

May 30, 2008

VIA EMAIL (DELORES@WATER.CA.GOV)

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

SUBJECT: Comments on Bay Delta Conservation Plan Notice of Preparation of an
Environmental Impact Report and Environmental Impact Statement
(EIR/EIS) for the Bay Delta Conservation Plan

Dear Ms. Brown:

On behalf of the North Delta Water Agency ("North Delta"), we appreciate this opportunity to comment on the above-referenced Notice of Preparation of an Environmental Impact Report and Environmental Impact Statement for the Bay Delta Conservation Plan ("NOP") posted by the Department of Water Resources on March 17, 2008 with comments accepted until May 30, 2008.

Background

Pursuant to a special act of the California Legislature (North Delta Water Agency Act, Chapter 283, Statutes of 1973), North Delta was formed in 1973 to help address the impacts of the Central Valley and State Water Projects (Projects) upon agricultural interests within the northern part of the Sacramento-San Joaquin Delta. Beginning approximately 160 years ago, farmers in this area began reclaiming lands from flooding, appropriating water to beneficial use and establishing vibrant agricultural communities. The Bureau of Reclamation (Bureau) began constructing the Central Valley Project (CVP) in the late 1930s, damming the major tributaries on the Sacramento River and holding back substantial quantities of the Delta water supply. As it did with landowners along the length of the Sacramento River, the United States conducted extensive studies and negotiations to ensure a sufficient supply for water right holders in the northern Delta. Discussions with Delta landowners were protracted, however, due to the complex issues of both water quantity and quality, and the issues only intensified with the commencement of the State Water Project under the Department of Water Resources (DWR).

Against this backdrop, North Delta was formed to represent northern Delta interests in negotiating a contract with both the Bureau and DWR in order to mitigate the water rights impacts of the Projects.¹ From 1974 to 1979, North Delta, the Bureau and DWR determined the outflow necessary to meet water quality standards for irrigated agriculture and generally reviewed the paramount water rights of landowners within North Delta's boundaries. The agencies also evaluated the Delta channels' historical function as natural seasonal storage. Before the Projects began withholding much of the Sacramento River system's high winter flows, the Delta channels stored sufficient fresh water to sustain water quality in the northern Delta throughout and often beyond the irrigation season. Since the Projects commenced, however, the Delta functions more like a flowing stream and, as a result, relatively minor decreases in outflow can have a serious impact on northern Delta water quality.

In 1981, DWR and NDWA executed a permanent settlement agreement that would prevent much of the Projects' detrimental effect on North Delta right holders.² The 1981 Contract for the Assurance of a Dependable Water Supply of Suitable Quality (1981 Contract) represents a guarantee by the State of California that, on an ongoing basis, it will ensure that suitable water will be available in the northern Delta for agriculture and other beneficial uses. The 1981 Contract requires DWR to operate the State Water Project to meet water quality criteria within the Delta channels while providing enough water to satisfy all reasonable and beneficial uses of water within North Delta's boundaries. In return, North Delta makes an annual payment to DWR. Although the two signatories are public agencies, the 1981 Contract also extends to individual landowners who, under the terms of the Contract, have executed Subcontracts guaranteeing that their lands will receive all the benefits and protections of the 1981 Contract. Many of these Subcontracts have been signed and recorded, enabling the subcontractors to enforce the terms of the 1981 Contract.

Serving as both a Habitat Conservation Plan and a Natural Community Conservation Plan, the Bay Delta Conservation Plan (BDCP) is a multi-participant strategy for mitigating the effects of the Projects (and other projects) on Delta species and the Delta ecosystem, just as the 1981 Contract mitigates for the Projects' effects on the landowners within the boundaries of North Delta. North Delta recognizes the importance of extending species protections and restoring the environmental health of the Delta while assuring a reliable water supply, and intends to play an active role in formulating appropriate comprehensive solutions to the environmental impacts caused by the Projects. At the same time, in moving ahead with the BDCP it will be critical to formulate an approach that respects and accommodates the State's commitment to ensure a permanent water supply of suitable quality to landowners within North Delta. It will also be

¹ Section 4.1 of the Agency Act states: The general purposes of the agency shall be to negotiate, enter into, executed, amend, administer, perform and enforce one or more agreements with the United States and with the State of California . . . To protect the water supply of the lands within the agency against intrusion of ocean salinity; and . . . To assure the lands within the agency of a dependable supply of water of suitable quality sufficient to meet present and future needs."

² By that time, the Bureau had decided against contracting with individual parties to meet water quality standards.

critical to recognize, as the Delta Vision Task Force has, that the Delta itself is a unique place, not just a source of water supply or a species habitat. The people who live, work and play in the Delta, and who have been stewards of the Delta for generations, understand and appreciate these unique characteristics, and deserve to have their legacy continue for many future generations.

Composition of the Steering Committee

As an initial matter, the BDCP Steering Committee is composed almost exclusively of State regulatory agencies, environmental groups, and entities with contracts for water from the Projects. The habitat creation projects and mitigation measures identified during the BDCP process thus far occur exclusively within the Delta and immediately adjacent areas, yet no local districts, municipalities, or counties are on the Steering Committee and, to our knowledge, none has received an invitation to join the Steering Committee. To ensure that the BDCP process and the resulting EIR/EIS reflects the interests of the people of the Delta, the Steering Committee should be expanded as quickly as possible to include significant interests within the Delta.

Alternatives Should Evaluate the Environmental Effect of Targeted Reductions in Exports in Conjunction with Other Approaches

The NOP and previous BDCP documents strongly suggest that none of the alternatives analyzed in the EIR/EIS will include any level of reduction in Delta exports, and as a result, the EIR/EIS will not specifically evaluate the potential environmental benefits of making targeted reductions in exports. This omission is a serious error under the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) and jeopardizes the validity of the EIR/EIS. The Delta ecosystem thrived even after the commencement of the CVP; serious environmental impacts began to occur only after exports substantially increased when the SWP came online. Environmental evaluations have repeatedly shown that Delta smelt and other species are more abundant during periods of greater outflow, which is reduced when exports are high. Mark and recapture data show that the survival rates of juvenile late fall-run Chinook salmon in the central Delta also decrease as exports increase. Export-related increases in salinity potentially affect not only species, but may also reduce the quality of water for agriculture within the Delta, which DWR is contractually obligated to protect under the 1981 Contract.

Therefore, it is appropriate that the EIR/EIS provide at least one alternative that includes a reduction in water exports water as part of a multi-factored approach to mitigating the effects of the Projects. Preferably, the EIR/EIS should analyze the environmental effects of a range of reductions upon all identified alternatives to properly inform decision-makers and the public of the approach that would have the greatest promise of reducing the environmental impacts of the Projects. It is not appropriate to simply bypass this analysis under the guise of a conclusory statement that any reduction in exports is infeasible when demand management, desalination projects, conjunctive use, xeroscoping, and zero net water developments have not been fully developed in the service areas where the water is being exported.

Water Conveyance Design

Two of the four alternatives explored in prior BDCP documents rely on construction of an isolated conveyance facility as a means of exporting water from the Delta. The EIR/EIS should address the environmental effects of lining such a facility to reduce conveyance losses to the greatest extent possible. High conveyance losses would require greater quantities of water to be removed from the Delta, with commensurate impacts on aquatic species.

The EIR/EIS must also evaluate the size/capacity of any isolated conveyance facility. The capacity should be based on the minimum amount of water necessary to serve the reasonable, beneficial needs of the south-of-Delta water contractors, particularly in light of the need for water to serve the landowners within the Delta itself and to satisfy the developing needs of the northern counties where the water originates. In addition, the EIR/EIS must evaluate the terrestrial effects of constructing the facility itself. A smaller, deeper facility will have a smaller terrestrial environmental footprint than a larger, shallower facility, which should be reflected in the analysis.

Impacts of Fostering Listed Species in Expanded Areas of the Delta

Every alternative that has been identified throughout the BDCP planning process proposes extensive construction and enhancement of habitat areas to benefit aquatic and terrestrial species within and adjacent to the Delta. Examples include introducing shallow flooding into northern and western Delta lands to serve as spawning habitat and to promote growth of organisms that serve as a food source for the threatened Delta and longfin smelt and other native fish. Much like the southern Delta export pumps, a network of private and public siphons, pumping plants, and other intake facilities are used to deliver the water supply for users within the Delta. Mitigation measures that foster threatened and endangered fish species in the vicinity of these water intakes will lead to entrainment, particularly for intakes that are not currently outfitted with positive fish screen barriers.

To mitigate for the environmental effects of habitat enhancement, the EIR/EIS must address the need to install fish screens and to undertake other measures to protect aquatic and terrestrial species that are being introduced into new locations within the Delta or whose existing populations are being enhanced. Without appropriate mitigation measures in place, existing landowners engaged in longstanding land uses may inadvertently be said to "take" these listed species under the Federal and State Endangered Species Acts, even though the species would not exist in those locations were it not for the BDCP. These measures to protect introduced and enhanced listed species must be enforceable and should include requirements that those entities proposing projects under the BDCP fund the construction, operation, maintenance, repair and replacement of these measures, in perpetuity. Local landowners within the Delta should not have to pay to implement mitigation measures that are necessitated by proposed projects that will primarily benefit water service contractors south of the Delta.

The Uncertain Effects of Habitat Creation

The BDCP documents frequently refer to habitat “restoration” in the context of creating tidal marshes. The creation of tidal marshes on the Delta islands cannot be properly characterized as “restoration.” It is our understanding that historically the Delta islands, just like the lands bordering the Sacramento River, had natural banks created by periodic flooding. When a river overtops its banks during a flood, the receding floodwaters deposit coarser grained suspended sediment along the banks, eventually building up a raised area resembling a natural levee. Although these natural levees would not be sufficient to prevent floods, they would have prevented overflow by the influence of the tides, and prevented the natural formation of tidal marshes along the Delta islands.

Thus, introducing man-made marshes along the banks of the Delta islands will not restore a natural habitat, but will create a new type of habitat as a means of trying to approximate aquatic conditions preferred by target species within the Delta. It is unclear what the effects might be of creating this new type of habitat. However, the EIR/EIS should identify all potential environmental impacts on hydrology, biological species, and soils resulting from this new form of habitat creation, and identify mitigation measures to reduce any impacts to below the level of significance.

Acquisition of Property Within the Delta for Installation of Habitat Improvements

The beneficial use of water in the Delta is crucial to the continued success of Delta agriculture, which is the backbone of the region’s economy and history, and is fundamental to its continued vitality as a community as well as its municipal water supply. The BDCP process has identified vast areas in the Delta, and in adjacent areas, for habitat creation projects to offset the impacts of water exports and other projects. Some of these projects are expected to occur on property currently devoted to agriculture. To date, BDCP documents have not adequately disclosed or discussed the impacts of land conversion on the human community. These impacts include reducing the size and changing the nature of the local community, depressing the local economy, eliminating family legacies in land and family farming, and forcing large-scale relocation. Historic communities may be unalterably changed or even eliminated. The EIR/EIS must address such impacts when evaluating each identified alternative, and perform CEQA’s critical function of informing the general public of the impacts of proposed projects.

To reduce these impacts to the greatest extent possible, project proponents should not seek to acquire new areas for habitat creation through eminent domain. Instead, any new habitat should be located on lands that are already in public hands or are subject to existing conservation or flood control easements, or else are purchased as a result of willing transactions by local landowners. It is in the public’s best interest to avoid protracted and expensive eminent domain proceedings over the compensation to be paid to landowners in exchange for their property, which would include the land itself as well as the associated water rights. Any habitat creation or wetland projects depending on application of water from the Delta channels will also require a

water right, which the project proponent will have to acquire. The 1981 Contract does not provide for the diversion or use of water for environmental purposes.

Effects of Agricultural Conversion

The EIR/EIS must also include an assessment of the conversion of productive agricultural land, which is being cumulatively lost throughout the State at an alarming rate. In preparing the EIR/EIS, the agencies will need to establish appropriate thresholds of significance for the potential loss of these productive lands, and establish mitigation measures that may include funding the creation of additional agriculture lands, possibly in the Delta uplands that are currently not subject to agriculture.

The EIR/EIS should also review the numerous secondary environmental effects that will be caused by the conversion of agricultural land. As one example, to the extent that the proposed projects will convert agricultural land, they will also reduce the amount of food grown and consumed locally within and adjacent to the Delta. As a substitute supply, more food will need to be transported into neighboring communities including small municipalities as well as the cities of Sacramento and Stockton. More fossil fuels will be consumed in transporting food, which will in turn increase air emissions in areas that are already in nonattainment. The EIR/EIS should find that the proposed projects will cause a significant environmental effect if they result in a cumulatively considerable net increase of any criteria pollutant for which the affected region is considered to be in nonattainment under applicable federal or state ambient air quality standards.

Additional concerns include the erosion of the local county tax base. When productive lands are purchased by public entities and converted to habitat or open space, they do not contribute to the County tax rolls. Less money will be available to the Delta counties and special districts, including reclamation districts with responsibility for operation and maintenance of local levees. To the extent that these losses of public revenue may lead to a significant environmental effect, possibly through cutting back of funds for levee maintenance, vector control or park and recreation programs, they should be replaced by the project proponents in the form of mitigation. Furthermore, when lands are acquired by public entities for open space or habitat, they tend not to be as actively managed as agricultural lands, and can become more vulnerable to invasion by exotic species and noxious weeds. Because invasive species are often a major threat to listed species, the EIR/EIS should evaluate this possibility for potential significant environmental effects and propose mitigation accordingly.

Habitat and Species Improvement Projects Outside the Delta

The BDCP documents refer to species mitigation measures that will occur in areas outside the Delta, including the Suisun Marsh. But the location of additional measures should focus on a much broader area than just the Bay Delta. Impacts to salmon and steelhead occur throughout the greater Sacramento and San Joaquin River systems. Mitigation measures should include

eliminating physical barriers to upstream and downstream fish passage on these river systems, building fish ladders, and ensuring that migration flows are available during all critical life phases, possibly by execution of funding arrangements with districts that maintain local reservoirs. Additional projects could focus on alternative transportation for smolts, and increased funding for smolt trap and hydroacoustic studies to better evaluate stressors on smolt mortality within the Delta.

Focus on Strengthening Delta Levees

The BDCP should place a stronger focus on measures to protect and improve Delta levees, including a greater role in flood management planning. The levees help protect the water quality within the Delta, which is of grave concern to aquatic and terrestrial species, local landowners and water exporters alike. Any improved system of through-Delta conveyance will depend on the reliability of local levees. Stockpiling rock at strategic locations throughout the Delta will better enable local maintaining agencies to respond to emergency levee breaks.

Human Health and Pesticide Application

The EIR/EIS should address potential impacts to human health. The habitat creation projects that have been proposed during the BDCP process include the creation of artificial marsh areas. Marshes frequently make productive breeding areas for mosquitoes and, as a result, may increase the potential for diseases including the West Nile virus to spread to communities within and adjacent to the Delta. This impact will be felt most strongly by children and the elderly. Local mosquito and vector control districts will also likely need to resort to chemical pesticides to address increases in the mosquito population, and residual pesticides may have an effect on people who are exposed through incidental contact and on listed aquatic and terrestrial species.

Growth Inducement

The EIR/EIS is required to discuss the ways in which the proposed projects could foster economic or population growth, either directly or indirectly, in the affected environment. A growth-inducing impact may occur where the proposed project would remove an obstacle to population growth or would encourage facilities or other activities that could significantly affect the environment, either individually or cumulatively.

Exported water from the Projects will be used by CVP and SWP contractors to supply water for new development in vast areas south of the Delta. Numerous water purveyors with water service contracts rely on projected Delta exports for their SB 610 Water Supply Assessments and SB 221 Written Verifications of Water Supply, which are required prior to approval of a 500-unit residential development or a project that would increase the number of the public water system's existing service connections by 10%. The Supplemental EIR must disclose and evaluate the impacts, direct, indirect and cumulative, of growth induced by Project exports.

Public Participation

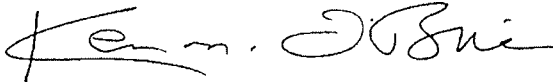
The BDCP should make a more concerted effort to reach out to local agencies and landowners, and solicit their feedback during the planning process. Many local landowners within the Delta are not accustomed to tracking public notices for large-scale environmental planning processes. During the local public scoping meetings held since publication of the NOP, many people learned about the existence of the BDCP planning process for the first time, and many more are still unaware of the process. Public meetings should be held within the Delta during each significant phase of the planning process, and in particular to get feedback regarding all lands and locations that may be identified as habitat creation or mitigation lands, and for any modifications to flood control plans and local levees. To ensure public understanding of each proposed action and appropriate feedback, the notices and meetings should include maps with clearly recognizable boundaries, and these meetings should be held *prior* to any final decisions on the location of such measures. The BDCP is a unique process with a tremendous scope, and warrants a more creative and expansive approach to soliciting public input.

Conclusion

We appreciate the opportunity to comment on the NOP. Thank you in advance for your attention to these comments.

Respectfully submitted,

DOWNEY BRAND LLP



Kevin M. O'Brien

cc: Board of Directors
North Delta Water Agency

Melinda Terry

NORTH DELTA WATER AGENCY

910 K Street, Suite 310, Sacramento, CA 95814
(916) 446-0197 Fax (916) 446-2404 melinda@northdw.com

Melinda Terry, Manager

Board of Directors

Henry N. Kuechler, Chairman Neil Hamilton, Vice-Chairman Kenneth A. Ruzich, Secretary/Treasurer
Steve Mello, Director Carel van Löben Sels, Director

June 11, 2008

Karen Scarborough, Chair, Bay Delta Conservation Plan Steering Committee
California Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Dear Ms. Scarborough:

As the General Manager of the North Delta Water Agency (NDWA), I am writing to request that NDWA be made a member of the Bay Delta Conservation Plan (BDCP) Steering Committee. I am prepared to serve as NDWA's member representative, and Kevin O'Brien will serve as NDWA's alternate.

Comprising over 277,000 acres of land within the jurisdictional Delta, NDWA plays a substantial role in the quantity, quality, and beneficial use of water flowing in the Delta channels. The California Legislature formed NDWA by a special act in 1973 (North Delta Water Agency Act, Chapter 283, California Statutes of 1973) for the principal purpose of negotiating and executing a contract with the Federal and State governments to address the impacts that the Central Valley and State Water Projects have on water users within the Delta. NDWA ultimately executed such a contract with the Department of Water Resources in 1981, and since then has administered, performed and enforced the 1981 contract to protect the water supply of NDWA lands against intrusion of ocean salinity, and to assure the NDWA lands have a dependable supply of water of suitable quality sufficient to meet present and future needs.

In developing a plan to address the impacts of Delta-related water projects on listed species, the BDCP process raises numerous issues of significant concern to NDWA and the landowners within its boundaries. NDWA's principal interests concern the BDCP's potential effects on Delta water quality and on the supply of water for beneficial uses within the northern Delta. NDWA wishes to participate in the BDCP to, among other things, help ensure that the alternatives and mitigation measures being considered by the Steering Committee are tailored to ensure protection of the northern Delta water supply, will pose as small an impact on NDWA landowners as possible, and will be broad enough to provide take coverage for projects designed to further those landowners' interests.

At the same time, NDWA is committed to advancing the broad objectives of the BDCP. NDWA supports the assurance of a reliable water supply for California, the implementation of meaningful protections for species and aquatic ecosystems within the Delta, and development of

Bay Delta Conservation Plan Review Document Comment Form

Document: 1st Draft Adaptive Management in Chap. 3 Conservation Strategy

Name: Melinda Terry **Affiliation:** NDWA

Date: 11/16/08

Please use this form to document your comments to the above document. Please number your comments in the first column and indicate the page, section, and line number (if provided) that reference the comment's location in the review document in the next three columns. **Return completed comment forms to Rick Wilder (wilderrm@saic.com) and Pete Rawlings (rawlingsms@saic.com).**

To be of the greatest value to the document development process, please make your comments as specific as possible (e.g., rather than stating that more current information is available regarding a topic, provide the additional information [or indicate where it may be acquired]; rather than indicating that you disagree with a statement, indicate why you disagree with the statement and recommend alternative text for the statement). Do not enter information in the **Disposition** column. This column will be used by SAIC to record how each comment was addressed during the document revision process.

No.	Page #	Section #	Line #	Comment	Disposition
	2	3.6	3	Near top of page, add "scientific" so third line reads "Conservation Strategy as indicated by new <i>scientific</i> information"	
	3	3.6.1	8	Add <i>scientific</i> as follows: "for implementing a conservation measure based on new <i>scientific</i> information indicating"	
	3	3.6.1	22	"relevant new information developed by others to determine if changes in implementation of one or more Conservation Strategy elements would be desirable" seems to invite "junk science" to be inserted into the process. In particular "others" and "information" is too vague. I would recommend defining "others" so that it is clear who's information is qualified to be utilized in evaluating the effectiveness of measures implemented. The term "information" should also be defined to assure that quality science is the measure.	
	4	3.6.3	42	Add <i>scientific</i> as follows: "adaptive management experiments and relevant new <i>scientific</i> information"	
	4	3.6.3	42	Delete, "developed by others". Refer to item above regarding information by others. The quality of information in this process is important and should not be as broad as "others."	
	5	3.6.5		Question: What happens if a restoration measure ends up causing non-compliance/violation of water quality standards of the SWRCB or other state environmental law?	
	6	Table 3.X		Question: What happens if remedial measures in the future results in the abandonment of land due to circumstances may occur as identified in Table 3.X and replacement habitat is pursued instead? The original land converted to BDCP habitat restoration area will still need funding for management of the area and the payment of local tax assessments. Will these costs continue to be paid? Will the land be re-claimed to its	

Bay Delta Conservation Plan Review Document Comment Form

Document: ADAPTIVE MANAGEMENT SECTION OF CHAPTER 3, CONSERVATION STRATEGY, FEBRUARY 27, 2009

Name: Melinda Terry **Affiliation:** North Delta Water Agency
Date: March 31, 2009

Please use this form to document your comments to the above document. Please number your comments in the first column and indicate the page, section, and line number (if provided) that reference the comment's location in the review document in the next three columns. **Return completed comment forms to Rick Wilder (wilderm@saic.com) and Pete Rawlings (rawlingsms@saic.com).**

To be of the greatest value to the document development process, please make your comments as specific as possible (e.g., rather than stating that more current information is available regarding a topic, provide the additional information [or indicate where it may be acquired]; rather than indicating that you disagree with a statement, indicate why you disagree with the statement and recommend alternative text for the statement). Do not enter information in the **Disposition** column. This column will be used by SAIC to record how each comment was addressed during the document revision process.

No.	Page #	Section #	Line #	Comment	Disposition
	2	3.6	16	Adaptive Management - The document fails to describe how monitoring will be designed to establish cause and effect relationships between implementation of specific conservation measures and the type and magnitude of human impacts from those measures such as economic and public safety.	
	2	3.6	25	Document gives examples of a tidal marsh restoration project being reduced or discontinued or water operation being modified if its providing little benefit to covered species, however it does not explain what will happen if a habitat project or water operation results in causing economic or physical harm to humans in the Delta.	
				Following are examples of potential negative human impacts that could occur as a result of implementation of habitat restoration projects or altered water operations:	
				1) Water operations and/or restoration project results in lowering water elevations in the North Delta sloughs/channels and landowners can't divert water as its below their diversion facility's elevation.	
				2) Delta homes with wells have their water become too salty for human use and there's no alternative municipal water supply available. Or if source is available at what cost and who pays? What if drinking water for cities such as Stockton or Rio Vista become too salty for drinking? This is a significant public health problem.	
				3) What if water too salty for farming in Delta? Agriculture is the main economic driver of the region.	
				4) What if tidal marshes result in growth in significant populations of mosquitoes and they transfer diseases to the	

NORTH DELTA WATER AGENCY



December 10, 2009

Mr. Jerry Johns
Deputy Director
California Department of Water Resources
P.O. Box 942836, Room 1115-9
Sacramento, CA 94236-0001

Subject: BDCP Modeling for Modelers Meeting Follow-up

Dear Jerry:

Thank you for organizing the BDCP Modeling for Modelers meeting on October 28th. We appreciate the effort to address the concerns of our agencies and hope that this will evolve into a closer working relationship to ensure the BDCP modeling tools and documentation meet the needs of the BDCP Steering Committee and stakeholders.

As we discussed at the meeting, we have two primary concerns: (1) the validation of new modeling tools; and (2) the evaluation of effects to Delta water quality and water levels. We recommend the following path to address each of these concerns.

First, the new modeling tools should be validated before model results are relied upon to guide decisions of the BDCP Steering Committee. As technical memos are developed by the project team to support the new modeling tools, the technical memos should be released to the BDCP Steering Committee for review. This level of review is necessary before the Steering Committee can approve any proposed project. We request the release of technical memos detailing the following issues:

- Incorporation of the 2008/09 FWS/NOAA Biological Opinions into the water operations model CALSIM II;
- Calibration and validation of Delta modeling tools to simulate new tidal marsh, including a sensitivity analysis on the placement, size, and timing of tidal marsh construction;
- Transformation of monthly flow output by the operations model to daily flows;
- Training of Artificial Neural Networks (or ANNs) to estimate Delta salinity within the operations model; and
- Other technical memos on the development, calibration, validation, or assumptions of analytical tools.

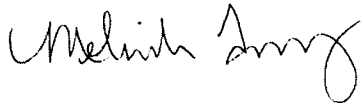
Second, modeling results should contain sufficient information to validate the new modeling tools and determine the impacts of the BDCP on Delta water quality and water levels. The attached document includes a detailed list of requested output from BDCP operations, hydrodynamic, and water quality modeling that will allow for adequate evaluation.

Mr. Jerry Johns
BDCP Modeling for Modelers Meeting Follow-up
December 10, 2009
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Finally, as preliminary modeling runs are now complete (presented to BDCP Steering Committee on December 3, 2009), we request another "BDCP Modeling for Modelers" meeting to discuss the results. Melinda Terry will contact you to coordinate schedules for the next meeting.

Thank you for your attention to these comments. We look forward to continuing a productive dialogue.

Sincerely,



Melinda Terry
Manager
North Delta Water Agency



Phil Harrington
Director of Capital Improvements/Water Rights
City of Antioch



Greg Gartrell
Assistant General Manager
Contra Costa Water District

Cc: BDCP Steering Committee
Armin Munevar, CH2M HILL

Attachment: Requested Output from BDCP Operations, Hydrodynamic, and
Water Quality Modeling

Requested Output from BDCP Operations, Hydrodynamic, and Water Quality Modeling

In order for the BDCP Steering Committee and stakeholders to evaluate potential effects of the BDCP, we request the following information from the BDCP modeling effort.

Specific Scenarios (CALSIM and DSM2)

The following scenarios are requested base cases to be used for calibration and validation of the new modeling tools and comparison to the with BDCP project cases.

- Historical Operations in recalibrated Delta model (DSM2 only)
- D1641 operations without BDCP project
- 2008/09 FWS/NMFS BO operations without BDCP project
- 2008/09 FWS/NMFS BO operations, with Delta geometry changes for BDCP Near-term tidal marsh (to determine the effect of near-term marsh alone)
- 2008/09 FWS/NMFS BO operations, with Delta geometry changes for BDCP Long-term tidal marsh (to determine the effect of long-term marsh alone)
- Near-term BDCP proposed operations, except using the D1641 implementation of the X2 standard for February through June, with Delta geometry changes for BDCP Near-term tidal marsh (to determine the effect of five month averaging X2)

Specific Output

The following output is requested from each base case and with project scenario. Many of these outputs are already defined in the Common Assumptions tools. We request the full time series output, not just summarized tables and charts.

- Operations Modeling (CALSIM)
 - End of Month Reservoir Levels
 - Shasta
 - Oroville
 - Folsom
 - San Luis Reservoir
 - New Melones Reservoir
 - Los Vaqueros Reservoir
 - All Delta Inflows - monthly and transformed daily, where appropriate (include diversions and return flows used in DSM2 preprocessing)
 - Sac R near Freeport and Hood (C169, C640)
 - Yolo (C157)
 - Mokelumne and Consumnes Rivers (C504, C501, C503)
 - Calaveras R (C508, R514)
 - San Joaquin R near Vernalis (C639)

Requested Output from BDCP Operations, Hydrodynamic, and Water Quality Modeling

- All Delta Exports and Diversions - monthly and transformed daily, where appropriate
 - North of Delta exports (D418_IF, D419_IF)
 - South of Delta exports (D418_TD, D419_TD)
 - Freeport exports and diversions (D168A, D168B, D168B_EBMUD, D168C)
 - Vallejo diversions (D403A)
 - NBA diversions (D403B, C, D)
 - CCWD diversions (D408_RS, D408_OR, D408_VC, D406A_MS, D168B_CCWD)
 - Antioch diversions (D406B)
 - Stockton diversions (D514A, B)
 - Upstream Diversions (North of Delta and east San Joaquin Valley senior water rights diversions)
 - Gross DCU (D404, D410, D413, D412)
- Delta Outflow Information
 - Required Delta Outflow (D407)
 - Net Delta Outflow (C407)
 - Delta Surplus
- Operations Parameters and Criteria
 - X2
 - QWEST
 - Old and Middle River
 - Required
 - Computed
 - Export/Inflow Ratio
 - Delta Cross Channel Operations (transformed to daily)
- Salinity
 - San Joaquin R at Vernalis
 - All ANN locations
- Delta Modeling (DSM2, RMA, UnTRIM, etc)
 - Tidal flow and velocity (15min)
 - At tidal marsh breach locations
 - Upstream and downstream of each new North Delta diversion
 - Old and Middle River compliance locations (channels 106, 144, and 145)
 - City of Antioch

Requested Output from BDCP Operations, Hydrodynamic, and Water Quality Modeling

- Select locations with relevant historical monitoring data
 - Lower Sacramento
 - Port Chicago (RSAC064)
 - Collinsville (RSAC081)
 - Emmaton (RSAC092)
 - Delta Outflow split
 - Three Mile Slough (SLTHM004)
 - Rio Vista (RSAC101)
 - SJR at Jersey Point (RSAN018)
 - Dutch Slough (SLDUT007)
 - DCC split
 - Sac at Georgiana (RSAC123)
 - Sac above DCC (RSAC128)
 - DCC (CHDCC000)
 - Georgiana Slough (SLGEO019)
 - Steamboat and Sutter Sloughs
 - 3 USGS meter locations (channels 379, 383, and 388)
 - Sac above Sutter Slough
 - Sac below Steamboat Slough
 - Franks Tract
 - False River (channel 279)
 - Old River at SJR (channel 124)
 - Old River at Holland Cut (ROLD041)
 - Old River at Mandeville (channel 119)
 - Central Delta
 - SJR above RRI (RSAN063)
 - Middle River (RMID005, 015)
 - Old River (ROLD024, 034)
 - Suisun Marsh
 - Montezuma Slough (SLMZU003, 011, 025, 032)
- Water level (1hour)
 - At tidal marsh breach locations
 - Upstream and downstream of each new North Delta diversion
 - North Delta
 - Sacramento River
 - Freeport
 - Hood
 - Walnut Grove
 - Rio Vista
 - Collinsville
 - Sutter Slough

Requested Output from BDCP Operations, Hydrodynamic, and Water Quality Modeling

- Steamboat Slough
- Prospect Slough
- Cache Slough
- Lindsey Slough
- Montezuma Slough

- South Delta irrigation level concerns
 - Middle River at Mowery
 - Old River at Tracy
 - San Joaquin River at Brandt Bridge

- All barrier locations (upstream and downstream)

- All Delta drinking water intakes
 - CCWD Rock Slough, Old River, Victoria Canal, and Mallard Slough Intakes
 - Freeport Regional Water Project
 - North Bay Aqueduct
 - City of Vallejo
 - City of Antioch
 - City of Stockton
 - CCFB Inflow
 - CVP Tracy Pumping Plant
 - New North Delta diversion locations

- EC
 - 15-min data
 - City of Antioch

 - Daily average
 - All Delta drinking water intakes (see above)
 - Supplemental locations for intakes on dead-end sloughs
 - Old River at Rock Slough (ROLD024)
 - Lindsey Slough at Cache Slough (node 322)

 - All D1641 standard locations

 - All DWR contract locations (ECCID, NBA, Antioch, Mallard Slough, NDWA)

 - All IEP River Kilometer Index (RKI) stations

 - Low Salinity Zone (every DSM2 node along specific reach)
 - Sacramento River: Martinez to Rio Vista
 - San Joaquin River: Confluence to Prisoners Point

Requested Output from BDCP Operations, Hydrodynamic, and Water Quality Modeling

- Volumetric fingerprinting
 - Recommended source fingerprinting locations:
 - Sacramento River at Freeport
 - Yolo Bypass
 - San Joaquin River at Vernalis
 - Martinez
 - Eastside Streams (Mokelumne, Consumnes, and Calaveras)
 - Sacramento Regional WWTP Discharge
 - Stockton WWTP Discharge
 - Other In-Delta WWTPs (to the extent these are distinguishable in DICU)
 - All other in-Delta discharge in DICU
 - Requested output locations
 - Hourly average
 - City of Antioch
 - Daily average
 - All Delta drinking water intakes (see above)
 - Supplemental locations for intakes on dead-end sloughs
 - Old River at Rock Slough (ROLD024)
 - Lindsey Slough at Cache Slough (node 322)
 - All D1641 standard locations
 - All DWR contract locations (ECCID, NBA, Antioch, Mallard Slough, NDWA)
 - Biologically relevant locations

Bay Delta Conservation Plan Document Review Comment Form

Document: Working Draft Chapter 1 Introduction, August 26, 2010 version

Name: Melinda Terry Affiliation: North Delta Water Agency

Date: November 4, 2010

Please use this form to document your comments to the above document. Please number your comments in the first column and indicate the page, section, and line number (if provided) that reference the comment's location in the review document in the next three columns. **Return completed comment forms to Rick Wilder (wilderrm@saic.com) and Pete Rawlings (rawlingsms@saic.com).**

To be of the greatest value to the document development process, please make your comments as specific as possible (e.g., rather than stating that more current information is available regarding a topic, provide the additional information [or indicate where it may be acquired]; rather than indicating that you disagree with a statement, indicate why you disagree with the statement and recommend alternative text for the statement). Do not enter information in the **Disposition** column. This column will be used by SAIC to record how each comment was addressed during the document revision process.

No.	Section #	Page #	Line #	Comment	Disposition
	1.1	2	18-19	The reference to "rather than" makes it sound like BDCP is not going to address or manipulate Delta flow patterns. RECOMMENDATION: Line 18, delete "rather than" and replace with <u>in combination with</u> .	
	1.1	5	23-25	It is true that the Steering Committee is the principal public forum, but it is <i>not</i> the only forum where key policy and strategy issues pertaining to the development of BDCP are discussed or decided. In fact, most key decisions regarding Plan development are made <i>before</i> being discussed in the SC public forum. Steering Committee may be "intended" to serve as the principal forum, however in reality the "Management Team" makes key policy and strategy decisions regarding, what and when, the Steering Committee will discuss. Examples of the Management Team's role in developing the Plan can be found in the October 5, 2007 Steering Committee meeting notes, page 4, which states: "In the next two weeks, the BDCP Management Team will explore concepts for the official process for selecting an option [conveyance] and suggest them to the full membership. " And also on page 4, "The BDCP Management Team will serve as the hub for caucus discussions on "framework" development process. The consultant team will propose an outline/table of contents for the framework document to be produced in the next few months." In addition, another group was formed in 2010, the Principals Group, to make key decisions regarding BDCP. In fact, Secretary Snow's letter to Senator Wolk, dated September 23, 2010, states: ". . .these meetings are a key procedural component of the public BDCP Steering Committee process	

			<p>designed to achieve the comprehensive strategy . . .” and “. . . provide policy guidance on elements of a draft Plan.” While these Principal meetings are open to all signatories to the BDCP Planning Agreement, they were not open to the general public and not all Steering Committee members were allowed to be participants, but instead were relegated as observers. Since participants in the Principals Group represents a majority of the Steering Committee members and are the bosses of representatives serving on the Steering Committee, the decisions the Principals Group make in their private meetings are unlikely to be overruled by their staff at the public Steering Committee meeting, so the decisions are already made before being discussed at Steering Committee. In the January 7, 2010 Draft Meeting Notes, under <i>Presentation: Overview of Proposed BDCP Site-Specific Near-Term Habitat Restoration Projects</i> says “A question was raised where these project proposals came from. Mr. Rawlings responded that teams for each Restoration Opportunity Area (ROA) looked at possible projects within the ROA’s. These were projects proposed within agencies or opportunities identified by the BDCP Habitat Restoration Technical Team.” I could not find any evidence that the HRTT or ROA meetings were noticed to the public or other members of the Steering Committee, so not sure whether other projects should have been included in the recommendation to the Steering Committee or how they made the decision on which projects to bring forward to SC. The February 4, 2010 Draft Meeting Notes even have following concern regarding recommendations to Steering Committee: “An opinion was expressed that getting recommendations from subject-matter experts through presentations at Steering Committee meetings was not enough input upon which to make informed decisions.” June 3, 2010 Draft Meeting Notes Roger Patterson discussed the progress of the Governance/Implementation Structure Workgroup, but I could not find any evidence that other SC members or public were notified of Governance Workgroup meetings. May 20, 2010 Draft Meeting Notes, Tina Cannon Leahy expressed her “hope that Chapter 9 will clearly describe how decisions were made and what information was used to make those decisions.” An example of a significant BDCP decision being made outside of the Steering Committee was the change in the Project Purpose made by permit applicants in February 2010. The use of discreet groups or committees to make management decisions is common in development of HCPs, therefore we should strive to be as accurate as possible in describing the public process and not overstate its openness or inclusiveness on how decisions made. RECOMMENDATION: Line 23, add <u>public</u> after “principal” and before “forum”. Line 25, add the following sentence after “be discussed and considered: <u>In order to streamline the workload and maintain permit applicant’s project goals, key policy and strategy issues pertaining to BDCP development were decided by a select and discreet group of Steering Committee members who served on a Management Team, Principals Group, and Oversight Committee. These meetings were private, but the decisions and outcomes were eventually brought forward to Steering</u></p>	
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				<u>Committee to be discussed in a public forum.</u>	
	1.1	5	25-27	Many members of the Steering Committee, including NDWA, signed the Planning Agreement and joined as members of the SC much later than December 2006. RECOMMENDATION: Line 25, after "December 2006, the" add <u>original</u> . After "development of the BDCP" on line 27 add following sentence: <u>The Steering Committee was expanded with the addition of new members, as noted in Table 1.1, after the development and approval of the Planning Agreement.</u>	
	1.1	6	1	This table makes it appear that all members of the Steering Committee have been involved since 2006, but many members were added later. RECOMMENDATION: Modify Table 1-1, BDCP Steering Committee Members, to add the dates that each member joined the SC, so that it's clear which members were original and when later members joined.	
	1.3.3	13	19-22	This language seems to reach conclusions and declare the BDCP to address "all" requirements of NCCPA and then seems to imply that Dept of Fish and Game must therefore issue permits. This assumes facts not yet in evidence, since none of the chapters are complete documents yet. RECOMMENDATION: Line 19, delete "The BDCP addresses" and replace with <u>The BDCP intends to address.</u>	
	1.3.4	14	1-5	The first sentence includes language, "measures that adequately minimize and fully mitigate the effects of Covered Activities", however this once again assumes facts not yet in evidence, since SC has not yet seen complete or sufficient effects analysis information necessary to reach that conclusion. RECOMMENDATION: Line 1, delete "incorporates" and replace with "intends to incorporate".	
	1.3.9.7	20	25-29	This sentence seems to imply that SWRCB's participation in development of BDCP assumes the Board is then obligated to approve actions in BDCP. This is inappropriate since the SWRCB is an independent public agency that must follow their guiding laws and regulations when considering BDCP Conservation Measures. Although they attend Steering Committee meetings and offer verbal comments, I am not aware that they have been "extensively" involved in the plan development and environmental review process and am not aware of them even providing written comments on the conservation measures. RECOMMENDATION: Delete the last sentence, starting on Line 25 and ending on line 29 and replace with: <u>In order to provide consistency between the actions described in the BDCP and those required by the State Water Board as part of its water quality control planning and implementation activities, particularly with respect to those measures identified to protect fish and wildlife beneficial uses, the Board has participated on the Steering Committee to allow them insight and a voice in the BDCP development.</u>	
	1.4.1	21	20-22	Any changes to the scope of the Plan Area during implementation of the Plan, particularly expansion of the boundaries, should be done through a Plan Amendment and should be done through an open, transparent, public process with the input and participation of stakeholders in the area to be added. RECOMMENDATION: Line 22, after Plan, add: <u>through an amendment to the Plan, that includes an open, transparent, public process with the input and participation of</u>	

				stakeholders in the area to be added to the Plan Area.	
	1.5.1	32	12-13	Ditto our comments above on Section 1.1, page 2, that what, how, and when decisions regarding development of the Plan were made “primarily” by Management Team <i>before</i> being brought forward to Steering Committee. In addition, the Principals Group was formed to make “key decisions” to “guide” the development of the Plan. The Management Team’s role in the development of the Plan should be properly recognized and reflected as part of the process that guided the development of the Plan. RECOMMENDATION: Line 13, after “Table 1.1” add <u>with direction from a Management Team and Principles Group.</u>	
	1.5.1	33	4	There were other Technical Teams that met including “Effects Analysis” and “Synthesis Team” which is mentioned on page 39, line 3 of this document, and possibly others that I don’t even know about. RECOMMENDATION: After line 3 add new bullets for other work groups added in 2009 or 2010, including: <u>Effects Analysis Work Group</u> After line 11 add new bullets for other technical teams added in 2009 or 2010, including: <u>Synthesis Team</u> (which is mentioned on page 39, line 3 of this document).	
	1.5.2	33	16-18	According to members of the general public, specifically residents in the Delta, it was difficult to find dates/times/locations/documents of Steering Committee and work group/committee meetings in 2006 and 2007, so unable to provide input during the “initial stage” of the “course of its development.” May 20, 2010 Draft Meeting Notes, General Public Comment section, Osha Meserve commented: “On the alternatives to take topic, the public had no role in the 2007 development of the 17 criteria used to select BDCP plan components, and had no role in the development of the BDCP purpose and need statement. Karen Scarborough (chair) responded that the Steering Committee meetings at which these elements were developed were, and have always been, public. Ms. Meserve countered that accessibility to BDCP documents was not as easy in 2006 as it is no with the established BDCP website.” In reviewing the past minutes and list of attendees from 2006 and 2007, it appears that there were several organizations and entities attending the Steering Committee, but not any local residents from the Delta. In fact, the November 16, 2007 Steering Committee meeting notes, page 2, have a bullet regarding a press conference by Public Officials for Water and Environmental Reform (POWER), which included several BDCP SC members in attendance, regarding the importance of communication of the BDCP process to the public. As a result, the BDCP public outreach consultants, BDCP Public Outreach workgroup and Resources Agency Deputy Secretary of Communications, were tasked with developing appropriate outreach material for the BDCP. Believe a website for BDCP was not developed until sometime in 2008. Section 7.4.1.3 of the BDCP Planning Agreement states that a list of Interested Observers will be maintained on the BDCP website, however I could find no such list on the website, so I’m not sure how extensive the outreach and notification of interested parties and Delta residents was made. If there was in fact some difficulties in getting notification to	

				residents and stakeholders in the Delta up and running in the beginning of the SC, then maybe best to describe properly that it was a building process. RECOMMENDATION: Line 17, delete “the public has been afforded” and replace with: <u>efforts were pursued to build a public outreach program to provide the public</u>	
	1.5.2	33	20-21	All meetings of the Working Groups and Technical Teams being open to the public is NOT true. Even as a Steering Committee member I often hear about work group or technical meetings occurring after the fact, however I never received notification or invitation to attend, so I am sure the public was not notified or invited either. In fact, if you check the website today (11/4/10), it indicates that there are three work groups currently active: Metrics, Governance, and Terrestrial. Yet according to the BDCP calendar these work groups have not had any meetings in 2010. To find noticed meetings of these work groups, you have to go back to October 2009. It has been mentioned at several Steering Committee meetings that these work groups have met (after the fact) and their work product has been brought forward to the Steering Committee for consideration, but the public and Steering Committee members not on the work group were never notified or invited to those meetings. Based on the record, the public was NOT invited or allowed to attend any work group meetings in 2010 at all. This should be properly reflected as a matter of accuracy. RECOMMENDATION: Lines 20-21 delete “, as well as Working Groups and Technical Teams,”. Line 21, after “open to the public.” add following new sentence: <u>Working Groups and Technical Teams were generally open to the public, particularly during the early development of the Plan in 2008 and 2009.</u>	
	1.5.2	33	23-25	Article 7.4.1.3 of the BDCP Planning Agreement says, “A list of Interested Observers will be maintained on the BDCP website.” However, I could not find this list on the website. Again, pursuant to my comments in prior item, I can find no evidence that an electronic listserv was used to send an invite to the public to ANY work group or technical team meetings in all of 2010, except for a modeling for modelers meeting in January 2010, which was on the BDCP calendar. Clearly announcements of public forums were somehow advertised as hundreds of people managed to attend some of the public forums, but it is not apparent that a list of these attendees was maintained to inform them of Steering Committee or committee/work group meetings. If notification of Steering Committee meetings means the agenda being sent out to list of interested observers, then this was not done until the afternoon the day before the meeting, so that’s not adequate notice to review agenda and decide if want to attend. Therefore, it is not appropriate to say that “interested members of the public were adequately notified of upcoming meetings”, however this statement is true regarding notification of Steering Committee meetings. RECOMMENDATION: Line 24, delete “adequately” and after “upcoming” add <u>Steering Committee</u>	
	1.5.2	34	24-25	One of the biggest complaints by interested members of the public has been the lack of “details” regarding the conservation measures. RECOMMENDATION: Line 24, delete “details	

**Bay Delta Conservation Plan
Review Document Comment Form**

Document: CHAPTER 7. IMPLEMENTATION STRUCTURE, JUNE 3, 2011, VERSION DISCUSSED AT THE JUNE 9, 2011 BDCP GOVERNANCE WORK GROUP

Name: Melinda Terry **Affiliation:** North Delta Water Agency

Date: June 17, 2011

Please use this form to document your comments to the above document. Please number your comments in the first column and indicate the page, section, and line number (if provided) that reference the comment's location in the review document in the next three columns.

To be of the greatest value to the document development process, please make your comments as specific as possible (e.g., rather than stating that more current information is available regarding a topic, provide the additional information [or indicate where it may be acquired]; rather than indicating that you disagree with a statement, indicate why you disagree with the statement and recommend alternative text for the statement). Do not enter information in the **Disposition** column. This column will be used by SAIC to record how each comment was addressed during the document revision process.

No.	Page #	Section #	Line #	Comment	Disposition
				<p>Issues/Items not addressed in this document that need to be for it to be considered adequate:</p> <ol style="list-style-type: none"> 1) Declare policy of "willing seller" for habitat restoration acres, except when requested by the landowner. 2) Needs to include process for considering and paying for third party impacts resulting in plan implementation 3) Include responsibility for implementing and enforcing EIR/EIS conditions. <p><i>Willing Seller</i> – Willing Seller is the foundation of trust for environmental land acquisition. It is inappropriate for the BDCP to use police powers to condemn land not just for its massive pump, canal-tunnel, and power line infrastructure, but to take 80,000 + acres of "habitat," privately owned lands that have been managed for productive agriculture for generations. Most of the terrestrial and wetland habitat in the Central Valley is protected by private landowners, waterfowl clubs, land trusts and local HCPs. The remaining local state and federal wildlife refuges suffer from a lack of adequate funding and increasing responsibilities. In contrast, the state and federally managed water projects are partially responsible for the decline of threatened and endangered species as documented by the recent biological opinions. The aquatic habitat being proposed in the Delta under the BDCP is so the existing and new water pumps can operate with ESA take authority. The burdens of the water projects can't fairly be placed on the backs of the very people who have protected the habitat and managed sustainable agriculture for the past 130 years. Taking private land for</p>	

			<p>habitat projects that benefit regions outside of the Delta sends exactly the wrong message to Delta communities.</p> <p>The Delta Conservancy has been designated by statute as a primary State agency to implement ecosystem restoration in the Delta. Under PRC 32366, the Delta Conservancy is required to follow policy of “willing seller”, so this should be recognized and committed to in Chapter 7. Failure to require “willing seller” for acquirement of lands for enhancement and restoration of habitat within the identified restoration opportunity areas (ROAs), conservation zones, and other areas in Plan Area will set a precedent that likely will have a chilling effect on public acceptance of HCPs proposed in future. “Willing sellers” is universally accepted as the policy to be followed in HCPs for acreage needed for habitat, therefore it would be a misuse of eminent domain powers to acquire land for habitat in such a hostile way. This is NOT good business for implementation of BDCP as it will increase confrontation with Delta residents and public agencies instead of cooperation.</p> <p>We urge the BDCP to formally recognize willing seller as policy in Chapter 7.</p> <p><i>Third Party Compensation</i> – According to a letter dated September 27, 2010 by Congressmen Dennis Cardoza and Jim Costa and recent newspaper articles, the implementation of the San Joaquin River Restoration Program has resulted in adverse impacts to landowners and water users that need to be redressed. NDWA anticipates similar adverse impacts to our landowners and water users, therefore, we request the Governance Chapter 7 include a claims process to compensate for damages caused by BDCP implementation.</p> <p>EIR/EIS – Enforcement of mitigations and standards in EIR/EIS should be done by same entity charged with responsibility for implementing/enforcing HCP/NCCP which is the Implementation Board. This is necessary component of accountability that the statutory co-equal goal of protecting “Delta as a Place” is in fact done.</p>	
1		9-16	<p><i>EIR/EIS Oversight</i> - This section says the implementation structure is intended to ensure the terms and conditions of the plan and its associated regulatory authorizations, however there is nothing in this governance structure or Implementation Office or the Implementation Board that indicates how the requirements, conditions, and mitigations in the EIR/EIS will be implemented and enforced. This is a fatal flaw as issues related to protecting Delta as a Place: economic considerations, flood protections, water elevations, consolidation of in-Delta intakes, etc are all issues that will be in EIR/EIS and need to have oversight of Governance Entity, and the Implementation Board appears to be the appropriate entity in the structure provided in this document. You CANNOT separate the implementation of mitigation in the EIR/EIS as they are mitigating the impacts of the Conservation Measures, so the governance entity will have to oversee</p>	

				implementation of all of the CMs <i>and</i> their associated mitigation and impacts to neighboring properties.	
	2		16-34	<p>We are concerned that Authorized Entities are the only ones given authority to assist the Program Manager with plan implementation. The Delta residents also have a lot at stake in terms of Plan Implementation and Delta residents are required to pay for Plan’s Conservation Measures by giving up land, livelihoods, and economic revenues.</p> <p>There are other entities such as NDWA, CCWD, City of Antioch and Brentwood that are also water contractors with SWP/DWR and should be added to the Implementation Board. NDWA Contract states: 1) The State will operate the SWP to provide water qualities at least equal to the better of: SWRCB standards or the Contract criteria, Article 2; 2) The State agrees not to alter the Delta hydraulics in such a manner as to cause a measurable adverse change in the ocean salinity gradient or relationship among the various monitoring locations; 3) the State shall NOT convey SWP water so as to cause a decrease or increase in the natural flow, or reversal of the natural flow direction, or to cause the water surface elevation in Delta channels to be altered, to the detriment of Delta channels or water users within the Agency; 4) if diversion facilities must be modified as a result of water surface elevations as a result of the conveyance of water from the SWP, the State shall repair or alleviate the damage, shall improve the channels as necessary, and shall be responsible for all diversions facility modifications required. These are certainly “implementation issues” and warrant representation on the Implementing Board since failure of the SWP to meet these criteria results in the mandatory ceasing of all diversions, storage, and export of SWP from Delta channels pursuant to Article 12 of the 1981 Contract.</p>	
	4		1-2	<p>This sentence is clear that the Implementing Office will oversee and implement <i>all</i> aspects of plan implementation. We agree that Plan Implementation means oversight for <i>ALL</i> issues in regards to implementation of Conservation Measures and CANNOT be selective and only want oversight for water ops or how many acres of habitat built. Consequently, either the Implementation Board or another Implementation entity needs to be created to deal with EIR/EIS mitigation implementation as well as third party impacts caused by implementation of any BDCP Conservation Measures.</p>	
	4		34-35	<p>We are concerned with this language to allow DWR and Reclamation to contract with “other entities” to operate the projects. The Authorized Entities should NOT be allowed to operate the water operations as this is a serious conflict of interest. If the AEs are not happy with DWR or Reclamation operating the projects, then a new “independent” third party government entity such as the PUC should be created and put in charge of project operations to prevent undue influence or outright violation of the operating rules. This arms length seems particularly important in light of many entities that are AEs supporting HR 1837 (Nunes) to eviscerate significant</p>	

				<p>Delta protections found in the CVPIA, San Joaquin River Settlement Agreement, and Biological Opinions, as well as some of the AEs filing a recent lawsuit to override a key provision on the current coordinated operations of the CVP and SWP, and the CVPIA. Do their current water contracts give them operational decision making authority? If not, then why should the BDCP provide this new authority for new facilities? Will this operational authority extend to the South Delta Pumps as well, since it will be a dual-operation scenario? Again, this is not appropriate. There is no separation of powers and an unacceptable conflict of interest to allow State and Federal Water Contractors to operate the SWP or CVP. If these are State facilities, then they should be operated by the State. Turning over operation of the SWP to State and Federal Water Contractors is not compatible with the interests of the NDWA and our 1981 Contract.</p>	
	7 8	7.1.2	14-37 1-4	<p>This draft is a step backwards because it is defaulting to the water contractors receiving regulatory take authority as individual entities <i>and</i> being on the Implementation Board. This is far more authority and power than they currently have over operation of the SWP and CVP, and is a line that should not be crossed. This is same problem as assuming a 15,000 cfs conveyance around the Delta is a given fact, rather than a controversial option to be analyzed. This issue was unresolved last year, and received much debate in the Principal Group meetings. Therefore, it is inappropriate to automatically add it into this newly revised version. It should not be added in until a final decision is made. If the Resources Agency and Reclamation are asserting such a final decision already as the preference based on inserting this placeholder language, then that should be disclosed to stakeholders and the general public.</p>	
	9	7.1.3	18-25	<p>This section needs to include responsibility for implementing, coordinating, overseeing, and reporting on all aspects of EIR/EIS implementation/mitigation and third party impacts, to ensure it is properly and fully implemented. As the entity responsible for implementation of all of the Conservation Measures, including ‘habitat acquisition and restoration targets’ mentioned on line 22, the IB must be responsible for all facets and impacts that result from the CMs, including third party impacts. This duty needs to be clearly spelled out and a process for applying for impact compensation set up in the Governance prior to implementation of any CMs. Based upon the experience of farmers dealing with crop damages from seepage due to the release of water under the San Joaquin River Settlement and past problems with seepage for Ryer Island when Prospect Island had water on it, these are issues that need to be figured out in Governance before creation of any new aquatic habitat.</p>	
	9	7.1.3	17-32	<p>Are they required to hold their meetings in the Delta or anywhere in the State? Since many of the Conservation Measures use or affect major components of the Sacramento Flood Control System, the Implementation Board should include a board member from the Central Valley Flood Protection Board and at least three representatives from Delta</p>	

				Reclamation Districts.	
	10	7.1.3.1	9-11	This sentence says that the SWP will remain under the control and responsibility of DWR, however this sentence and commitment is in conflict with other sections that indicate other entities may be allowed to operate the SWP, such as page 4, lines 34-35 and page 11, lines 25-28, which says water facilities and water operations may be contracted out by DWR to other 'entities.' This is more authority than State and Federal Water Contractors currently have over the operations of the SWP or CVP and seems to be a line that should not be crossed, otherwise the Governance is specifically creating a conflict of interest.	
	10-11	7.1.3.2	31-36 and 3-13	Pages 10-11, Lines 33-36 and 1-2 respectively, the limitations on the two criteria for objections seems too narrow, subjective, and it is not clear <u>who</u> makes the decision on whether either of those criteria have been met. Determined by who?? Page 11, Lines 9-10 includes SFWCA and the State or federal water contractors individually, which seems to make them both judge and jury for decision making since they also are on the Implementation Board who's decision is being sent to dispute resolution.	
	11	7.1.4	25-29	Do not think it is appropriate for DWR or Reclamation to contract with or designate other 'entities' to operate the SWP or CVP facilities. This goes far beyond existing authorities and creates conflicts of interests if the operation of these facilities is turned over to State or Federal Water Contractors.	
	10	7.1.3.2	31-36	What will the disposition process be for input provided by the Stakeholder Committee to the IO? It is meaningless if they offer input and suggestions, but there is no process or requirement for them being acted on by IO.	
	12	7.1.5	5-14	ESA/CESA take authority should also be shared with local flood control agencies to allow for maintenance and improvement of levees necessary for the conveyance of SWP or CVP water through the Delta.	
	12 and 13	7.1.5.1 And 7.1.5.2	23-26 And 1-23	It is one thing to have DFG consulting with authorized entities, but it is inappropriate to have their "participation" in real-time operations. The word "participation" should be deleted from page 12, line 25; page 13, line 3; and page 13, line 16.	
	12	7.1.5.1	28-32	Creating agreements for DFG to operate and maintain habitat areas, MUST include a requirement it is only if the agreement includes a funded and securitized endowment to pay for the ongoing maintenance and local taxes/assessments prior to construction and implementation. DFG does not receive sufficient funding in the State Budget to cover these costs, so they must be included in the Agreement.	
	13	7.1.5.3	19-23	There is no mechanism for local government agencies to make federal government pay their local assessments, so any Agreement for the USFWS to operate and maintain habitat areas must include a funded and securitized endowment fund prior to construction and implementation.	
	13	7.1.6	25-34	Since most of the Conservation Measures in the BDCP are in fact flood control projects that propose modification of Project Levees and or flood Bypasses, how will agencies such as the	

				U.S. Army Corps of Engineers and the CA Central Valley Flood Protection Board 'participate in the governance of plan implementation' mentioned on line 30?	
	14	7.1.6	3-10	Should include the Delta Protection Act and PRC Section 32322, 32364.5, 32366, and 32370.	
	14	7.1.7	19-21	This section should either specifically identify which Conservation Measures the State and Federal Water Contractors will have responsibility for implementing or which CMs they will <i>not</i> have responsibility for, such as water operations of SWP and CVP. It is unclear why State and Federal Water Contractors should have a role in implementation of habitat measures the General Public will be paying for??	
	15	7.1.8	9-11	Having the Stakeholder Committee simply be a 'forum' for the 'discussion' of matters is not sufficient. This group will include landowners and Delta entities that are directly impacted and burdened by CMs that benefit other areas of the state, so they need to be able to make recommendations for changes to CMs that are detrimental to the Delta's regional economy and Delta as a place as defined in PRC Section 32322. Also needs to define how their input will be dealt with by the Implementation Board and IO.	
	15	7.1.8.1	12-33	How many total members? How will membership be divided between the different categories on lines 17-33? Not sure why there is cross-over on entities that serve on the Implementation Board ALSO get to serve on the Stakeholder Committee. If they get to cross-over to the Stakeholder Committee, then the locals on the Stakeholder Committee should also cross-over and have representation on the Implementation Board. Since most of the CMs are flood projects, the Central Valley Flood Protection Board and at least six representatives of Delta Reclamation Districts should be included. Since significant agriculture acres will either be converted or have ESA/CESA and detrimental impacts such as seepage, the Committee should include representatives from either the County Ag Commissioners or County Farm Bureaus for each of the five Delta Counties (five reps total). Also missing representatives from sport and recreational fishing, boating and marinas, Delta Chambers of Commerce, and Delta Conservancy.	
	16	7.1.8.2	1-21	Will the meetings convened pursuant to this section be open to the public? Will the communication and regular update documents required in this section be made available to the public? Will the recommendations of the Stakeholder Committee be made available to the public?	
	16	7.1.8.3	23-38	<p>Lines 28-30, the limitations of these two criteria is too narrow, subjective, and it is not clear <i>who</i> makes the decision on whether either of those criteria have even been met.</p> <p>Lines 31-32, it is confusing how elevating an objection to the IB will result in an objective decision, since an element of their work plan is what is being elevated for objection. This extra process seems to add time to how long it will take to resolve dispute. The time period the IB has to act on an objection needs to be defined. How long does IB have to deal with the dispute before it can be elevated to the 'entity with the ultimate authority over the matter?' Failure of the IB to act on dispute in</p>	

				<p>a timely manner will lead to lawsuits. “Entity with the ultimate authority over the matter” needs to be better defined.</p> <p>Lines 35-36, the ‘decision by the entity with ultimate authority over the matter’ must also have a time limit, otherwise complainants will go to court due to unnecessary delays.</p> <p>Lines 36-38, should be amended to clarify the State and Federal Water Contractors have final say over responsibility for plan implementation and compliance <u>with permit conditions</u> as holders of the permits pursuant to Section 7.1.2.</p>	
	20	7.2.9	26-30	<p>As mentioned before, most of the BDCP’s Conservation Measures are in fact flood control projects proposing the alteration of Project Levees and flood Bypasses for habitat purposes. These coordinating agencies should be on the Implementation Board due to their significant role in permitting these projects and for monitoring their maintenance.</p>	
	22	7.3.1 and 7.3.1.1	3-18	<p>Willing seller policy should be added in this section as follows:</p> <ol style="list-style-type: none"> 1) Line 7, “These measures will primarily involve actions to acquire lands from willing sellers <u>except when requested by the landowner</u>, restore . . .” 2) Line 10, . . . measures associated with habitat protection and restoration, <u>based on a willing seller except when requested by the landowner .</u>” 3) Line 13, “. . . acquire interests in real property <u>based on a willing seller except when requested by the landowner . .</u>” 4) Line 15-16, “. . . also may acquire interests in real property <u>based on a willing seller except when requested by the landowner.</u>” 	
	22	7.3.1.1	25	<p>Add two new bullets: *</p> <ul style="list-style-type: none"> • <u>A funded and securitized endowment for the payment of ongoing maintenance, monitoring, and local taxes/assessments.</u> • <u>Be consistent with PRC Section 32322</u> 	
	22	7.3.1.1	30-31	<p>This language should specifically prohibit the conveyance of any lands to the Delta Conservancy, DFG, FWS, or other entities, <i>UNLESS</i> the property includes a funded and securitized endowment fund to pay for ongoing maintenance, monitoring, and local taxes/assessments as well as required to be consistent with PRC Section 32322.</p>	
	23	7.3.1.2	15	<p>Need to add several more bullets:</p> <ul style="list-style-type: none"> • <u>Enforcement of easements</u> • <u>Monitoring of third party impacts, including seepage, erosion, and levee failures</u> • <u>Enforcement of Safe Harbor or Good Neighbor policies and agreements</u> 	
	24	7.3.2.2	2-4	<p>Page 12, line 25; page 13, line 3, and page 13 line 16 provide “<i>participation</i> in real-time operations to Authorized Entities which seems inconsistent with the section on the “Real Time Operations Response Team.”</p>	
	24	7.3.2.2	17-21	<p>Since page 4, lines 34-35 and page 11, lines 25-28 are just two of several places which say water facilities and water operations may be contracted out by DWR to other ‘entities’</p>	

NORTH DELTA WATER AGENCY

910 K Street, Suite 310, Sacramento, CA 95814 (916) 446-0197

LOCAL AGENCIES OF THE NORTH DELTA

1010 F Street, Suite 100 Sacramento, CA 95814 (916) 455-7300

November 4, 2011

Mr. John Laird, Secretary
Dr. Gerald Meral, Deputy Secretary
CA Natural Resources Agency
1416 Ninth Street, 13th Floor
Sacramento, CA 95814

Mr. David Hayes, Deputy Secretary
U.S. Department of the Interior
Michael Connor, Commissioner
U.S. Bureau of Reclamation
1849 C Street, N.W.
Washington, DC 20240

Dear Gentlemen:

We find it necessary at this point in the Bay Delta Conservation Plan (BDCP) process to convey to you significant unaddressed issues to date as well as grave concerns regarding problems with the substance of the BDCP, its process, and its treatment of local Delta interests.

The North Delta Water Agency (NDWA) is a state water contractor with DWR pursuant to a 1981 Contract for the availability of suitable quantity and quality of water to all North Delta water users as well as DWR's responsibility for avoiding and mitigating detrimental impacts such as erosion and seepage damage, altered surface water elevations, and reverse flows associated with Delta water conveyance.

Local Agencies of the North Delta ("LAND") is a coalition comprised of eleven reclamation and water districts in the northern geographic area of the Delta.¹ LAND participant agencies have concerns about how the BDCP may eventually impact provision of water, and/or, drainage and flood control services to landowners within their respective districts. Six LAND member agencies have sought and received cooperating agency status under NEPA with the Bureau of Reclamation.

The September 30, 2011 letter by four environmental organizations raises many serious flaws and inadequacies of the BDCP documents and process which we agree need to be addressed in order to meet State and Federal laws governing HCPs and NCCPs. In addition to failing to improve the health of the estuary, we would add that the BDCP is headed toward the destruction of Delta as a Place, the Delta's vibrant economy, and the Delta's 150-year history of agriculture as the primary land use. Such a result is unacceptable.

¹ / LAND member agencies include: Reclamation Districts 3, 150, 307, 551, 554, 755, 813, 999, and 1002. Some of these agencies provide both water delivery and drainage services, while others only provide drainage services. These districts also assist in the maintenance of the levees that provide flood protection to homes and farms.

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is neither open nor inclusive and ultimately was done over the objections of Delta stakeholders and others.

The MOA also provides the state and federal water contractors unprecedented control of the BDCP, even more so than previously. Section II-K of the MOA explicitly grants the state and federal water contractors the right to not only see *all draft consultant work product* before the general public has access to it, but presumably the right to suggest or demand alterations to the work product before it is released to the public. This same section *also requires* that state and federal water contractors be included in addressing all *comments received* during the BDCP-DHCCP Planning Phase, including comments received during development of the BDCP and EIR/EIS. Our questions are: who is in charge of the process? How can the state and federal government agencies remain fair and impartial arbiters in a process corrupted by the control of only one stakeholder group whose interests are neither neutral nor impartial? How can in-Delta stakeholders trust their comments and concerns will be appropriately addressed in the BDCP or the EIR/EIS phases if water contractors are dictating the responses to comments received?

We understand that comments are now being requested on the MOA, now that it has already been approved by the State and Federal governments, as well as many of the Water Contractors. We will provide separate comments on the MOA, but it is clear that the recent decision to circulate an already approved MOA is too little and too late in terms of including the public in the decision-making process regarding the critical issues addressed in the MOA.

We also strenuously object to the state and federal water contractors continuing to be included in the lead agencies' monthly meetings to discuss BDCP-DHCCP Planning Phase Management unless these meetings are open to the public. The NDWA 1981 Contract with DWR makes it clear that DWR bears the responsibility of maintaining adequate water supply of a certain quality for all North Delta water users, as well as obligates DWR to avoid and mitigate detrimental impacts of erosion and seepage, altered water elevations, and creation of reverse flows associated with the SWP Delta water conveyance facilities. Therefore, NDWA and other local water agencies clearly have an interest in also participating in these monthly BDCP-DHCCP Planning Phase management meetings where the design of the projects, the project's impacts, and the proposed mitigation of in-Delta impacts will be discussed and decided. These meetings appear to be far more important and relevant to in-Delta water agencies than the work groups have been so far.

In addition, almost all Conservation Measures in the BDCP propose altering, breaching, and modifying project levees and bypasses that are part of the State Plan of Flood Control. This could have significant public safety implications if flood protections are reduced as a result of the BDCP activities. The Delta Reclamation Districts that have flood management responsibilities should also be included in important Planning Phase meetings to assure flood protection for the Delta and Sacramento region is not detrimentally affected.

PR Propaganda Apparently Approved by Resources Agency to Justify Elimination of Delta Agricultural Economy

At the September 27, 2011 BDCP Public Meeting a summary of the findings of a so-called study on BDCP job creation was presented. The presentation was both insulting and offensive, and

with screens in the new diversions, entrainment/entrapment will occur wherever water is diverted in large volumes.

- No pathway toward take coverage for other landowners and entities in the Plan area is provided, despite the fact that if successful, the project could directly increase the probability of take of protected species.
- BDCP includes no commitment to levee improvements even though it would continue to rely on pumping from the South Delta, which in turn requires that key levees be maintained to prevent saltwater intrusion.

Unlawful Use of Eminent Domain Laws to Further BDCP Goals and Timeline

The eminent domain process for just the *investigatory activities* of the BDCP is already causing difficulties. There are numerous stories of frustration from Delta landowners regarding their dealings with DWR on the Temporary Entry Permits for environmental surveys and subsequent actions by DWR to pursue eminent domain to conduct geo-technical drilling on private properties to support the preparation of the BDCP EIR/EIS. Despite alternative public lands nearby the privately-owned proposed drill sites, DWR does not appear to have actually investigated or pursued using those public lands as alternatives to disrupting and permanently altering people's private property.

DWR's drilling is in some cases exposing landowners to toxic clean-up liability. The geo-technical drilling pulls up a 200 foot tube of soil from properties and sends the soil to a lab for testing and is reported to the Department of Toxic Substance Control if any toxic chemicals are detected. No landowner can afford for the geo-technical drilling to cause their property to become a State Toxic Clean-up Site. DWR has refused to assume liability if the drilling and subsequent reporting results in a toxic clean-up liability; as a result, many landowners cannot agree to a Temporary Entry Permit.

The recent court decision clarified that geo-technical drilling is a "taking" of private property due to the permanent alteration of the property, so now DWR is pursuing the condemnation (eminent domain) of property in order to conduct this drilling. According to California law (Water Code Section 11580), however, eminent domain can only be pursued by DWR once a public project has been authorized and funded.

BDCP has not even released a draft EIR/EIS indicating various project alternatives and associated location of facilities, let alone a final EIR/EIS and Record of Decision. The MOA recently signed by DWR and the Bureau of Reclamation mentioned above makes it very clear that DWR may not commence with preparing "Public review draft of the BDCP and EIS/EIR" or the "Final BDCP and EIS/EIR," until and unless "the Public Water Agencies provide the Director of DWR with written authorization to proceed" (Section III-G-b, pp. 10-11).

Therefore, the State is proposing to condemn through eminent domain private property for a project that may not be completed if written authorization and funding is not forthcoming from the Public Water Agencies. Why should Delta landowners have their private property taken through eminent domain when the EIS/EIR is has not yet been completed and approved pursuant to Section III-G-b of the MOA? Moreover, Deputy Secretary Jerry Meral disclosed at the October 19, 2011, Legislative Oversight hearing, that more geotechnical information is not needed to complete the public draft EIS/EIR.

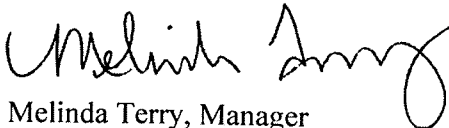
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- Rescind signatures of and provide an open and transparent process for public input and comment to the first Amendment to the MOA, which puts entirely too much decision-making authority in the water exporters despite the fact that BDCP is a public project with significant local impacts.

We look forward to your response on how and when the State and Federal governments plan to respond to the issues and concerns raised by the North Delta Water Agency, LAND and all Delta stakeholders that the BDCP affects.

Sincerely,



Melinda Terry, Manager
North Delta Water Agency



Osha R. Meserve, Representative
Local Agencies of the North Delta

cc:

Nancy Sutley, Chair, White House Council on Environmental Quality
U.S. Senator Barbara Boxer
U.S. Senator Dianne Feinstein
Representative Dennis Cardoza
Representative Jim Costa
Representative Jeff Denham
Representative John Garamendi
Representative Dan Lungren
Representative Doris Matsui
Representative Kevin McCarthy
Representative Tom McClintock
Representative Jerry McNerney
Representative George Miller
Representative Grace Napolitano
Representative Devin Nunes
Representative Jackie Speier
Representative Mike Thompson
Senator Mark DeSaulnier
Senator Darrell Steinberg
Senator Lois Wolk
Assemblymember Bill Berryhill