

Review of WaterFix and the Bay Delta Conservation Plan's Partially Recirculated Draft EIR/EIS

Requested Action: This action would authorize the submittal of the recommended comments on the Bay Delta Conservation Plan's (BDCP)/California WaterFix (WaterFix) partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS), including any alterations directed by the Council, to the Natural Resources Agency and the Department of Water Resources.

Summary

The Department of Water Resources (DWR) and the Bureau of Reclamation (Reclamation) released the BDCP/WaterFix RDEIR/SDEIS for public comment on July 10, 2015 for a comment period ending on Oct. 30, 2015. This agenda item will present draft review comments prepared by staff and the Council's independent consultant, ARCADIS, which assessed how the BDCP addresses the requirements of the California Environmental Quality Act (CEQA), the applicable provisions of the 2009 Delta Reform Act, and the Delta Plan's regulatory policy and recommendations.

This agenda item will also present the comments prepared by the Delta Independent Science Board which reviewed the BDCP/WaterFix RDEIR/SDEIS pursuant to the Delta Reform Act.

Draft comments on the BDCP/WaterFix RDEIR/SDEIS are presented by the staff for the Council's consideration and potential action.

Background

The original Bay Delta Conservation Plan was being developed as a 50-year Natural Community Conservation Plan (NCCP) with the goal of recovering the Delta's endangered or threatened species. This would be accomplished in part by improving the conveyance of water from the Sacramento River to the south Delta pumps of the Central Valley Project and State Water Project, by establishing parameters for operating those projects, and by restoring wildlife and fish habitats in and around the Delta. If the BDCP were to meet the requirements of the California Environmental Quality Act and the California Natural Community Conservation Planning Act (NCCPA), as well as the requirements set forth in the Delta Reform Act, the BDCP would be incorporated into the Delta Plan. Drafts of both the BDCP and its draft Environmental Impact Report/Environmental Impact Statement (EIR/S) were released Dec. 9, 2013 and the Council submitted its comments in June 2014.

In April 2014, the Administration announced a new preferred alternative within the BDCP. The new alternative would not complete the BDCP as an NCCP, but instead proposes construction of water conveyance facilities through an initiative called California WaterFix. A parallel effort called California EcoRestore proposes to accelerate implementation of a suite of habitat restoration actions being planned in the Delta. On July 10, 2015 DWR and

Reclamation released the BDCP/WaterFix REIR/SEIS which includes the analysis of WaterFix and two other new sub-alternatives, each with a differing level of diversion; and additional analysis and refinement of the previous draft environmental documents based on the comments they received in 2014.

If BDCP is not pursued/approved as an NCCP, it will not be incorporated into the Delta Plan pursuant to Water Code section 85320. If WaterFix is instead chosen as the project, it will be subject to the Council's authority over covered actions and the consistency certification provisions of Water Code sections 85225-85225.25.

Recommended Staff Comments on the BDCP/WaterFix REIR/SEIS

The comments recommended in draft comment letter (Attachment 1) should not be misconstrued as a broad criticism of the BDCP/WaterFix or the REIR/SEIS. Of necessity, these comments emphasize aspects of the REIR/SEIS that the staff suggests can be improved, rather than the many satisfactory parts of the draft EIR/S.

The comments (Attachment 2) contained in the draft comment letter were prepared by the Council's staff with ARCADIS' assistance. The summary of the key issues and recommendations are:

- A. Delta Plan and Delta Reform Act consistency. *Issue:* The BDCP/WaterFix REIR should fulfill the requirements of Water Code section 85320(b)(2). In addition, if WaterFix is ultimately chosen as the project, DWR will need to certify that the California WaterFix is consistent with the Delta Plan.

Delta Plan Policy GP 1, Detailed Findings to Establish Consistency with the Delta Plan. The Delta Plan requires the BDCP/WaterFix project needs an adequate adaptive management program and document adequate resources and authority to assure continued implementation of the adaptive management plan and use of best available science.

Delta Plan Policy ER P3, Opportunities to Restore Delta Habitats. Delta Plan policy ER P3 requires significant adverse impacts to the opportunity to restore habitats within priority habitat restoration areas depicted in the Delta Plan, must be avoided or mitigated. WaterFix Alternatives 4A, 2D, and 5A include both permanent and temporary features whose compatibility with the opportunities for ecosystem restoration near the Cosumnes – Mokelumne Confluence and the lower San Joaquin River floodplain need fuller assessment.

Recommendation: Continue consultation with Delta Stewardship Council staff as final EIR/S is completed and certification of consistency with Delta Plan is contemplated. We suggest consult with the Delta Science Program and affected regulatory agencies to describe an adaptive management program and use of best available science. BDCP/WaterFix should more fully assess how project features near the Cosumnes – Mokelumne Confluence and the lower San Joaquin River floodplain may affect planned and potential habitat restoration action in these areas. Recommend measures to mitigate conflicts that cannot be avoided.

- B. Comprehensive project description. *Issue:* The final EIR/S needs a BDCP/WaterFix project description that is complete, especially with regard to key operational components. *Recommendation:* The final EIR/S's project description should be consistent with and fully informed by regulatory filings for the project.
- C. Water Quality. *Issue:* Implementation of measures proposed to mitigate potential impacts to water quality for in-Delta water users may prove cumbersome and protracted. *Recommendation:* Identify a water quality monitoring and compliance program in the final EIR/S and/or its mitigation monitoring and reporting plan. Improve the process and better balance the burdens for identifying and implementing operational changes or other corrective actions to mitigate adverse effects on in-Delta water users or the environment.
- D. Mitigation of other effects on wetlands and aquatic habitats. *Issue:* Damage to wetlands, aquatic habitats, and associated wildlife and fish populations should be avoided and/or minimized. *Recommendation:* Better describe mitigation for impacts to wetlands and aquatic habitats.
- E. Evaluation and mitigation of impacts to unique Delta values. *Issue:* The REIR/SIES does not adequately evaluate or mitigate the cumulative impacts of the California WaterFix alternatives to agriculture, recreation, community character, aesthetics, and cultural resources. In some cases, identification of feasible and enforceable measures to mitigate these impacts is deferred. *Recommendation:* The final EIR/S should more thoroughly identify impacts to agriculture, recreation, community character and cultural resources and offer specific, feasible, and enforceable mitigation measures. If specific, feasible and enforceable mitigation measures for adverse effects cannot be identified at this time, specify performance standards that will mitigate the project's significant impacts.

Delta Independent Science Board Comments on the BDCP/WaterFix RDEIR/SDEIS

The Delta Reform Act directs the Delta Independent Science Board (ISB) to review the draft environmental impact report for the BDCP and submit its report to the Council and the Department of Fish and Wildlife (Water Code section 85320(c)). The Delta ISB's comments on the BDCP/WaterFix RDEIR/SDEIS (Attachment 3) were transmitted to the Department of Fish and Wildlife and to the Council on Sept. 30, 2015. The briefing that the Delta ISB is providing to the Council today is intended to assist the Council in its consideration of the BDCP's draft EIR/S, rather than for the Council's approval.

The Delta ISB's review of the BDCP draft EIR/S was guided by a joint charge prepared by the Council and Department of Fish and Wildlife. That charge emphasized aspects of the BDCP, especially its adaptive management program, and elements of the EIR/S on which the Delta ISB's views were particularly sought. The Delta ISB developed a charge for its review of the BDCP/WaterFix RDEIR/SDEIS, which is based substantively on their previous charge and review comments on the previous draft BDCP EIR/S.

The ISB initiated its BDCP/WaterFix review upon the release of the RDEIR/SDEIS, and discussed its review comments during three meetings between August and September,

2015. During these meetings the board heard from staff of the BDCP/WaterFix agencies, their consultants and members of the public, and deliberated about the BDCP/WaterFix among its members.

Recommendation

The staff recommends that the Council, after discussion of these comments, authorize the chairman to submit them, with such revisions as the Council may direct. The staff further requests that the Council authorize the staff to make any non-substantive or technical revisions to these comments as may be necessary.

Staff further recommends that, in approving the comments for submittal, the Council adopt the following motion:

1. The Council has received and formally accepts the Delta ISB's comment letter and thanks it for its hard work and fulfillment of its statutory duty.
2. The Council directs that the Delta ISB letter be incorporated – by reference and attachment--into the Council's comment letter, and requests that DWR address the Delta ISB's issues as if they were raised by the Council, with the understanding that a CEQA evaluation using best available science, while not required by CEQA, may facilitate DWR's and DFW's use of best available science for purposes of the NCCPA and or/consistency with Delta Plan regulatory requirements.
3. The Council adopts the staff-suggested comment letter, with the incorporation of the Delta ISB letter and with the other substantive changes agreed upon at this meeting, and directs the Executive Officer to transmit the comments after making appropriate technical, non-substantive changes as appropriate.

List of Attachments

Attachment 1: Draft Cover Letter on the BDCP/WaterFix RDEIR/SDEIS

Attachment 2: Draft Comments on the BDCP/WaterFix RDEIR/SDEIS

Attachment 3: Delta Independent Science Board Review Comments of the BDCP/WaterFix RDEIR/SDEIS

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