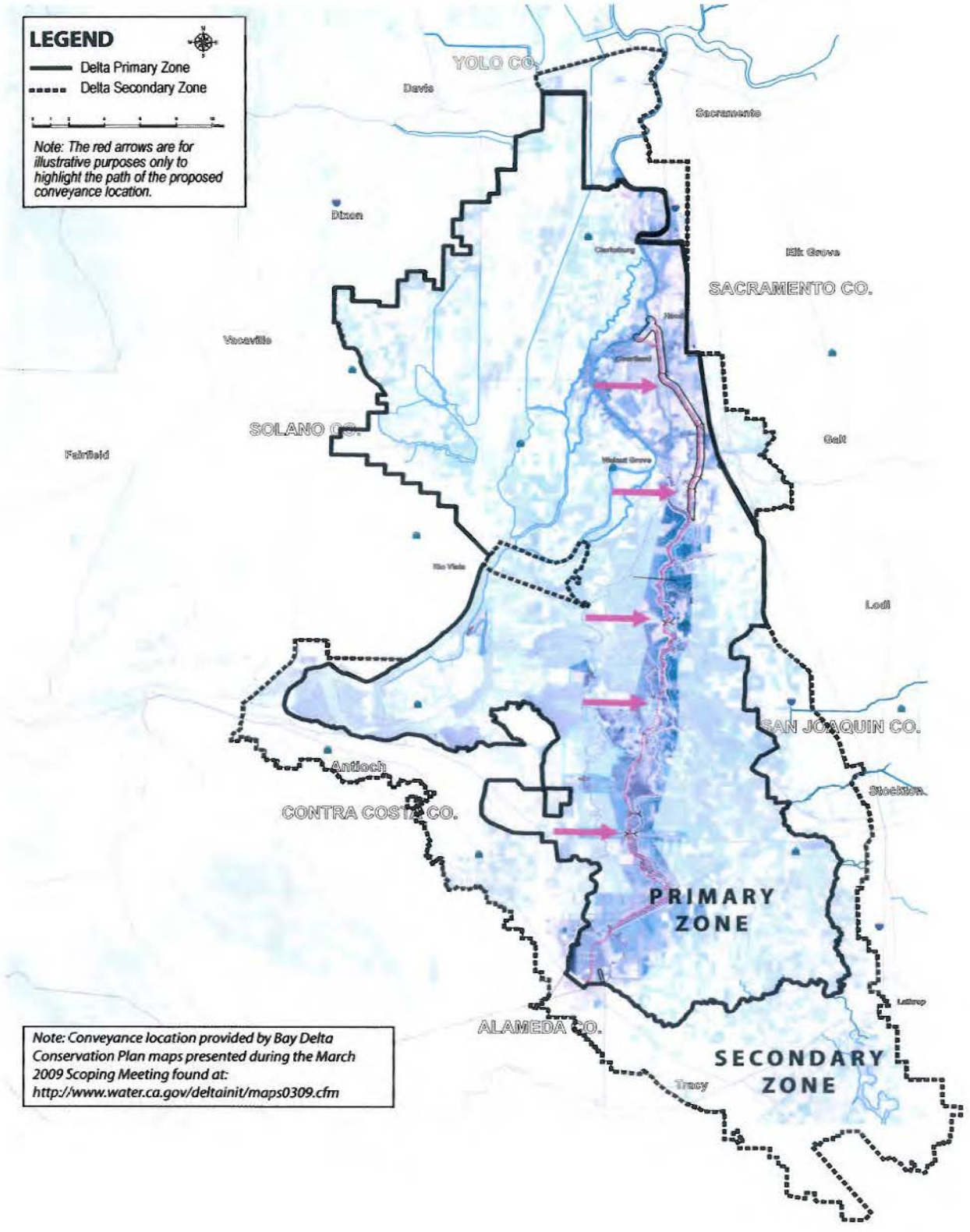
Linda Fiack

Linda Fiack
Executive Director

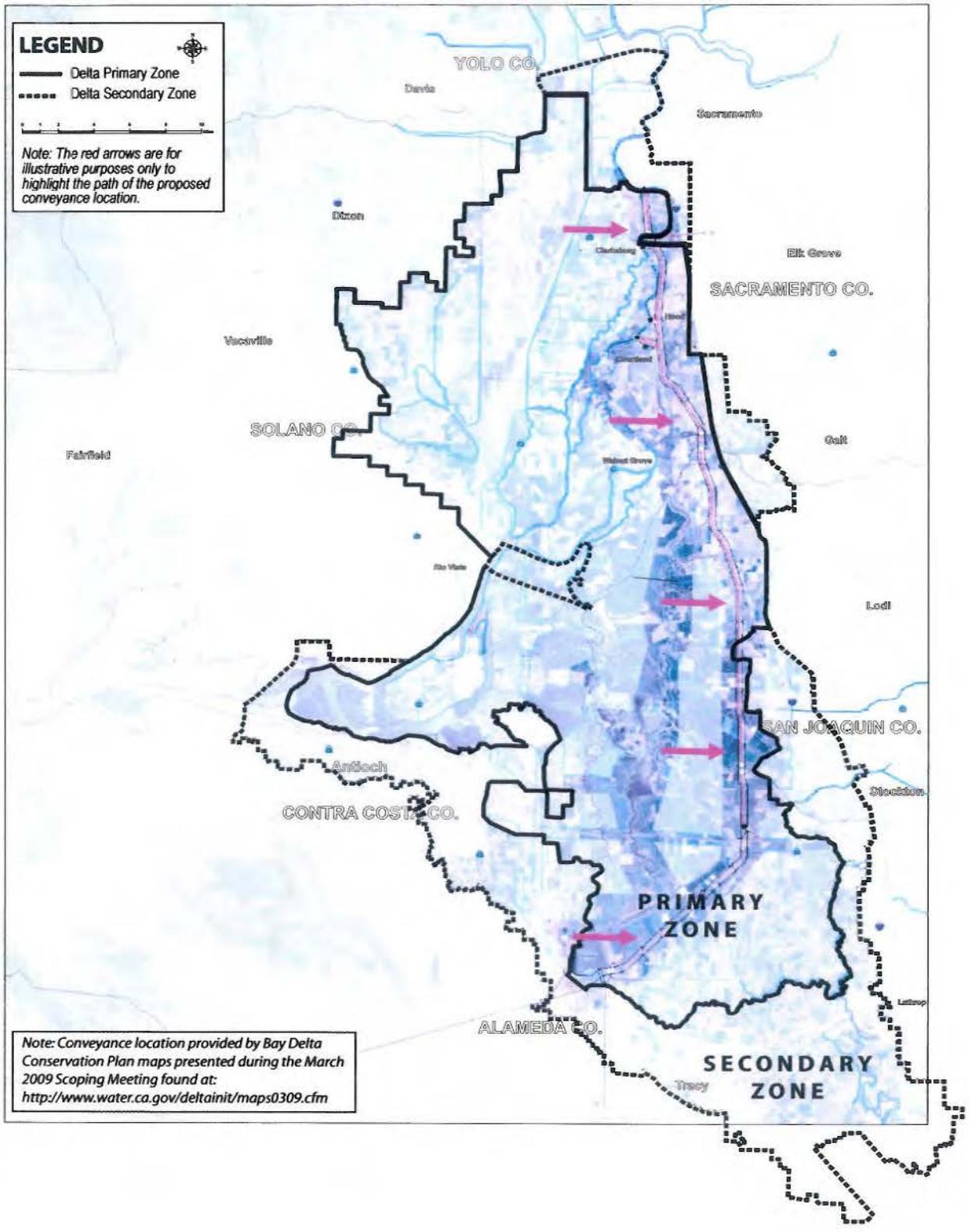
Enclosures

cc: State Clearinghouse
Chair, Contra Costa County Board of Supervisors
Chair, Sacramento County Board of Supervisors
Chair, San Joaquin County Board of Supervisors
Chair, Solano County Board of Supervisors
Chair, Yolo County Board of Supervisors
Members, Delta Protection Commission

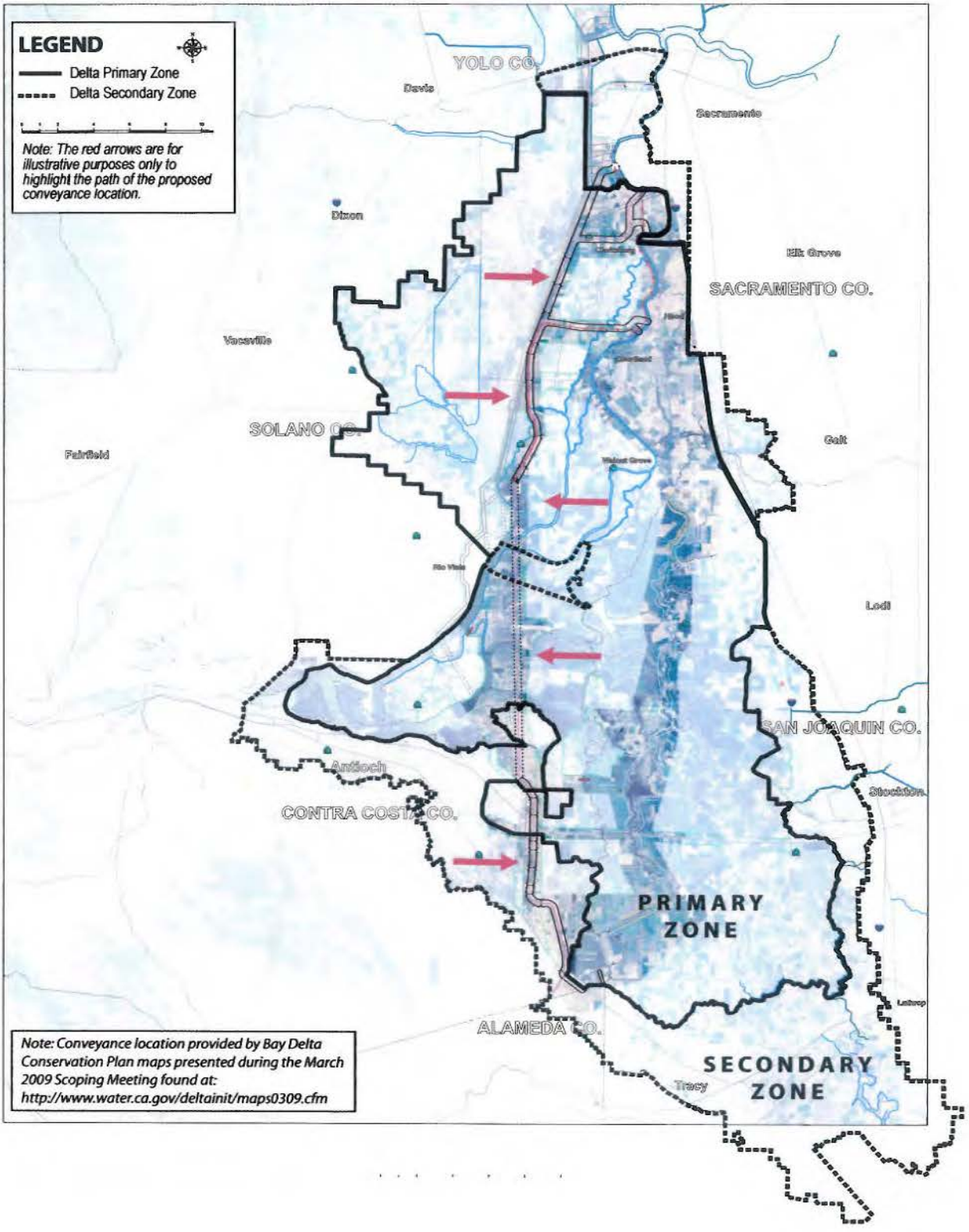
Proposed Conveyance Through Delta location relative to Delta Protection Commission Primary and Secondary Zone



Proposed Conveyance East location relative to Delta Protection Commission Primary and Secondary Zone



Proposed Conveyance West location relative to Delta Protection Commission Primary and Secondary Zone



STATE OF CALIFORNIA—THE RESOURCES AGENCY ARNOLD SCHWARZENEGGER, Governor

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May 30, 2008

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Dear Ms. Brown,

SUBJECT: Notice of Preparation of Joint ERI/EIS for the Bay Delta Conservation Plan (BDCP)

The staff of the Delta Protection Commission (Commission) has reviewed the Notice of Preparation document dated March 17, 2008 in relation to the Commission's Land use and Resource Management Plan for the Primary Zone of the Delta (Management Plan). The following information and comments are provided for your consideration in the environmental review process for the subject project.

The Delta Protection Act (Act) was enacted in 1992 in recognition of the increasing threats to the resources of the Primary Zone of the Delta from urban and suburban encroachment having the potential to impact agriculture, wildlife habitat, and recreation uses. Pursuant to the Act, a Management Plan was completed and adopted by the Commission in 1995.

The Management Plan sets out findings, policies, and recommendations resulting from background studies in the areas of environment, utilities and infrastructure, land use, agriculture, water, recreation and access, levees, and marine patrol/boater education/safety programs.

The goals, findings, policies, and recommendations from the Management Plan that are relevant to this project include, but are not limited to, the following:

Environment

- Finding 1: The physical environment which existed prior to 1850 has been permanently and irretrievably modified through levee construction, drainage of wetlands, and introduction of agriculture.
- Finding 5: While over 95% of all wetlands in the Delta have been lost, the Delta area is used by 10% of the wintering waterfowl traveling within the Pacific Flyway.
- Finding 7: The value to wildlife of levee habitat and habitat within the levees is lessened by on-going human impacts such as levee maintenance, farm practices, human habitation, and recreational use of the levees and waterways. Activities such as water transport and boating use have eroded Delta channel islands, berms, and levees destroying habitat areas. Without levee maintenance, the habitat on the levees and within the islands will be lost.

- Finding 8: The native population of fish and other aquatic species has been modified by hydromodification including water diversion, etc., through introduction of exotic species and other causes. Numbers of both native and of some introduced fish have dropped dramatically since the late 1960's; numbers have dropped so low that winter-run Chinook salmon and Delta smelt have been listed as endangered and threatened, respectively. However, the population of some introduced species of fish and other introduced aquatic species throughout the aquatic food chain has substantially increased.
- Finding 9: There is no Delta regionwide management plan for wildlife resources.
- Finding 13: Delta channel islands and levees serve as habitat for several burrowing species, including beaver and muskrat. Some species have created burrows large enough to endanger levee stability.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Deltawide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.
- Recommendation 1: Seasonal flooding should be carried out in a manner so as to minimize mosquito production. Deltawide guidelines outlining "best management practices" should be prepared and distributed to land managers.
- Recommendation 2: Wildlife habitat on the islands should be of adequate size and configuration to provide significant wildlife habitat for birds, small mammals, and other Delta wildlife.
- Recommendation 3: Undeveloped channel islands provide unique opportunities for permanent wildlife habitat in the Primary Zone. A strategy should be developed to encourage permanent protection and management of the channel islands. Protection may include: acquisition, conservation easements, or memoranda of understanding. Management may include: protection from erosion, controlling human access, or habitat management, such as planting native plants and removing exotic plants. Some larger, reclaimed channel islands may be suitable for mixed uses, such as recreation and habitat. Any development on channel islands must ensure long-term protection of the wildlife habitat.
- Recommendation 4: Feasible steps to protect and enhance aquatic habitat should be implemented as may be determined by resource agencies consistent with balancing other beneficial uses of Delta resources.
- Recommendation 5: Publicly-owned land should incorporate, to the maximum extent feasible, suitable and appropriate wildlife protection, restoration and enhancement as part of a Deltawide plan for habitat management.

- Recommendation 6: Management of suitable agricultural lands to maximize habitat values for migratory birds and other wildlife should be encouraged. Appropriate incentives, such as conservation easements, should be provided by nonprofits or other entities to protect this seasonal habitat through donation or through purchase.
- Recommendation 7: Lands currently managed for wildlife habitat, such as private duck clubs or publicly-owned wildlife areas, should be preserved and protected, particularly from destruction from inundation.
- Policy 3: Lands managed primarily for wildlife habitat shall be managed to provide several inter-related habitats. Delta-wide habitat needs should be addressed in development of any wildlife habitat plan. Appropriate programs, such as "Coordinated Resource Management and Planning" [Public Resources Code Section 9408(c)] and "Natural Community Conservation Planning" (Fish and Game Code Section 2800 et seq.) should ensure full participation by local government and property owner representatives.

Utilities and Infrastructure

- Finding 2: High voltage transmission lines have disrupted wildlife use patterns and resulted in the loss of birds due to collision with those lines.
- Recommendation 4: Materials dredged from Delta channels should, if feasible, be stored at upland sites for reuse for levee maintenance and repair, and other feasible uses in the Delta. Impacts to wildlife caused by storage of dredged materials should be mitigated.
- Recommendation 7: Natural gas production will continue to be an important use of Delta resources. Structures needed for gas extraction should be consolidated to minimize displacement of agriculture and wildlife habitat. In compliance with existing laws, facilities no longer needed for gas extraction should be completely removed to allow restoration of agriculture or wildlife habitat uses. Counties should ensure that there are appropriate buffers between gas processing and storage facilities and residential and recreational uses to protect lives and property.
- Policy 1: Impacts associated with construction of transmission lines and utilities can be mitigated by locating new construction in existing utility or transportation corridors, or along property lines, and by minimizing construction impacts. Before new transmission lines are constructed, the utility should determine if an existing line has available capacity. To minimize impacts on agricultural practices, utility lines shall follow edges of fields. Pipelines in utility corridors or existing rights-of-way shall be buried to avoid adverse impacts to terrestrial wildlife. Pipelines crossing agricultural areas shall be buried deep enough to avoid conflicts with normal agricultural or construction activities. Utilities shall be designed and constructed to minimize any detrimental effect on levee integrity or maintenance.

Land Use

- Recommendation 1: A program by non-profit groups or other appropriate entities should be developed to promote acquisition of wildlife and agricultural conservation easements on private lands with the goal of protecting agriculture and wildlife habitat in the Delta.

- Recommendation 2: Public agencies and non-profit groups have or propose to purchase thousands of acres of agricultural lands to restore to wildlife habitat. The amount, type, and location of land identified to be enhanced for wildlife habitat should be studied by wildlife experts to determine goals for future acquisition and restoration. Lands acquired for wildlife habitat should also be evaluated for recreation, access, research and other needed uses in the Delta. Habitat restoration projects should not adversely impact surrounding agricultural practices. Public-private partnerships in management of public lands should be encouraged. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Recommendation 3: Multiple use of agricultural lands for commercial agriculture, wildlife habitat, and, if appropriate, recreational use, should be supported, and funding to offset management costs pursued from all possible sources. Public agencies shall provide funds to replace lost tax base when land is removed from private ownership.
- Policy 2: Local government general plans, as defined in Government Code Section 65300 et seq., and zoning codes shall continue to strongly promote agriculture as the primary land use in the Primary Zone; recreation land uses shall be supported in appropriate locations and where the recreation uses do not conflict with agricultural land uses or other beneficial uses, such as waterside habitat. County plans and ordinances may support transfer of development rights, lot splits with no increase in density, and clustering to support long-term agricultural viability and open space values of the Primary Zone. Clustering is intended to support efficient use of agricultural lands, not to support new urban development in the Primary Zone. Local governments shall specifically indicate when, how, and why these options would be allowed in the Primary Zone.

Agriculture

- Finding 11: Programs at State and federal level support land management to enhance habitat values on private agricultural lands. Some programs will result in permanent conversion of agricultural land. Examples include: creation of wetlands on agricultural lands; seasonal flooding of agricultural lands; deferred tillage; deferred harvesting of grains; enhancement of field edges as habitat; and planting native plants along roadways and between fields. However, many of the existing programs do not reflect the unique Delta resources and opportunities.
- Policy 7: Local governments shall encourage acquisition of agricultural conservation easements as mitigation for projects within each county, or through public or private funds obtained to protect agricultural and open space values, and habitat value that is associated with agricultural operations. Encourage transfer of development rights within land holdings, from parcel to parcel within the Delta, and where appropriate, to sites outside the Delta. Promote use of environmental mitigation in agricultural areas only when it is consistent and compatible with ongoing agricultural operations and when developed in appropriate locations designated on a countywide or Delta-wide habitat management plan.

- Policy 8: Local governments shall encourage management of agricultural lands which maximize wildlife habitat seasonally and year-round, through techniques such as sequential flooding in fall and winter, leaving crop residue, creation of mosaic of small grains and flooded areas, controlling predators, controlling poaching, controlling public access, and others.

Water

- Goal: Protect long-term water quality in the Delta for agriculture, municipal, industrial, water-contact recreation, and fish and wildlife habitat uses, as well as all other designated beneficial uses.
- Finding 13: Water is needed to enhance seasonal and year-round wildlife habitat in the Delta such as flooding agricultural fields in fall and winter. Seasonal flooding is of particular value to migratory waterfowl.
- Finding 17: Transport of State and federal project water through the Delta does result in levee erosion and reverse flows and may detrimentally affect some fish species.
- Policy 1: Local governments shall ensure that salinity in Delta waters allows full agricultural use of Delta agricultural lands, provide habitat for aquatic life, and meet requirements for drinking water and industrial uses.
- Recommendation 3: Programs to enhance the natural values of the State's aquatic habitats and water quality will benefit the Delta and should be supported.
- Recommendation 5: Water for flooding to provide seasonal and year-round wildlife habitat should be provided as part of State and federal programs to provide water for wildlife habitat.

Recreation and Access

- Finding 5: The Delta waterways are recognized as valuable habitat for resident and migratory species, including fish, amphibians, birds, and mammals.
- Finding 6: Some recreational activities are detrimental to habitat values; such as those that create loud noises, create waves or wakes; or disturb sediments. Recreational boating adversely impacts the stability of some levees through creation of wakes increasing costs of maintenance. Wake erosion also adversely impacts wildlife habitat areas, such as channel islands.
- Finding 10: The marina permit application process is long, expensive and difficult due to: difficulty in obtaining upland sites and leases for underwater lands, land ownership issues, possible impacts to the environment including rare and endangered fish and plant species, limitations on dredging, and protection of riparian vegetation.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Recommendation 2: Support a scientifically-valid study of the carrying capacity of the Delta waterways for recreation activities without degradation of habitat values which minimize impacts to agriculture or levees.

- Recommendation 5: To protect rare and endangered fish species from adverse impacts of poaching, the Department of Fish and Game (DFG) should study the feasibility and value of banning night fishing in the Delta.
- Recommendation 10: New, expanded, or renovated marinas should minimize toxic discharges (including paint, paint chips, chemicals, heavy metals, tribytulin, oil, grease, and fuel) and prohibit discharges of untreated sewage as required under local, State, and federal laws and regulations.
- Policy 2: To minimize impacts to agriculture and to wildlife habitat, local governments shall encourage expansion of existing private water-oriented commercial recreational facilities over construction of new facilities. Local governments shall ensure any new recreational facilities will be adequately supervised and maintained.
- Policy 3: Local governments shall develop siting criteria for recreation projects which will ensure minimal adverse impacts on: agricultural land uses, levees, and public drinking water supply intakes, and identified sensitive wetland and habitat areas.

Levees

- Finding 8: Materials for levee construction and repair have routinely been dredged from adjacent waterways. Environmental regulations to protect endangered fish and other restrictions have limited access to this traditional source of material. Historically lower costs of using dredged material have been offset by increased regulatory costs. Other sources of levee maintenance material include: on-island deposits; quarries; construction projects, including habitat enhancement projects; and spoils from authorized maintenance dredging projects by ports or flood control districts.
- Finding 13: Loss of Delta levees could result in loss of life; lowered water quality for water diverted by local water systems and for export through the State and federal water systems; loss of freshwater due to increased evaporation; loss of property, including crops and structures; and loss of habitat. Rodent dens and tunnels, particularly those created by beaver and muskrat, can adversely affect levee stability and are thought to have been the cause of numerous levee failures.
- Policy 1: Local governments shall ensure that Delta levees are maintained to protect human life, to provide flood protection, to protect private and public property, to protect historic structures and communities, to protect riparian and upland habitat, to promote interstate and intrastate commerce, to protect water quality in the State and federal water projects, and to protect recreational use of the Delta area. Delta levee maintenance and rehabilitation shall be given priority over other uses of the levee areas. To the extent levee integrity is not jeopardized, other uses, including support of vegetation for wildlife habitat, shall be allowed.
- Recommendation 1: Levee maintenance, rehabilitation, and upgrading should be established as the first and highest priority of use of the levee. No other use whether for habitat, trails, recreational facilities, or roads should be allowed to unreasonably adversely impact levee integrity or maintenance.

- Recommendation 2: Landowners, through reclamation districts, should pay a portion of levee maintenance costs. The overall citizenry of California and the United States that benefits from the state and federal water projects, commerce and navigation, travel, production of crops, recreation, and protection of fish and wildlife habitat should also pay a substantial portion of the cost of maintaining the Delta levees. New programs of determining assessments on mineral leases and other beneficiaries should be evaluated by reclamation districts.
- Recommendation 8: To lower levee maintenance costs, streamlined permitting systems for authorization of dredging for levee maintenance and rehabilitation work, including the improvement of wildlife habitat and habitat mitigation sites, and for levee upgrading to mandated standards to protect public health and safety, should be instituted, with one state agency designated as lead agency and one federal agency designated as lead agency. Federal agency concurrence in such designations should be obtained.
- Recommendation 12: Levee maintaining agencies and fish and wildlife agencies should continue to cooperate to establish appropriate vegetation guidelines. Continuation of the SB 34 Program with its incentive funding for mitigation should be supported as the best way to accomplish the goals of levee maintenance with no net long term loss of habitat.

It is also worth noting, relative to the Commission's Management Plan that pursuant to the Commission's adopted 2006-2011 Strategic Plan and in response to the Governor's recommendation in February of 2008, the process for updating the Management plan has been initiated with anticipated completion by the end of the year. Delta initiatives and processes underway (including DBCP and Delta Vision) that may be of relevance to the Commission's policies and mandates are being taken into consideration in this process.

A copy of the Management Plan and the Act are available at the Commission's web site www.delta.ca.gov for your reference. Please contact me at (916) 776-2292 or lindadpc@citlink.net if you have any questions regarding the Commission or the comments provided herein.

Sincerely,

Linda Fiack
Executive Director

Making San Francisco Bay Better

May 14, 2009

Ms. Delores Brown
Chief, Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

SUBJECT: Revised Notice of Preparation of an Environmental Impact Report and Environmental Impact Statement for the Bay-Delta Conservation Plan

Dear Ms. Brown:

On February 13, 2009, the State Clearinghouse, Governor's Office of Planning and Research, received the Revised Notice of Preparation (NOP) of an Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for the Sacramento-San Joaquin Bay-Delta Conservation Plan (BDCP). Pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), the California Department of Water Resources (DWR), National Marine Fisheries Service (NMFS), U.S. Fish and Wildlife Service (FWS), and the U.S. Bureau of Reclamation (Reclamation) are preparing a joint EIR/EIS that will include analysis of improved water conveyance infrastructure and other habitat conservation measures that will be developed to advance the goals and objectives of the BDCP. DWR will serve as the State lead agency and the California Department of Fish and Game will be a responsible and trustee agency under CEQA. Reclamation is the lead agency and NMFS and FWS are co-lead agencies under NEPA.

Although the San Francisco Bay Conservation and Development Commission (Commission) itself has not reviewed the NOP, the staff comments discussed below are based on the McAteer-Petris Act, the Suisun Marsh Preservation Act, the Commission's *San Francisco Bay Plan* (Bay Plan), the *Suisun Marsh Protection Plan* (Marsh Plan), the Commission's federally-approved coastal management plan for the San Francisco Bay, and the federal Coastal Zone Management Act (CZMA).

The Commission staff supports the BDCP's goal of enhancing and restoring ecosystem processes and functions, including seasonal floodplain habitat, subtidal and intertidal habitat, hydrologic conditions, and salinity within the Delta estuary, as well as reducing direct losses of fish and other aquatic organisms. The staff also supports the BDCP's purpose of providing for the conservation of threatened and endangered species in the Delta and improving the reliability of the water supply within a stable regulatory framework. However, the staff believes it will be critical for the BCDP agencies to coordinate closely with other Bay and Delta initiatives, such as the *Delta Vision Strategic Plan* recommendations, the Delta Risk Management Strategy, and other ongoing and planned habitat restoration efforts in the estuary.

State of California • SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION • *Arnold Schwarzenegger, Governor*
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Jurisdiction. The Commission's permit jurisdiction includes all tidal areas of the Bay up to the line of mean high tide or, in areas of tidal wetlands, up to five feet above Mean Sea Level or the extent of tidal wetland vegetation; all areas formerly subject to tidal action that have been filled since September 17, 1965; and the shoreline band that extends 100 feet inland from and parallel to the Bay jurisdiction. The Commission also has jurisdiction over certain managed wetlands adjacent to the Bay, salt ponds, and certain waterways, and the Suisun Marsh.

The proposed project would cross the eastern limit of the Commission's Bay jurisdiction, which is defined by a line across the Sacramento River between Stake Point and Simmons Point, extending northeast to the mouth of Marshall Cut. A section of the proposed project would be located in portions of the Suisun Marsh and Suisun Bay within Solano County and, thus, also in the Commission's primary management jurisdiction of the Suisun Marsh.

Commission permits are required for placement of fill, construction, dredging, and substantial changes in use within its jurisdiction. Permits are issued when the Commission finds proposed activities to be consistent with its laws and policies. In addition to any needed permits under its state authority, federal actions, permits, licenses and grants affecting the Commission's coastal jurisdiction are subject to review by the Commission, pursuant to the federal CZMA, for their consistency with the Commission's federally-approved coastal management program for the Bay.

From reviewing the NOP, it appears that the proposed project may include the following activities within the Commission's Bay and Marsh jurisdictions: (1) maintenance, improvement or changes in operation of water management facilities, such as the Suisun Marsh Salinity Control Gates; (2) habitat restoration; and (3) new power lines and rights of way. In addition, new water conveyance facilities and changes in operation of existing facilities outside the Commission's jurisdiction in the Delta have the potential to alter circulation patterns, affect water quality, or result in other impacts in the Commission's Bay and Marsh jurisdictions.

Fresh Water Inflow. The Bay Plan and Marsh Plan policies call for adequate freshwater inflow to the Bay and Suisun Marsh and provide additional guidance regarding legal requirements promulgated by the State Water Resources Control Board.

The Bay Plan recognizes the importance of fresh water inflows to the ecosystem of the Bay. Bay Plan findings state that "conserving fish, other aquatic organisms and wildlife depends, among other things, upon availability of ...proper fresh water inflows, temperature, salt content, water quality, and velocity of the water."

The Bay Plan's Fresh Water Inflow policies state, in part:

> Diversions of fresh water should not reduce the inflow into the Bay to the point of damaging the oxygen content of the Bay, the flushing of the Bay, or the ability of the Bay to support existing wildlife....
>
> High priority should be given to the preservation of Suisun Marsh through adequate protective measures including maintenance of freshwater inflows....
>
> The impact of diversions of fresh water inflow into the Bay should be monitored by the State Water Resources Control Board, which should set standards to restore historical levels (1922-1967) of fish and wildlife resources. The Bay Commission should cooperate with the State Board and others to ensure that adequate fresh water inflows to protect the Bay are made available.

The Marsh Plan recognizes that the Suisun Marsh, located where salt water and fresh water meet and mix, contains "the unique diversity of fish and wildlife habitats characteristic of a brackish marsh."

Marsh Plan policies state, in part:

> There should be no increase in diversions by State or Federal Governments that would cause violations of existing Delta Decision or Basin Plan standards....
>
> Water quality standards in the Marsh should be met by maintaining adequate inflows from the Delta.

To address these policies, we recommend that the EIR/EIS include analysis of the fresh water flow needs of the entire estuary, not just the Delta. This includes the need for peak flows that transport sediment and nutrients to the Bay, increase mixing of Bay waters, and create low salinity habitat in Suisun Bay, San Pablo Bay and the upper part of central San Francisco Bay.

The *Delta Vision Strategic Plan* (October 2008) included recommendations regarding adequate flows for the Bay-Delta ecosystem. Strategy 3.4 calls for restoring Delta flows and channels to support a healthy Delta estuary, including:

- Flows to produce sufficient volumes of open water habitat of the appropriate water quality, including salinity, temperature, and concentrations of dissolved oxygen and contaminants, e.g., adequate low salinity fall habitat for the Delta smelt;
- Flows to reduce fish entrainment in pumps and other water facilities; and
- Flows to provide adequate fish migration cues, e.g., high flows that trigger migration of salmonids.

The EIR/EIS should analyze the flow recommendations in the *Delta Vision Strategic Plan* and other recent publications in order to determine the appropriate flows needed support ecosystem processes as well as the recovery of individual species in the Bay and Suisun Marsh.

Wetland Restoration. Much of the Bay's historic tidal wetlands have been lost, including 80 percent of tidal marshes and 40 percent of tidal flats. The Bay Plan and Marsh Plan encourage wetland restoration and enhancement.

The Bay Plan's policies state, in part:

> Where and whenever possible, former tidal marshes and tidal flats that have been diked from the Bay should be restored to tidal action in order to replace lost historic wetlands or should be managed to provide important Bay habitat functions, such as resting, foraging and breeding habitat for fish, other aquatic organisms and wildlife. As recommended in the *Baylands Ecosystem Habitat Goals* report, around 65,000 acres of area diked from the Bay should be restored to tidal action....
>
> If the owner of any managed wetland withdraws any of the wetlands from their present use, the public should make every effort to buy these lands and restore to tidal or subtidal habitat, or retain, enhance and manage these areas as diked wetland habitat for the benefit of multiple species. This type of purchase should have a high priority for any public funds available.

Ongoing large-scale efforts to restore Bay wetlands have great potential to benefit the entire estuary, including species of concern, yet these projects could inadvertently be adversely affected if Delta management actions, such as restoring Delta islands, result in the capture of sediments that would otherwise flow to the Bay. We request that the EIR/EIS include analysis of sediment dynamics throughout the whole system, including potential impacts on the Bay.

The Bay Plan's dredging policies encourage the reuse of dredged material in wetland restoration projects, as appropriate, and support efforts to fund the additional costs associated with transporting dredged material to project sites. We suggest that the BDCP agencies encourage the coordination of use of dredged material in the Bay and Delta as part of a regional sediment management strategy.

The Commission has a long and successful history of managing natural resources in the Suisun Marsh. The Commission is currently participating in the Suisun Marsh Charter Group to develop a new Habitat Management, Preservation and Restoration Plan for Suisun Marsh. Our priorities for the new plan include enhancing seasonal and managed wetlands that provide essential wintering habitat for waterfowl of the Pacific Flyway, supporting tidal restoration, and supporting maintenance of Suisun Marsh levees.

Suisun Marsh Protection Plan policies state, in part:

> The diversity of habitats in the Suisun Marsh and surrounding upland areas should be preserved and enhanced wherever possible to maintain the unique wildlife resource....
>
> Where feasible, historic marshes should be returned to wetland status, either as tidal marshes or managed wetlands. If, in the future, some of the managed wetlands are no longer needed for private waterfowl hunting, they should be restored to tidal or subtidal habitat, or retained as diked wetland habitat and enhanced and managed for the benefit of multiple species....
>
> The Suisun Resource Conservation District should be empowered to improve and maintain exterior levee systems as well as other water control facilities on the privately owned managed wetlands within the primary management area.

Our staff urges the BDCP agencies to incorporate Marsh Plan and Bay Plan policies, as well as the information in the Commission's draft staff report on climate change, as it develops the BDCP in order to ensure that wetland restoration in the Bay and Delta are coordinated to maximize public benefits.

Climate Change. Climate change and accelerating sea level rise could result in devastating impacts to the Bay and Delta. As the Commission has noted in the draft staff report *Living with a Rising Bay: Vulnerability and Adaptation in San Francisco Bay and on the Shoreline* (April 2009):

> Salinity increases due to climate change may dramatically impact the brackish and freshwater marshes found in Suisun Marsh.... Since brackish and freshwater tidal marshes tend to be more productive and provide habitat for a greater diversity of plants than salt marshes, elimination of these valuable wetlands or their conversion to salt marshes could reverberate throughout the food

> web and reduce the habitat available to rare and endangered species (Callaway et al. 2007, Newcombe and Mason 1972, Baye et al. 2000, Lyons et al., 2005).
>
> Efforts to use water control structures, such as salinity gates, to artificially reduce salinity in Suisun Marsh in dry years are likely to become increasingly difficult in the face of climate change. The Suisun Marsh Salinity Control Gates restrict the flow of higher salinity water from incoming tides and retain [lower salinity] Sacramento River water from the previous outgoing tide. An eastward shift of the salinity gradient caused by sea level rise will likely reduce opportunities for importing freshwater into the Suisun Marsh.

We therefore request that the EIR/EIS evaluate the proposed project in relation to potential climate change impacts on the Bay and Delta, particularly on the brackish wetlands of the Suisun Marsh.

Multiple Levee Failures. The Delta Risk Management Strategy and other recent publications have explored the potential impacts of multiple levee failures and the simultaneous flooding of several Delta islands. These analyses focused on the disruption of water exports and economic consequences. As the DRMS report states, "Impacts to aquatic species were not quantified in the DRMS Project and require further study." Similarly, impacts to water quality were not quantified in the DRMS Project. The EIR/EIS should address the potential impacts of multiple levee failures on the ecosystems of Suisun Marsh and the Bay and how those impacts might vary in different conveyance and water project operations scenarios.

Minimize Harmful Effects to the Bay. The proposed project would need to be consistent with all applicable Bay Plan policies. Therefore, the EIR/EIS should address other applicable Bay Plan policies, including a discussion about the Commission's regulatory requirements governing the protection of the Bay's natural resources, including fish, other aquatic organisms, and wildlife, and certain habitat needed for their protection, including tidal flats and marshes and subtidal areas. The Bay Plan policies on fish, other aquatic organisms, and wildlife, state that marshes, mudflats, and subtidal habitat should be "conserved, restored, and increased." Furthermore, the Commission must consult with and give appropriate consideration to the state and federal resource agencies, and not authorize any project resulting in a "taking" of a listed species unless the appropriate authorization has been issued by the resource agencies. According to the Bay Plan policies on tidal marshes and tidal flats, and subtidal areas, all projects subject to Commission consideration should also be sited and designed to minimize or avoid adverse resource impacts in these areas.

The EIR/EIS should analyze how the entire project, not just the portion within the Commission's permit jurisdiction, will affect the hydrology, sediment dynamics, water quality and biological resources of the Bay. As mentioned above, it should include analysis of climate change impacts, including the potential impacts of sea level rise, precipitation patterns, and changes in air and water temperature. It should also analyze cumulative impacts, including the potential impacts of other projects being planned for the Bay-Delta estuary and its watershed, such as dam construction, habitat restoration, levee repairs and upgrades, and the deepening of the Stockton and Sacramento Ship Channels. The EIR/EIS should discuss the Commission's regulatory authority governing the protection of the Bay's and the Marsh's natural resources and habitats.

Water Quality. Pursuant to the Commission's water quality policies in the Bay Plan, pollution in the Bay's water "should be prevented to the greatest extent feasible." Further, in considering this project, the Commission would need to consult with and base its decision on the San Francisco Bay Regional Water Quality Board's evaluation of and advice on the proposed project and any potential water quality impacts. Therefore, the Commission encourages the project proponents to continue conducting early consultation with and working to obtain all necessary authorization from the Regional Board to aid the Commission in determining whether the project would adversely impact the Bay's water quality. The EIR/EIS should analyze the impacts of the project on salinity, temperature and concentrations of dissolved oxygen and contaminants in the Bay.

Utilities and Improvements. The Marsh Plan policies on utilities, facilities and transportation state, in part, that "New electric power transmission utility corridors should be located at least one-half mile from the edge of the Marsh." In light of this policy, the EIR/EIS should: (1) clearly show the location of any proposed new power lines in relation to the boundary of the Suisun Marsh; (2) identify any potential project-related impacts to wetlands in the Marsh and measures for mitigating these effects; and (3) provide a construction schedule for any work affecting wetland area in the Marsh.

Mitigation. In the event that the proposed project would result in adverse environmental impacts that cannot be avoided, the EIR/EIS should discuss mitigation measures. The Commission's policies regarding mitigation state, in part, that "projects should be designed to avoid adverse environmental impacts to [the] Bay" and, further, that "[w]henever adverse impacts cannot be avoided, they should be minimized to the greatest extent practicable....[and] measures to compensate for...impacts should be required."

Coastal Zone Management Act. We request that the EIR/EIS indicate that under CZMA (16 USC 1456(c) and (d)) the Commission is authorized to review any federal actions, permits, licenses and grants affecting any land or water use or natural resources within the Commission's coastal jurisdiction (i.e., San Francisco Bay and Suisun Marsh) for consistency with the Commission's laws and regulations.

Thank you for the opportunity to comment on this NOP. If you have any questions regarding this letter or the Commission's policies, please call me at (415) 352-3660 or email me at jessicah@bcdc.ca.gov.

Sincerely,

JESSICA HAMBURGER
Coastal Program Analyst

JH/rca

By U.S. Mail and e-mail (delores@water.ca.gov)