

Bay Delta Conservation Plan Draft EIR Review Check-in

Summary: Staff will brief the Council on their progress reviewing the Partially Recirculated Draft Environmental Impact Report (REIR)/Supplemental Draft Environmental Impact Statement (SEIS) on the Bay Delta Conservation Plan (BDCP)/California WaterFix (WaterFix) released on July 10 for public review. Comments on the REIR/SEIS are due October 30. This information item is provided in anticipation of the Council's review of staff comments on these documents in September 2015 and ultimate adoption and submission of comments at the October 2015 meeting.

The California Department of Water Resources (DWR) and the Bureau of Reclamation (USBR) jointly released the document. This briefing by Council staff will include initial observations that may form the basis for portions of the Council's comment letter, and a discussion about how the Council's previous comments have been addressed in this version of the document.

Background

Under the Delta Reform Act, the Council has four defined roles with respect to the BDCP: 1) The Council is a responsible agency in the review of BDCP's EIR/EIS, providing a formal opportunity for the Council to comment on the plan's impacts, alternatives, and mitigation measures; 2) the Council has a consultative role with regard to plan development; 3) if the BDCP was completed and approved by the Department of Fish and Wildlife (DFW) as a Natural Community Conservation Plan (NCCP) and otherwise meeting the requirements of the Delta Reform Act, that determination by DFW could be appealed to the Council; and 4) if the BDCP meets the Delta Reform Act's requirements, the Council shall incorporate the approved BDCP into the Delta Plan. The Act also directs the Delta Independent Science Board (ISB) to review the draft BDCP EIR/EIS and submit its comments to the Council and DFW. Since the Council was formed in 2010, they have actively participated in the BDCP process and have continuously provided suggestions that could improve the project. This includes consulting directly with DWR on the BDCP and providing written comments on each phase of the [BDCP](#) EIR/EIS process.

Although WaterFix is shown as a new alternative in the environmental documents for the BDCP, for practical purposes the BDCP as it has been envisioned for the past eight years no longer exists. Unlike BDCP, the new WaterFix project is not a conservation plan aiming to improve species recovery in exchange for a long-term operational permit. Rather, the objectives of WaterFix are much more narrow – "to make physical and operational improvements to the State Water Project (SWP)/Central Valley Project

(CVP) systems in the Delta necessary to restore and protect ecosystem health, water supplies of the SWP and CVP south of the Delta, and water quality within a stable regulatory framework, consistent with statutory and contractual obligation”.

To take advantage of all the analysis and other work that has gone into the BDCP draft EIR/EIS and in lieu of starting the entire CEQA process over, DWR and USBR have chosen to evaluate WaterFix as a series of new alternatives within a partially recirculated draft BDCP EIR and supplemental EIS. As such, the Council, informed by comments from the Delta Independent Science Board (ISB), will provide comments on this recirculated document.

Because WaterFix will not be a NCCP, nor a habitat conservation plan (HCP), the Council is not required to incorporate the WaterFix alternative into the Delta Plan. WaterFix instead will be subject to the Council’s authority over covered actions, meaning that it must be consistent with the regulatory portions of the Delta Plan.

Initial Observations

Staff has started to review the REIR/SIES and has the following initial observations:

1. The REIR/SEIS looks at three new non-NCCP/non-HCP alternatives that comprise WaterFix; 1) a single intake facility (Alternative 5D); 2) three intake facilities (Alternative 4A); and 3) five intake facilities (Alternative 2D). The three intake facility, Alternative 4A is the new preferred alternative.
2. Habitat restoration and other conservation measures originally proposed in BDCP will not be included in Alternatives 4A, 2D, and 5A, except to mitigate significant environmental effects under CEQA/NEPA and to meet the regulatory standards of ESA section 7 and CESA section 2081(b).
3. The new design of WaterFix appears to significantly reduce Delta as a Place impacts because:
 - a. The alignment of the tunnels has been improved to lessen environmental impacts
 - b. The changes to the diversion structures will result in simplified construction and less impacts during construction
4. WaterFix is not seeking operational assurances and will be subject to current and future federal and state regulatory requirements to protect fish, water rights and Delta water quality.
5. The REIR/SEIS includes a new assessment of water quality effects in San Francisco Bay.

Previous Council Comments

The majority of the Council's previous comments dealt with those aspects of BDCP that are not part of the current WaterFix alternative, including: consistency with the Delta Reform Act and Water Code section 85320(b)(2); the adequacy of the assessment of Conservation Measures 2-22; and the benefits of the habitat restoration described in the BDCP.

The remaining issues are ones the Council previously commented on and are still pertinent to WaterFix. These include:

- What water quality impacts does WaterFix impose on in-Delta users?
- How does WaterFix work together with measures to improve levees for through-Delta conveyance?
- Are the new WaterFix facilities resilient and does WaterFix increase the resiliency of the SWP and CVP overall?
- Does WaterFix provide adequate mitigation measures to protect the unique values of the Delta as an evolving place?
- Adequacy of the mitigation measures, including the role of adaptive management in ensuring the mitigation efforts are successful.
- Does the REIR/SEIS meet the requirements of CEQA, including analyzing a reasonable range of project alternatives?

WaterFix REIR/SEIS Schedule

July 10, 2015: BDCP REIR/SEIS is released for public review and comment
Sept. 24-25, 2015: Staff will provide Council with draft comments
Sept. 30, 2015: ISB will provide Council with their final comments
Oct. 22-23, 2015: Council will provide staff with direction on final REIR/SEIS comments incorporating staff comments and select ISB comments
Oct. 30, 2015: Close of REIR/SEIS comment period

Other WaterFix Regulatory Efforts of Interest

- DWR will petition the State Water Resources Control Board (SWRCB) for a change in the point of diversion (additional place of diversion) for the SWP and CVP. The SWRCB will hold hearings and take action on the petition. It is anticipated that DWR may submit its petition to SWRCB in the near future. The entire process, which will establish applicable operational conditions on the project, could take between one and three years.

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- USBR will consult with the federal fisheries agencies under section 7 of the Endangered Species Act. USBR will present the agencies with a Biological Assessment of how WaterFix will affect listed species. The fisheries agencies will develop a Biological Opinion on whether WaterFix will jeopardize the existence of the listed species and may provide USBR with reasonable and prudent alternative actions. DWR will enter into consultation with California's Department of Fish and Wildlife under CESA Section 2081(b).
- DWR has indicated that it considers WaterFix a covered action and will file a certification of consistency with the Council.

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