



LEAGUE OF WOMEN VOTERS® OF CALIFORNIA

May 15, 2014

BDCP Comments
Ryan Wulff, National Marine Fisheries Services
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

RE: Comments on the BDCP and Associated Draft EIR/EIS

Dear Mr. Wulff:

The League of Women Voters of California (LWVC) appreciates the opportunity to comment on the Bay Delta Conservation Plan (BDCP, or plan) and its draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS). We have analyzed the BDCP from the perspective of our state and national League consensus positions on water resources, agriculture, energy, and land use. Our positions are the result of League studies and long-time member involvement in these issues.

Although we acknowledge the considerable financial and technical resources expended on the draft EIR/EIS, we believe the draft EIR/EIS is inadequate because it has resulted in a preferred alternative that is unlikely to meet the coequal goals of ecosystem restoration and water supply reliability. We ask that you not certify the draft EIR/EIS because of the likelihood that the plan will fail to meet both coequal goals, and because of inadequate disclosure of impacts arising from critical issues identified below.

Over-allocation of Waters—Water rights within the watersheds feeding into the Delta, plus the maximum contracted flows planned for export to contractors, exceed the long-term hydrologic capacity of this water resource, and the BDCP compounds these mistakes.

We find the stated project objective of meeting the full contract amounts of the State Water Project and Central Valley Project unrealistic, given the hydrologic history of California:

Restore and protect the ability of the SWP and CVP to deliver up to full contract amounts, when hydrologic conditions result in the availability of sufficient water, consistent with the requirements of State and federal law and the terms and conditions of water delivery contracts and other existing applicable agreements. (Public draft BDCP EIR-EIS, Chapter 2, p. 3).

So long as this remains a stated objective, reducing reliance on the Delta will not be achieved.

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The statement from the Executive Summary of the plan, “The geographic scope of the Plan Area encompasses the Sacramento–San Joaquin Delta, as defined in California Water Code Section 12220 . . .,” implies that this plan is designed to ignore the actual watersheds of the Sacramento River. The assumption that there will always be water to move through the tunnels is problematic, considering the DWR climate change models that project the greatest loss of the snowpack will occur in the watershed of the Feather River, source of the water stored behind Oroville Dam.

**Failure to Meet the *Delta Vision Strategic Plan* and the Delta Reform Act of 2009—
The BDCP is not consistent with the “coequal goals” of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem.**

The *Delta Vision Strategic Plan*¹ calls for the state to “Legally acknowledge the co-equal goals of restoring the Delta ecosystem and creating a more reliable water supply for California” and sets forth the following strategy and actions, among others:

Strategy 1.1: Make the co-equal goals the foundation of Delta and water policy making.

Action 1.1.1: Write the co-equal goals into the California Constitution or into statute.

Action 1.1.2: Incorporate the co-equal goals into the mandated duties and responsibilities of all state agencies with significant involvement in the Delta.

Action 1.1.3: Require the achievement or advancement of the co-equal goals in all water, environmental, and other bonds, and operational agreements and water contracts or water rights permits, that directly or indirectly fund activities in the Delta.

The subsequent Delta Reform Act of 2009² defines “coequal goals”³ as:

“two goals of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem. The coequal goals shall be achieved in a manner that protects and enhances the unique cultural, recreational, natural resource, and agricultural values of the Delta as an evolving place.”

The Delta Reform Act of 2009 also calls for reduced reliance on the Delta through investments in improved regional supplies, conservation, and water use efficiency.⁴ We

¹ “*Delta Vision Strategic Plan*,” prepared by the Blue Ribbon Task Force created by Governor Schwarzenegger's Executive Order S-17-06, and released by the State of California Resources Agency, October 2008.

² Added by Stats. 2009, 7th Ex. Sess., Ch. 5, Sec. 39. Effective February 3, 2010, as codified in the California Water Code (CWC), Division 35, starting at section 85000.

³ CWC, section 85054.

⁴ CWC, sections 85021 and 85004(b).

believe that large public investments in interbasin water transfers must be informed by a recognition that California's water resources have been over-allocated (see above) by as much as five times. Additional options for water supply reliability should include groundwater management, watershed and forest management for water capture, conjunctive use of surface and groundwater, and more conservation and improved water use efficiencies.

We believe that the BDCP is not consistent with the *Delta Vision Strategic Plan* and the Delta Reform Act of 2009, in that it is not a realistic plan that will meet the coequal goal of restoring the Delta ecosystem. In addition to their relying on unrealistic flows of water, we believe that the plan and associated draft EIR/EIS are inadequate for the reasons given in the subsequent sections:

Ecosystem Restoration—The plan is missing updated flow objectives, a key factor in the success of habitat restoration.

Water Supply Reliability—More encouragement is needed for the state, local governments, and urban and agricultural end-users to conserve and improve efficiencies before resorting to dual tunnels under the Delta.

Finances—The BDCP does not demonstrate that funding all elements—in particular, habitat restoration—will be realistically achieved.

Governance—Agencies and advocates for natural resources need to be elevated in the proposed governance structure to ensure that ecosystem restoration actually has coequal status under the BDCP.

Ecosystem Restoration—The plan is missing updated flow objectives, a key factor in the success of habitat restoration.

The current proposal is to begin construction of a facility with a 9,000 cubic feet per second capacity before an updated determination is made of flows necessary to protect fisheries. The Delta Reform Act mandated completion some years ago of the new flow criteria. While recognizing that these flow criteria may not be considered pre-decisional with regard to consideration of permits, we stress that without them certain important decisions would be left to permittees—permittees whose primary goal is to deliver up to full contract amounts of export water, not to operate the facility to benefit habitat. (See our comments below on Governance.)

As long-time advocates of placing limits on water that is exported through and around the Delta, we believe that proceeding with the preferred alternative before updated flow objectives are established and implemented will not protect the Bay-Delta ecosystem.

Water Supply Reliability—More encouragement is needed for the state, local governments, and urban and agricultural end-users to conserve and improve efficiencies before resorting to dual tunnels under the Delta.

We are concerned that construction of the dual tunnels, which represents a substantial investment by beneficiaries, will drastically reduce incentives for urban, agricultural, and other users to do all they can—through conservation, recycling, and development of regional water sources—to reduce reliance on the Bay-Delta freshwater flows. We acknowledge that both urban and agricultural districts have made strides in these areas. However, as long as it is easy to move water under the Delta, we see no discernible incentive for the permittees to put the same financial resources into conservation and recycling that they have invested in the BDCP preferred alternative.

In acknowledging progress over the past two decades by the urban sector to recycle treated wastewaters, we understand that government leadership—including financial support from the federal, state and local levels—has been important in realizing accomplishments such as the Edward C. Little Water Recycling Facility in the south bay of Los Angeles County. We believe that there is significant additional potential to conserve water and improve water use efficiencies, and that state and local governments must take more action to achieve this potential. For example, in the urban sector, ramped-up efforts to establish a new landscape norm can significantly cut consumption.

To reiterate, should efforts be concentrated on the large structural twin tunnels in the preferred alternative, we expect that valuable incentives to maximize conservation and opportunities to develop integrated regional water management planning for efficient water use will be lost.

Finances—The BDCP does not demonstrate that funding all elements—in particular, habitat restoration—will be realistically achieved.

We have concerns about the proposed funding for ecosystem restoration over the 50-year life of the preferred alternative. A Habitat Conservation Plan (HCP) is required to identify funding for its implementation; funding must be sufficient for all proposed activities, and all financial contributors and planned allocation of funds must be identified. As we prepare these documents, there is no Implementing Agreement specifying these funding matters, and we will not see one in time for adequate public review before the close of the BDCP and draft EIR/EIS comment period.

Initial state funding will largely come from two new water bonds, the first proposed for the 2014 statewide ballot. Federal funding is expected to come mostly from the same sources and authorizations used in the past to support Delta restoration efforts. New federal funding authorizations will also likely be needed to support the BDCP. (BDCP Executive Summary, p. 26)

In raising our concerns regarding inadequate financing, we asked the Department of Water Resources (December 6, 2013) if construction of the preferred alternative could begin if voters do not approve the anticipated water bonds. The answer was that full funding for habitat restoration is not required before the water conveyance facility can be built and operated. Again, we find this aspect of the BDCP to be inadequate to ensure that the required goal of habitat restoration can be met.

Governance—Agencies and advocates for natural resources need to be elevated in the proposed governance structure to ensure that ecosystem restoration actually has coequal status under the BDCP.

Successful governance and the very best science are central to pursuit of the coequal goals of ecosystem restoration and water supply reliability. We believe the proposed governance system needs to be improved. The fishery agencies, other resource agencies, and non-agency parties impacted by the projects need to be elevated so that they have an equal voice in the top tier of the decision makers and the decision-making process regarding how the state and federal projects are operated and how habitat restoration projects are implemented.

The adaptive management strategy needs to be more fully described. Experiments in tidal marsh and in-delta restoration, alternative fish screen designs, and other elements of any BDCP plan should have a proven record of success before any BDCP alternative goes forward.

We do not believe these documents are adequate as a basis for issuing permits. The Endangered Species Act requires that a Habitat Conservation Plan contribute to the recovery of endangered and threatened species, and the California Fish and Game Code requires that a Natural Communities Conservation Plan assist in providing for the conservation of covered species. We are not persuaded that the BDCP can meet those requirements because of problems with the adaptive management strategy and governance.

Conclusion

In summary, the League of Women Voters of California believes that, before construction of any large-scale infrastructure for the Bay-Delta, technical and financial resources must be made available to maximize statewide efforts for conservation, recycling, watershed management, regional water supply development, completion of delta habitat restoration already underway, and for any other measure that will reduce reliance on Bay-Delta exports now and in the future. Further, we recommend that the information generated by the current BDCP planning process be utilized by the Department of Water Resources to develop a Bay-Delta management regime that will fairly balance all the needs and uses of

water resources in the state, without a bias toward the contractors for the State Water Project and the Central Valley Project.

We thank the Department of Water Resources for responses to our several inquiries. Please contact us if you wish additional information about any of our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer A. Waggoner". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jennifer A. Waggoner
President

cc: Mark W. Cowin, Director, California Department of Water Resources
Felicia Marcus, Board Chair, [State Water Resources Control Board](#)