San Diego County Water Authority
4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

October 30, 2015

BDCP/WaterFix Comments
P.O. Box 1919
Sacramento, California 95812

Re: Partially Recirculated Draft Environmental Impact Report/Supplemental Environmental Impact Statement for the Proposed Bay Delta Conservation Plan/California Water Fix

Dear Sir/Madam:

The San Diego County Water Authority (Water Authority) submits the following comments on the Partially Recirculated Draft Environmental Impact Report (EIR)/ Supplemental Draft Environmental Impact Statement (EIS) prepared by the U.S Department of Interior, Bureau of Reclamation (Reclamation), and U.S. Department of Interior, Fish and Wildlife Service (USFWS); the U.S. Department of Commerce, National Oceanographic and Atmospheric Administration, National Marine Fisheries Service (NMFS); and the California Department of Water Resources (DWR) for the proposed Bay Delta Conservation Plan (BDCP)/California Water Fix.

While these comments are directed to the Partially Recirculated Draft EIR/Supplemental Draft EIS dated July 10, 2015, this letter should be considered a supplement to the previous Water Authority comment letters dated May 30, 2014 and July 28, 2014.

COMMENTS

1. The BDCP was portrayed as a Habitat Conservation Plan/Natural Community Conservation Plan (HCP/NCCP) that implements certain conservation actions to benefit sensitive species and habitats while increasing water supply reliability for millions of Californians. The wildlife agencies and participating water contractors would memorialize their commitments to undertake these conservation actions in an Implementing Agreement that provided assurances that as long as the conservation measures were being implemented per the BDCP, the water contractors would receive increased water reliability.

While the shift to an alternative approach to federal and state endangered species permitting is understandable, this change will result in less supply certainty for federal and state water contractors. Without the assurances provided by the federal Section 10 and state Section 2835 incidental take permits, the continued availability of sufficient water for export is questionable.

Comment: With abandonment of the BDCP approach, the Final EIR/EIS should more clearly identify how the new permitting approach maintains and enhances water supply reliability to the same levels anticipated under the BDCP, and quantify the annual amounts expected to be available for each water contractor compared to the BDCP approach.

2. The commitment of individual State Water Project (SWP) or Central Valley Water (CVP) contractors to participate financially in implementing the proposed project remains undetermined and it is likely that some contractors will decline given the reduced level of certainty resulting from the alternative permitting approach.

   Comment: With abandonment of the BDCP approach, the Final EIR/EIS should specify the criteria to be used by DWR and Reclamation in determining how to coordinate and allocate water between the SWP and CVP, and among the funding and non-funding participants. While typically not an issue for CEQA, the importance of funding to overall project viability cannot be overstated. The water contractors are Responsible Agencies under CEQA and will need accurate cost and allocation information for each project component to make an informed decision regarding participation. The Final EIR/EIS should include details on how DWR and Reclamation intend to guarantee that each participating water contractor provides the revenue necessary to pay for the proposed project, including any necessary provisions for "step-up" should one or more water contractors default on funding obligations, and a legal analysis of relying on property taxes as a back-up security for debt. In addition, the Final EIR/EIS should evaluate the potential for indirect environmental effects associated with various proposed funding types and sources.

3. Page 4.1-1, lines 32 through 34 state that: "Alternatives 4A... would not serve as... (HCPs/NCCPs)... but rather would achieve incidental take authorization under ESA Section 7 and CESA Section 2081(b)."

   Comment: While ESA Section 10/Section 2835 (HCP/NCCP) permits are no longer preferred, the Water Authority is concerned that continuing the current management approach using Section 7/Section 2018 permits lack sufficient assurances to ensure a reliable water supply for millions of Californians. The Water Authority is also concerned over the lack of collaborative decision-making inherent in implementing adaptive management and real time water operational changes under traditional Section 7/Section 2081 permits. The Water Authority encourages the lead agencies

to pursue innovative permitting approaches with the federal and state wildlife agencies (e.g., hybrid Section 7/10 permits, incorporating all or parts of Candidate Conservation Agreements with assurances and Safe Harbor Agreements, along with a similar innovative approach on the state 2081 permit) that provide as much certainty as legally possible for participating water contractors. The complexity of the Bay-Delta ecosystem and the large human dependence on exported water supplies warrant consideration of inclusive, cooperative, and flexible permitting approaches.

4. Page 4.1-15, Table 4.1-3 lists the environmental commitments for preferred Alternative 4A. The total mitigation acreage shown for all habitat types appears to be around 15,548 acres.

   Comment: BDCP Conservation Measure 1 (CM1) was defined as the conveyance facility (intakes and tunnels). The proportional direct and indirect mitigation acreage and costs for CM1 to be borne by the participating state and federal contractors is shown in Table 8-41 of the Draft EIR/EIS (pages 8-74 through 8-76). However, it is unclear how the required mitigation acreage and costs for CM1 in Alternative 4 compare to the required mitigation acreage and costs for the new Alternative 4A. Further, it is unclear if the modeling performed for Alternative 4, which included a different baseline for impact analysis, is appropriate and accurately reflects expected impacts for Alternative 4A. An improper/inconsistent baseline will result in an inaccurate impact analysis, yielding mitigation requirements that do not reflect actual impacts. The Final EIR/EIS should provide a table showing a side-by-side comparison of the expected direct and indirect impacts, required mitigation acreage (whether conservation measure or environmental commitment), and mitigation costs for CM1 and Alternative 4A. The Final EIR/EIS should also include a table that compares the baseline assumptions used in the impact analysis for Alternative 4 and Alternative 4A. This will aid in clarifying how the new preferred alternative has lessened potential impacts and required mitigation, and reduced costs for participating state and federal water contractors.

   In addition, the relationship between the environmental commitments (i.e., project mitigation) for preferred alternative 4A and the separate ecosystem restoration efforts anticipated under California EcoRestore, as well as current obligations contained in existing state and federal permits (e.g., Biological Opinions), needs additional clarification. The participating water contractors need to clearly understand where the "bright line" is between project mitigation obligations and general ecosystem restoration. The Final EIR/EIS should provide more detail on how the "environmental commitments" of Alternative 4A relate and contribute to the associated, but separate, California EcoRestore effort, as well as how those commitments contribute to meeting obligations in existing permits.

5. Page 4.1-21, lines 2 through 6 state that: "Commitments to adaptive management... will be secured through a MOA... Details... including adaptive management decision-making, an organizational structure for... decisions, and funding... will be developed through the MOA..."

   Comment: Adaptive management is highlighted as the mechanism through which construction and operation of the new conveyance facilities will be managed. Freshwater outflows (and corresponding export flows) will be determined through current and future scientific studies, monitoring, and a yet to be developed Memorandum of Agreement (MOA) between the lead agencies, public water agencies, and wildlife agencies. In other words, the MOA will govern future operation of the conveyance facility. Given the crucial nature of this document, it is especially disappointing that the additional details to be provided in the MOA are not yet available. These details will certainly be required for potential participating water agencies to decide whether to commit the funds and resources necessary to implement the preferred alternative. The Final EIR/EIS should provide greater clarity on the adaptive management "details" expected to be included in the MOA and provide a schedule and process for MOA development and implementation. Further, the Final EIR/EIS should include additional details on the extent of authority for participating entities, i.e., the water contractors need assurances that their interests will be incorporated in all operational actions.

6. Page 9-269, Table 9-32 of the Draft BDCP Plan identifies the total average water deliveries to the contractors under various take alternatives. As shown, water supplies available under the BDCP range from 4.7 to 5.6 million acre feet per year (MAFY) depending on high or low outflow scenarios, respectively. Average annual flows for the existing conveyance scenarios (defined as the "without BDCP" scenario on page 9-39) ranged from 3.4 to 3.9 MAFY for the high and low outflows, respectively. The "without BDCP" scenario contemplated continuing fish population declines and imposition of additional operational constraints that would reduce water supply availability.

   Comment: With abandonment of the BDCP approach, the Final EIR/EIS should clarify and explain how the new permitting approach will prevent available water supplies from being reduced to the existing conveyance scenario volumes (e.g., 3.4 to 3.9 MAFY) shown in Table 9-32. In other words, how would the new permitting approach prevent available supplies from being further reduced to 3.4 to 3.9 MAFY, if fish population continues to decline even after preferred Alternative 4A is constructed?

The Water Authority appreciates the opportunity to review and provide comments on the Partially Recirculated Draft EIR/Supplemental Draft EIS. As noted above and in two prior comment letters, the intention of our comments is to obtain additional

information and clarification in the Final environmental documents to determine if the Proposed Action/Preferred Project is a cost-effective, long-term solution to Delta water supply and ecosystem conflicts.

Please retain the Water Authority on your mailing list to receive future notifications or documents regarding this project. If you have questions or wish to discuss any of the above concerns in greater detail, please contact Larry Purcell, Water Resources Manager at (858) 522-6752, or by email at lpurcell@sdcwa.org.

Sincerely,

Maureen A. Stapleton
General Manager