DELTA STEWARDSHIP COUNCIL
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Mr. Russell Stein
c/o Marcus Yee
Department of Water Resources
3500 Industrial Blvd
West Sacramento, CA 95691

SUBJECT: Preliminary "Responsible Agency" Comments on BDCP Administrative Draft Environmental Impact Report/Environmental Impact Statement

Dear Mr. Stein:

The Delta Stewardship Council (Council) congratulates you and your team on the significant progress made to date. We also appreciate your efforts to foster a more transparent Bay Delta Conservation Plan (BDCP) process and to encourage responsible agencies, stakeholders, and the public to participate in review of the preliminary administrative draft BDCP and Environmental Impact Report/Environmental Impact Statement (EIR/EIS) documents. We recognize the difficult task you have ahead. In addition to the issues we reference in this letter, we refer you to our comments as a part of the NOP process. Issues discussed in this attachment are:

Programmatic vs. Project Specific EIR/EIS	Operational Scenarios
Effects Analysis	Water Supply
Presentation of Alternatives	Screening of Alternatives
Thresholds of Significance	Staged Implementation
Funding Sources	Resilience of Constructed Facilities
Adaptive Management	Flood Management
Range of Flow Criteria	Levees

Attached to this letter are the Council staff's preliminary comments on the EIR/EIS, as well as—where relevant to the EIR/EIS comments—BDCP documents included in Batches A and B posted as of February 29, 2012, and the current versions of the documents that will constitute Batch C in a future release. We focused our review on those issues considered most germane to compliance with the Delta Reform Act and to the latest draft of the Delta Plan. The Council supports successful development and implementation of the BDCP, which is critical to achieving the coequal goals of providing more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.

We recognize that the desire to have an open and transparent process has led you to post draft documents that are in various stages of completion, and in some cases, post documents prior to internal review. As a consequence, some of our comments may already be addressed or will soon be addressed in updated versions that are not yet available to us.

The purpose of our review is to identify important issues that we believe will need to be adequately addressed for the BDCP to meet the requirements of the California Environmental Quality Act and the Delta Reform Act for purposes of inclusion in the Delta Plan and eligibility for state funding (see Water Code Section 85320). Our comments are organized consistent with the statute requirements. Note also that our preliminary comments are offered in our role as a "responsible agency" (Water Code Section 85320(c)), and will not have a pre-decisional effect on the possible future appeal of a Department of Fish and Game determination related to the BDCP (Water Code Section 85320(e)).

We offer the opportunity for your staff to meet with our staff for additional details on any of the comment areas summarized in the attachment. Please contact Carl Lischeske, P.E., at (916) 445-5891 if you would like to discuss these comments further.

Sincerely,

P. Joseph Grindstaff
Executive Officer

cc: Jerry Meral, Deputy Secretary, California Natural Resources Agency

Attachment

BDCP ADMINISTRATIVE DRAFT EIR COMMENTS

GENERAL COMMENTS

1. **Project-level vs. Programmatic-level EIR/EIS.** The BDCP includes 22 proposed conservation measures (CMs). CM1, water facilities and operations, is currently the only CM evaluated at the project level while the remaining CMs are evaluated at the programmatic level. However, the EIR/EIS has the following issues:

   - Impacts from construction of CM1 and associated mitigation are presented at inconsistent and uneven levels of detail, generally appropriate for a programmatic-level evaluation but lacking suitable rigor for a project-level review. The current level of detail may not meet CEQA requirements.

     CM1 is dependent on and influenced by implementation of the other CMs that define the BDCP project as a whole. The anticipated impacts of CM1 and the BDCP's ability to meet the requirements of the ESA (the federal Endangered Species Act) and NCCPA (California's Natural Communities Conservation Planning Act) are inextricably linked to the anticipated effects of the other CMs.

   - This disparity in the level of analysis gives the appearance that the BDCP may not treat the coequal goals of water supply reliability for California and protecting, restoring, and enhancing the Delta ecosystem as equal. We suggest that future documents provide some additional discussion of why the level of analysis is not consistent and when a commensurate level of analysis will be performed.

2. **Effects Analysis.** The BDCP effects analysis is integral to analyzing the proposed action for purposes of compliance with the ESA and NCCPA and for analyzing in the EIR/EIS the effects of the proposed action and alternatives on biological resources.
   We note that the initial findings of the effects analysis indicate that the preliminary project proposal (Alternative 1A) does not fully meet NCCPA biological standards for reducing the risk of extinction for some of the covered species. We look forward to reviewing the evaluation of other alternatives in the development of the preferred project proposal. Based on the material presented in the preliminary draft EIR/EIS, it is not clear how the results of the effects analysis are being used to shape the conservation strategy and to inform a specific, science-based adaptive management program. The effects analysis should also be applied to evaluate the other BDCP alternatives in addition to Alternative 1A.

   As you know, the Delta Science Program's Independent Review Panel is conducting an ongoing multi-phase review of the BDCP effects analysis. In October 2011, the Panel completed its first phase review of early drafts of Appendix A (Conceptual Foundation and Analytical Framework) and Appendix B (Entrainment) and offered eleven recommendations to guide revisions in subsequent drafts of the effects analysis[1]. The Panel indicated that BDCP did not yet provide the "big picture" necessary to evaluate how the effects of complex flow and restoration changes in the Bay-Delta will be analyzed as a whole to ensure long-term protection of covered species. It also indicated that improved documentation is needed describing models used along with underlying assumptions and known limitations based on

[1] http://deltacouncil.ca.gov/sites/default/files/documents/files/BDCP_Effects_Analysis_Review_Panel_Report_FINAL.pdf

current scientific research. We believe that the Panel's previous and forthcoming comments are important and require your close attention.

3. **Presentation of Alternatives.** Currently, the draft EIR/EIS does not provide a convenient means to compare alternatives for their abilities to, among other things: 1) achieve ecosystem restoration objectives; or 2) achieve water supply reliability objectives. We suggest presenting a summary evaluation of alternatives to facilitate comparison of each alternative relative to the goals and objectives of the project and the ESA and NCCPA. The EIR/EIS would also benefit from a summary which justifies selection of the preferred project showing: 1) the screening evaluation of all alternatives including pros and cons; 2) the ability of each proposed alternative to meet the requirements of the Delta Reform Act (Act); and 3) the ability of the preferred project to satisfy ESA and the NCCPA requirements. Under NEPA, the general rule is that all alternatives must be analyzed and presented to similar levels of detail; this is different from CEQA, which requires only enough information about alternatives to allow for meaningful comparison. When preparing a joint document, however, the alternatives analysis must also meet the NEPA standard. We anticipate that the analysis presented in the final draft EIR/EIS will address these points so that it meets the requirements of both laws.

4. **Thresholds of Significance.** CEQA encourages clear identification of thresholds of significance for use in determining the significance of environmental effects. The draft BDCP EIR/EIS would benefit from explicit identification of appropriate thresholds of significance together with evaluation of compliance against each threshold.

5. **Funding Sources.** The funding requirements required by the HCP and the NCCPA are not currently included in the BDCP. Though funding does not need to be in place now, we expect to see a plan to implement funding over time and how the BDCP will provide and guarantee future, credible fund sources. If the plan contains speculative measures, there must also be a contingency as well as a specific plan to cover shortfalls.

6. **Adaptive Management.** Uncertainties associated with habitat creation and restoration versus tradeoffs with flow criteria in the Delta will require ongoing scientific investigation and analysis. A well-designed and adequately funded science plan and adaptive management plan are fundamental to the success of BDCP. As a near term action, the adaptive management program should include a pilot study to evaluate the benefits to covered species obtained from habitat creation and to better inform the design and implementation of subsequent habitat creation. The Delta Plan includes a recommended framework for addressing adaptive management needs in the Delta and should be used to guide the development of the BDCP's adaptive management program.

REASONABLE RANGE OF FLOW CRITERIA, RATES OF DIVERSION, AND OPERATIONAL CRITERIA (Water Code Section 85320(b) (2) (A))

1. **Range of Flow Criteria.** The BDCP EIR/EIS should demonstrate how it has addressed critical issues regarding flows in the Delta, particularly how: 1) the range of flow criteria, rates of diversion, and other operation criteria are consistent with the requirements of an NCCP; 2) the BDCP will identify the water available for export and other beneficial uses; 3)

the BDCP was informed by the State Water Resources Control Board's flow criteria[2] and will be affected by the forthcoming update to the Bay-Delta Water Quality Control Plan flow objectives; and 4) flows and other operational criteria will be adjusted in real-time consistent with Water Code section 85321. The proposed adaptive range for operational flows and associated recommendations provided in the five agencies' Waypoints document[3] is of critical importance and deserves prominent consideration in the EIR/EIS.

2. **Operational Scenarios.** The BDCP EIR/EIS should clearly describe: 1) how and why operational scenarios were developed; 2) the criteria used to apply scenarios to the various project alternatives; 3) how the various operational scenarios contribute to meeting the coequal goals; and 4) what the operational scenarios mean in the comparison of alternatives. The BDCP EIR/EIS should show how operational scenarios enable use of an adaptive range in an adaptive management framework that is linked the BDCP goals and objectives.

3. **Water Supply.** The Council's fifth staff draft of the Delta Plan calls for expanded water storage. Since the BDCP is proposed to be an integral part of the Delta Plan, the EIR/EIS should include a discussion of how storage projects that are currently being considered could impact water supply reliability and flows in the Delta and potentially affect operations of any proposed project. The BDCP EIR/EIS should describe how plans for new surface- and groundwater storage could influence: 1) the range of flow criteria, rates of diversion, and other operational criteria; 2) the range of conveyance alternatives; and 3) achievement of the coequal goals.

REASONABLE RANGE OF CONVEYANCE ALTERNATIVES (Water Code Section 85320(b) (2) (B))

1. **Screening of Alternatives.** The BDCP EIR/EIS needs to demonstrate that its screening process has included a wide range of conveyance alternatives, including alternative intake locations, and that the appropriate criteria were used to select alternatives for more detailed evaluation. Although there are variations in operational flows, it is difficult to determine if the BDCPEIR/EIS met this requirement because with the exception for the No Action alternative, and Alternative 9, the draft documents currently describe a single capacity for all conveyance alternatives, one location for intakes and conveyance tunnels, and two routes for canals. We expect that this is because the results of earlier and more comprehensive screening analyses have not yet been posted.

2. **A Staged Implementation** Because there are so many unknowns, the BDCP EIR/EIS may want to consider including evaluation of implementation through staging i.e., build a smaller and less expensive project first or implement the preferred alternative in phases, then use the results of performance monitoring and adaptive management to inform its expansion. On the other hand, if a "first phase" project fails to meet its goals as a CM, then this could be learned at substantially less cost and time than more comprehensive alternatives.
3. BDCP Administrative Draft EIR Comments

[2] Per Water Code Section 85086(c)(1)
[3] A Brief History of BDCP 'Water Operations Waypoints' to Inform Selection of an Adaptive Range. 5-Agency Adaptive Range Technical Team, December 2011

FLOOD MANAGEMENT AND RESILIENCE (Water Code Section 85320(b) (2) (E) and (F))

1. **Resilience of Constructed Facilities to recover from a natural disaster.** To support a comprehensive review and analysis of the resilience of conveyance alternatives and to determine the relative risk associated with each alternative, the EIR/EIS should be based on modeling the impacts of potential earthquake and natural disaster scenarios. Currently, the ability of through-Delta conveyance to withstand or recover from the effects of seismic events and floods is not well defined. Risk reduction (if any) and system resilience should be thoroughly described to enable rigorous comparison of all alternatives.

2. **Flood Management Considerations.** BDCP does not appear to be adequately integrated with flood management programs in the Delta, notably the Central Valley Flood Protection Plan and the DWR's Delta Region Integrated Flood Management Background/ Reference Memorandum. Potential flood risks to local communities and flood management implications associated with conveyance alternatives and other CMs should be discussed in the EIR/EIS including: 1) the impacts from the BDCP project as a whole on potential flooding of Delta communities or infrastructure; 2) the influence of BDCP projects on localized flooding within the project footprint; and 3) the impacts of CMs that will encroach on floodplains leading to more frequent flooding or inundation. In addition, the discussion should also include descriptions of possible mitigation measures to address each of these issues.

3. **Levees.** The BDCP EIR/EIS should address the needs, methods, and costs for levee strengthening required to: 1) improve the long-term reliability of through-Delta conveyance; and 2) protect people, property, and infrastructure (e.g., highways, railroads, electrical transmission lines, gas and water pipelines, wastewater treatment plants). The BDCP EIR/EIS should also describe how construction of its elements along with construction of levee stabilization and improvements to flood management can be accomplished in ways that avoid adverse environmental impacts, minimize conflict, avoid duplication of effort, and reduce required investment.