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October 30, 2015

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

Subject: Comments on the Partially Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement for the Bay Delta Conservation Plan (BDCP) and California WaterFix Project

To whom it may concern:

The Environmental Justice Coalition for Water (EJCW), Restore the Delta, the Environmental Water Caucus (EWC), and our affiliated organizations present the following concerns on behalf of thousands of community members who would be negatively affected by the Bay Delta Conservation Plan (BDCP) and California WaterFix Project. We continue to oppose both the BDCP and California WaterFix. A misnomer, California WaterFix will be referred from here on as Tunnels Project.¹

In short, our organizations, as well as hundreds of thousands of limited English speakers who reside largely in low-income communities of color within the five Delta counties, request an extension and restart of the public comment period due to U.S. Bureau of Reclamation and the California Department of Water Resources(DWR)'s, failure to provide for meaningful access and participation of California's limited English speaking population, including limited English speakers who live in the Delta and are attempting to engage with the draft Bay Delta Conservation Plan and draft The Partially Recirculated Draft Environmental Impact

¹ "California WaterFix" is a misnomer; it will not fix California water issues. We choose to call the project what it appears to be, a Tunnels Project. We think this best for commenting purposes.

Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS). In particular, we request that the agencies hold public hearings and provide interpreters; translate vital documents such as, at the very least, the Executive Summary of the draft RDEIR/SDEIS; and provide affordable access to documents to allow low-income and limited English speakers to participate meaningfully in the process. RDEIR/SDEIS fail to allow meaningful participation and do not consider impacts of the Tunnels Project on environmental justice communities.

RDEIR/SDEIS fail to consider impacts for environmental justice communities.

The Tunnels Project still fails to uphold federal principles of environmental justice that are to be implemented under not only the National Environmental Policy Act of 1969, but also federal and state civil rights laws. Since our comments were submitted on June 11, 2014, and July 8, 2014, the Tunnels Project has failed to provide adequate public outreach and translated documents that would allow a comprehensive and objective view of the project and its impacts on the Delta and surrounding environmental justice communities—communities disproportionately exposed to environmental health burdens.

Impacts from the Tunnels Project will include the relocation of residents from their homes, loss of jobs, inability to access fish for basic nutrition, increased health risks from the higher degree of contamination in the fish that are accessible, higher water rates as urban municipal water systems will be forced to upgrade their water treatment systems, exposure to increased water contaminants like methylmercury, selenium, salt, pesticides, and other chemical toxins when recreating at county and state parks within the Delta, and inability to navigate waterways when fishing and/or reach communities in a timely fashion during the 10-year construction period.

Unfortunately, Bay Delta Conservation Plan & the Tunnels Project have left few traces of what EJ outreach they may have done in their extensive archive of meetings and plan documents online and in its meeting schedule involving other stakeholders.

RDEIR/SDEIS do not meet Environmental Justice legal standards.

The State of California has defined “environmental justice” as: “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”² Federal and state laws require agencies to consider environmental justice and to prohibit discrimination in their decision-making processes. The Presidential Memorandum accompanying the Federal Executive Order (EO) 12898 (1994) singles out NEPA and states that “[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices. The Tunnels Project fails to meet the legal requirements for the issues presented below.

Language Accessibility

The agencies have still failed to respond adequately to requests for materials & outreach in Spanish and other languages. Currently, only some documents (e.g., Fast Facts) are available in languages other than English and present content that is too limited in scope for the target

² California Government Code § 65040.12(c)

audience to use it to engage meaningfully in the decision-making process. As one example, the Fast Facts document is available in six languages, but only presents promotional information. Moreover, the contents of the translated documents present information that is misleading about the impacts of the Tunnels Project.

The Fast Facts document claims to address certain issues raised in comments received on the Draft EIR/EIS. However, nowhere in this four-page document are the negative impacts of the tunnels--on public health, health of communities, water quality and subsistence fishing, impact on small communities, air quality, etc., mentioned. The RDEIR/SDEIS documents are still not available in other languages, thus making them inaccessible not just to individuals, but to many communities as a whole which have a high percentage of limited English speakers.

In addition, when our community members and partners have called the contact number for more information in Spanish, they are prompted to leave a message. After leaving a message, our colleagues reported that the messages were returned only after a week had passed. Immediate questions or concerns were left unanswered or referred to the Fast Fact sheet for answers that do not exist on those sheets.

As noted in a May 28, 2014, letter regarding, then, the lack of access for limited English speakers, the environmental justice survey completed to support Chapter 28 of the EIS/EIR (Environmental Justice) excluded non-English speakers within the Delta. Since then, no efforts have been made to publish even the Executive Summary in languages other than in English.

Public Participation

In June 11, 2014, we noted in our BDCP comments that the closing of the forum to critical comment is contrary to the promise of encouraging public participation. The two open house sessions, ostensibly conducted for the purpose of collecting public feedback on the then-current status of the BDCP and Tunnels Project, one of which was held on July 28, 2015, in Sacramento and the second on July 29, 2015, in Walnut Grove, once again avoided meaningful public participation and a traditional public hearing process by presenting a “science fair” style open house. The open house was hosted during typical working hours, which did not allow many community members to participate. This was convenient for the agencies which staffed the event, but ran contrary to the open house’s very purpose: to elicit and capture feedback on the BDCP and Tunnels Project. Attendees of these open house meetings conveyed to us that no interpretation services were advertised at these meetings.

Land Use, Flood Risk, and Affordable Housing

As mentioned in our previous comment, the Tunnel Project still fails to consider how affordable housing opportunities will still be maintained as land use changes are implemented. Impacts on low-income home owners, such as threats to public safety and lowered home value must be addressed as part of any proposed land use changes for which the RDEIR/SDEIS call.

Disproportionate impacts of flooding on renters must be mitigated for all residents of the Delta. The impacts on existing communities of alterations in land use plans must be evaluated, particularly the potential for increased vulnerability to flooding.

A sustainable Delta will require dramatic changes in land use decisions. The Delta is already over-developed, thereby limiting choices for flood attenuation and increasing the potential for catastrophic damage associated with a seismic event. As those choices are made, the potential exists to provide equitable benefits in planning for EJ communities, but there is also the threat of disproportionate impacts on those same communities. For this reason, a sustainable vision for the Delta must identify and account for the particular impacts on EJ communities.

Changes in allowable land use patterns must be an element of a sustainable Delta. Current patterns of development will leave entire communities at risk in the event of one or more seismic event and/or flooding. We are deeply concerned that the Tunnel Project facilities and alignments may foreclose otherwise viable options for improving land use and affordable housing for the Delta's poorest residents. A disproportionate number of the developments the Tunnels Project would put at risk are populated by low-income, predominantly Latino residents. Changes in flood mapping and zoning will have a profound effect on these developments, while their ability to recover from a flood event is limited.

Moreover, these existing communities may be detrimentally impacted by the advent of upper scale developments protected by new "super levees," which have the potential to re-route flood waters in ways that may negatively impact lower income communities. The following figures taken from Draft EIR/EIS (Appendix: Figure 6-5 SPFC and Non-SPFC Levees, 6-6 Reported Delta Levee Problem Areas, 6-7 Effective Federal Emergency Management Agency Flood Zones, 28-1 Minority Populations in the Plan Area, and 28-2 Low-Income Populations in the Plan Area) demonstrate that FEMA flood zone encompasses much of the central, south, and western Delta as well as Suisun Marsh where many low-income and minority Delta residents live. RDEIR/SDEIS fail to analyze the impacts to communities whose transportation routes could be disrupted due to flood impacts.

At an even greater disadvantage are communities that reside in, but don't own property in, floodplains--including tenants and farmworkers. These communities receive less assistance than property owners after a flood event and are more likely to be permanently displaced and suffer a total or near total loss of their movable property. Any emergency plan must target the special needs and vulnerabilities of these residents as well as their capacity to lead their own recovery effort, if it is, in fact, supported with resources.

As development becomes limited and/or more expensive in floodplains, the supply of low-income housing will be curtailed. Any land use changes must include a plan for provision of affordable housing for the current and expected population in the Delta Region. No such plan appears in the RDEIS/DEIR.

Public Health & Water Quality

The Tunnels Project degrades rather than protects or enhances the water quality in the Delta. In addition, water quality and other assessments in Chapter 25 Public Health are based on many decisions/papers published prior to our drought conditions and do not effectively consider public health impacts for environmental justice communities. The impact of the drought and incomplete environmental assessment confound many of the conclusions made in RDEIR/SDEIS.

Several concerns for water quality and its public health impact on environmental justice communities remain with the RDEIR/SDEIS.

The Tunnels Project creates an overall pattern of inequitable and discriminatory water quality impacts, several of which would have public health implications. That general pattern is this: by diverting the Sacramento River right as it enters the Delta, the Tunnels diversions reduce flows and slows down water, which increases residence time, which, in turn, concentrates salinity and pollutants in the western and central Delta, while privileging export water quality south of the Delta over in-Delta beneficial uses. This happens over and over again in the RDEIR/SDEIS modeling results for boron, bromide, chloride, salinity, nitrate, pesticides, mercury, selenium, and dissolved organic carbon. It contributes to why harmful algal blooms will be significant and adverse impacts of the project down the road. These and other water quality constituents, which were not modeled in the RDEIR/SDEIS, all worsen for south and west Delta water ways and the Suisun Marsh and improve for the export pumps. This is a conscious decision to sacrifice in-Delta water quality and the environmental justice communities that rely on it; it is an integral part of the Project design and purpose and the water quality modeling, however incompletely done, bears that out. See Project Objectives at 1-8, Section 1.1.4.1, lines 18-21, stating “DWR’s fundamental purpose in proposing the proposed project is to make physical and operational improvements to the SWP system in the Delta necessary to restore and protect ... water quality within a stable regulatory framework, consistent with statutory and contractual obligations” and Project Objectives at 1-8, Section 1.1.4.1, lines 34-37, stating project objectives include to “[r]estore and protect the ability of the SWP and CVP to deliver up to full contract amounts...”.

In addition, as noted in RDEIR/SDEIS Chapter 25-66, there are significant bromide effects on drinking water quality, which relate to precursors for carcinogenic disinfectant byproducts - a significant water supply treatment cost issue for both municipal exporters and in-Delta municipal drinking water suppliers, like Stockton, Walnut Grove, Isleton, Rio Vista, etc.³ Treatment plan upgrades would further increase the burden of water accessibility on small and low-income communities.

As noted in RDEIR/SDEIS Chapter 25.3.3.2, public health impacts from *Microcystis* blooms have yet to be fully assessed. As RDEIR/SDEIS state, public health impact would be significant and unavoidable. In addition, RDEIR/SDEIS still fail to comprehensively evaluate the public health impacts on small communities on fish consumption and exposure to methylmercury. Species of fish affected by the Tunnels project are pursued during subsistence fishing by populations already burdened with environmental injustice. Despite the RDEIR/SDEIS stating the adverse effects and negative health impacts of the Tunnels Project, as mentioned in RDEIR/SDEIS 28.5.8.7, more investigation and analysis need to be completed. As noted in EWC’s letter³, Interior Suisun Marsh salinity is expected to increase substantially from operation of the Tunnels, according to data in the RDEIR/SDEIS. Reverse flows on the lower Sacramento River will increase, which may injure neighboring water right holders. Numerous water quality pollutant criteria and beneficial uses will be violated and degraded. And subsistence fishers may be harmed by worsening mercury and selenium concentrations contaminating fish tissues in the long term, resulting from Tunnels operations.

³ Environmental Water Caucus Comments on Recirculated Draft EIR/Supplemental Draft EIS for Bay Delta Conservation Plan and Tunnels Project, submitted DATE

BDCP's analysis of selenium as a water quality stressor is inadequate for failing to acknowledge or address uncertainties about the regulatory and technological setting of the Grassland Bypass Project and long term management and mitigation of selenium loading to the San Joaquin River in the western San Joaquin Valley.⁴ These projects indicate the ecological and public health risks of various scenarios of selenium loading to the Bay Delta Estuary. BDCP irresponsibly downplays the risks and foreseeable costs and circumstances involved.

The RDEIR/SDEIS have conducted no analysis of in-Delta water demand and subsistence fishing patterns represented by these beneficial uses when it conducts its operational studies of the Tunnels Project. These uses are protected by, among other statutes, the Delta Protection Act of 1959. Additional evaluation must be conducted and allow for proper public participation to apply the precautionary principle, rather than allowing real-time operational decisions to exacerbate environmental injustices for Delta-dependent communities.³

To ensure that community health and the environment are protected in the Tunnels Project, we recommend that decisions on changes in conveyance and operation of Delta water infrastructure be incremental and reversible, dependent upon the measured impact on the ecosystem. This can only be done by having habitat restoration proceed first, so that the public knows it will succeed. Success for the Delta common pool resources should be assured before any Twin Tunnels project is deemed safe to develop. Agricultural and storm water discharges must be limited to protect water quality. Remediation of mine sites and stream beds must be prioritized and ecosystem restoration projects must be prioritized, sited, and designed so as to limit the potential for additional methylation of mercury and the related health impacts to wildlife and human health.

Violations of Civil Rights and Environmental Law

The lack of consideration for environmental justice communities, lack of proper assessment of public health impacts and mitigation efforts, lack of access to information regarding the project, lack of provision of adequate oral and written bilingual information, failure to notice meetings in various languages, and limited public access to the document through required computer access, exorbitant fees violate the below cited principles of environmental justice and constitutes violations of CEQA and NEPA, as well as federal and state civil rights of a significant population of the five Delta counties. Such violations include but are not limited to:

1. CEQA participation requirements— CEQA requires a process that provides an opportunity for meaningful participation of the public. According to Public Resources Code Section 21061: “The purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project can be minimized; and to indicate alternatives to such

⁴ The California Water Impact Network provided the State Water Board with testimony about the Grassland Bypass Project's limitations and the broad overview of the challenges Grassland area farmers face in developing and implementing a cost effective treatment technology for concentrating, isolating, managing and sequestering selenium. California Water Impact Network. 2012. *Testimony on Recent Salinity and Selenium Science and Modeling for the Bay-Delta Estuary*, prepared by T. Stroshane and submitted to the State Water Resources Board Workshop #1 Ecosystem Changes and the Low Salinity Zone, September 5 (and 6, if necessary), 44 pages plus appendices. Accessible online 26 October 2015 at http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/docs/cmnt081712/tim_stroshane.pdf

a project.” Public Resources Code section 21003(b) provides: “Documents prepared pursuant to [CEQA] should be organized and written in such a manner that will be meaningful and useful to decision makers and to the public.” CEQA Guidelines section 15201 explains that “Public participation is an essential part of the CEQA process. Each public agency should include provisions in its CEQA procedures for wide public involvement . . . in order to receive and evaluate public reactions to environmental issues relating to the agency’s activities.” **RDEIR/SDEIS fail to meet the purpose of CEQA and has obstructed meaningful and useful means to public participation. Lead agencies fail to translate critical documents and conduct sufficient outreach to affected communities to facilitate their meaningful participation.**

2. NEPA participation requirements and Equal Justice Executive Order 12898: Federal Executive Order (EO) 12898 (1994), Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, requires Federal agencies to make environmental justice part of their mission and to develop environmental justice strategies. The Presidential Memorandum accompanying the Executive Order specifically singles out NEPA, and states that “[e]ach Federal agency must provide opportunities for effective community participation in the NEPA process, including identifying potential effects and mitigation measures in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.” (Memorandum from President Clinton, March 1994, available at http://www.epa.gov/fedfac/documents/executive_order_12898.htm.) **RDEIR/SDEIS fail to meet NEPA participation requirements and the Presidential Memorandum for effective community participation in consultation with affected communities and improving the accessibility of public meetings, crucial documents, and notices.**
3. Title VI of the Civil Rights Act of 1964 provides: “No Person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” Executive Order 13166 “Improving Access to Services for Persons with Limited English Proficiency,” See 65 Fed. Reg. 50,121 (Aug. 16, 2000). EPA “Guidance to Environmental Protection Agency Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 69 Fed. Reg. 39602. (June 25, 2004). *Lau v. Nichols*, 414 U.S. 563 (1974) providing that National Origin Discrimination to Limited English Speakers. **RDEIR/SDEIS fail to meet Title VI of the Civil Rights Act of 1964, Executive Order 13166, 65 Fed. Reg. 50,121 121 (Aug. 16, 2000), and 69 Fed. Reg. 39602 (June 25, 2004) by failing to provide sufficient documents for information affecting limited English speaking communities, thus excluding them from participation.**
4. California Government Code section 11135 (a) and implementing regulations in the California Code of Regulations Title 22 Sections 98211 (c) and 98100. Government Code 11135(a) provides: “No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the

benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state or by any state agency, is funded directly by the state, or receives any financial assistance from the state.” **RDEIR/SDEIS fail to meet California Government Code section 11135 (a) and California Code of Regulations Title 22 Sections 98211 (c) and 98100 by unlawfully denying full and equal access to documents for EJ communities.**

5. The Dymally-Alatorre Bilingual Services Act—Government Code Sections 7290-7299.8 which requires that, when state and local agencies serve a “substantial number of non-English speaking people,” they must among other things translate documents explaining available services into their clients’ languages. **RDEIR/SDEIS fail to meet the Dymally-Alatorre Bilingual Services Act—Government Code Sections 7290-7299.8 by not providing at minimum the Executive Summary in languages other than English.**

Conclusion

The Tunnels Project fails to consider, fully, impacts on categories including and not limited to public health, water quality, subsistence fishing, land use, flood risk, affordable housing, public participation, and language accessibility for environmental justice communities. The lead agencies violate Civil Rights and Environmental Law and fail to meet Environmental Justice legal standards. For the reasons listed above, the BDCP/Tunnels Project presents an environmental injustice and should not proceed, as proposed.

* * *

For questions about the above comments, please contact Colin Bailey by phone at (916) 432-3529 or e-mail at <colin@ejcw.org>.

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Appendix:

Figure 6-5 SPFC and Non-SPFC Levees

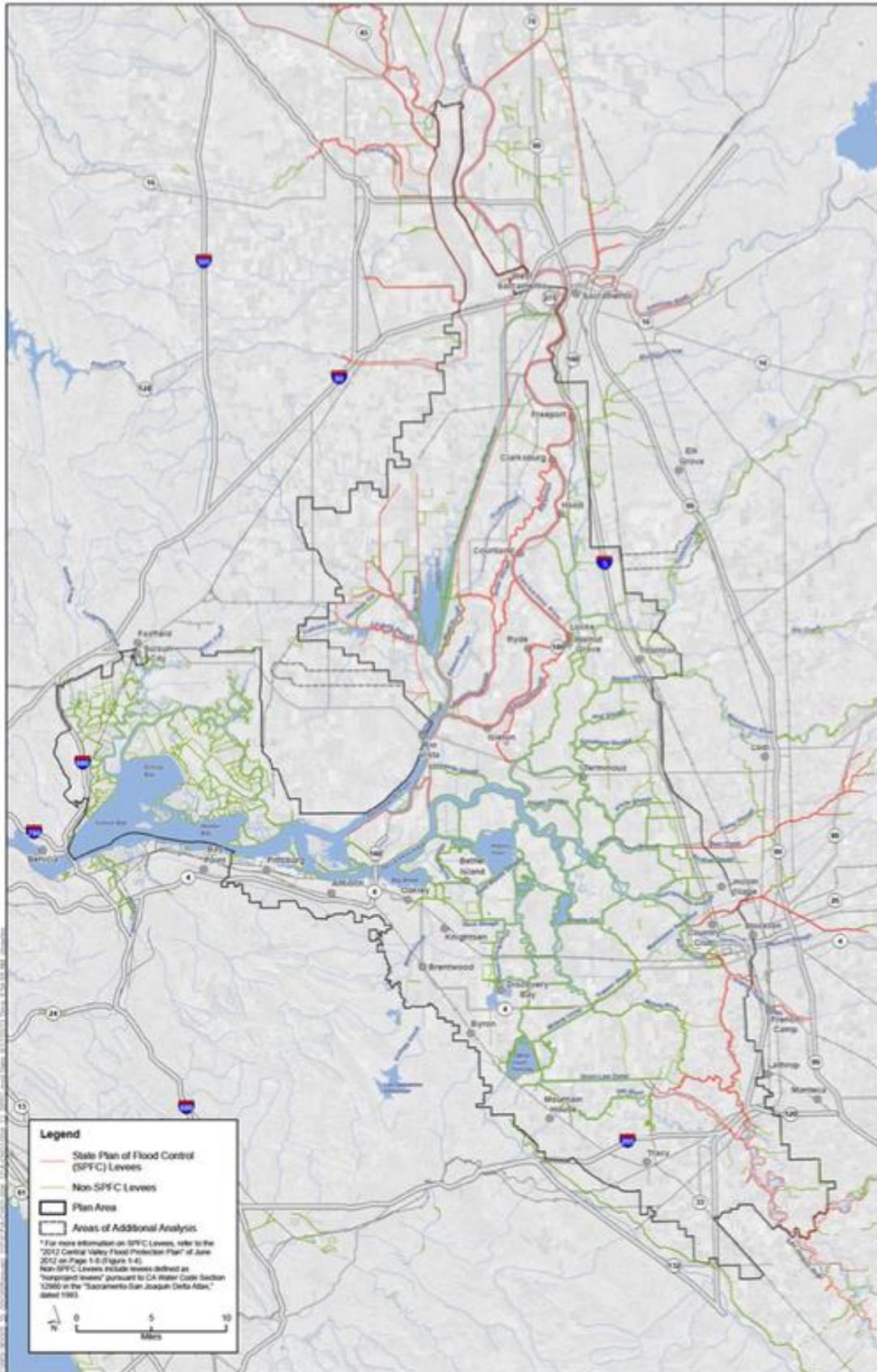
Figure 6-6 Reported Delta Levee Problem Areas

Figure 6-7 Effective Federal Emergency Management Agency Flood Zones

Figure 28-1 Minority Populations in the Plan Area

Figure 28-2 Low-Income Populations in the Plan Area

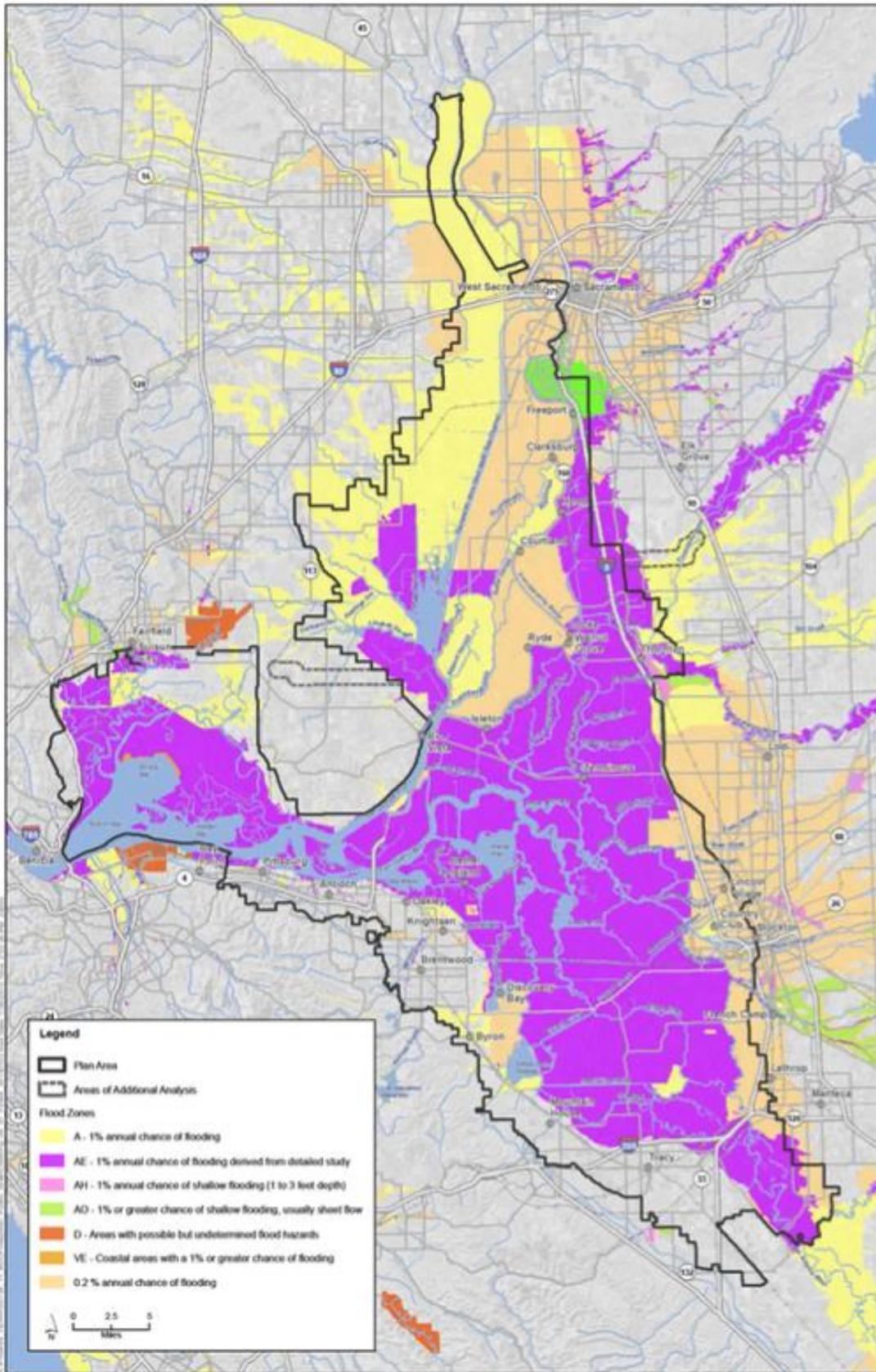
Figure 6-5 SPFC and Non-SPFC Levees



Source: Plan Area, California Levee Database v3.0 in GIS (December 2011).

Figure 6-5
SPFC and Non-SPFC Levees

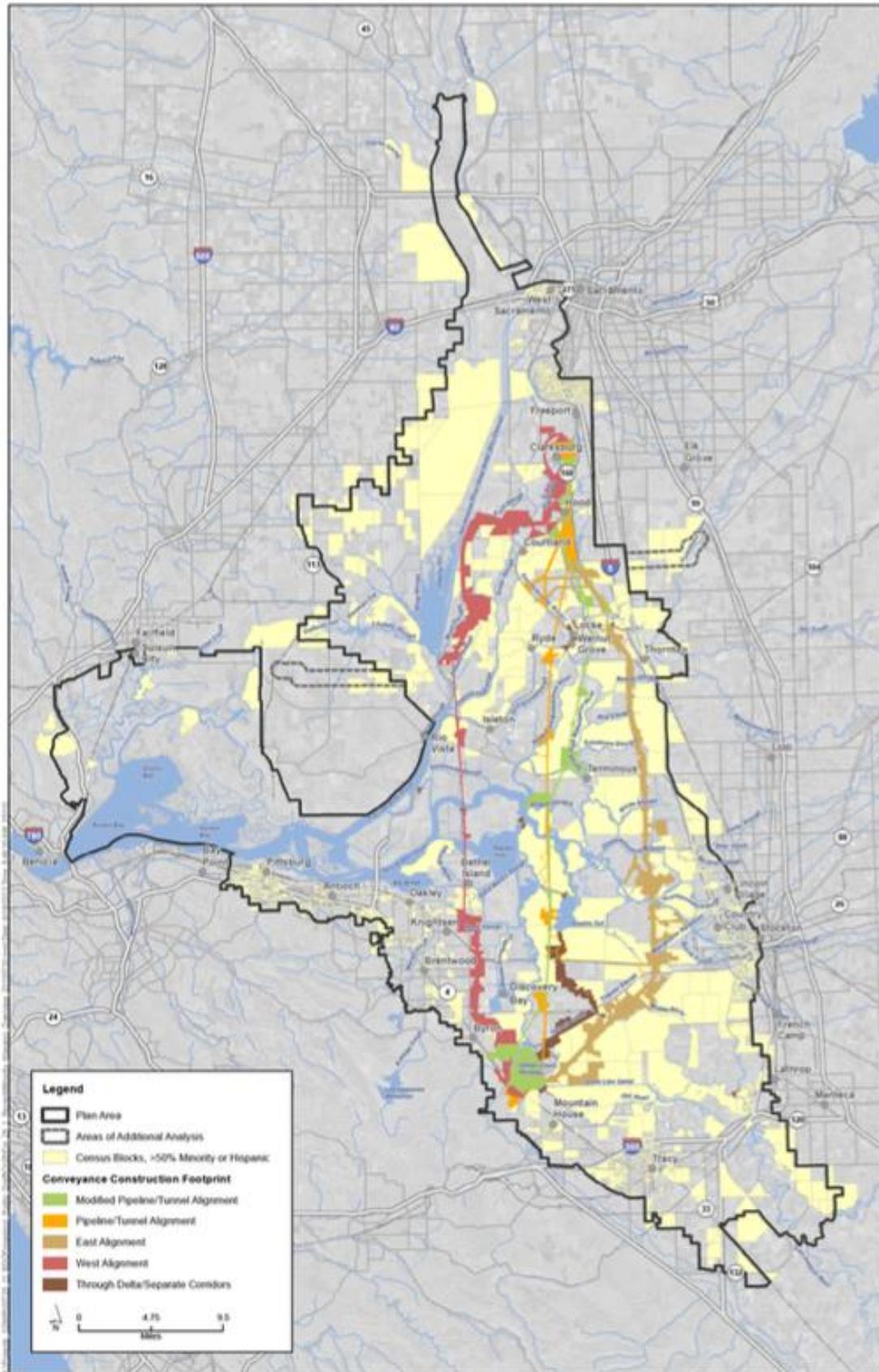
Figure 6-7 Effective Federal Emergency Management Agency Flood Zones



Source: Plan Area, DWR 2010; Floods, CDFR 2010; Aerial Photograph, AEP 2010; Flood Zones, FEMA OFPM 2009

Figure 6-7 Effective Federal Emergency Management Agency Flood Zones

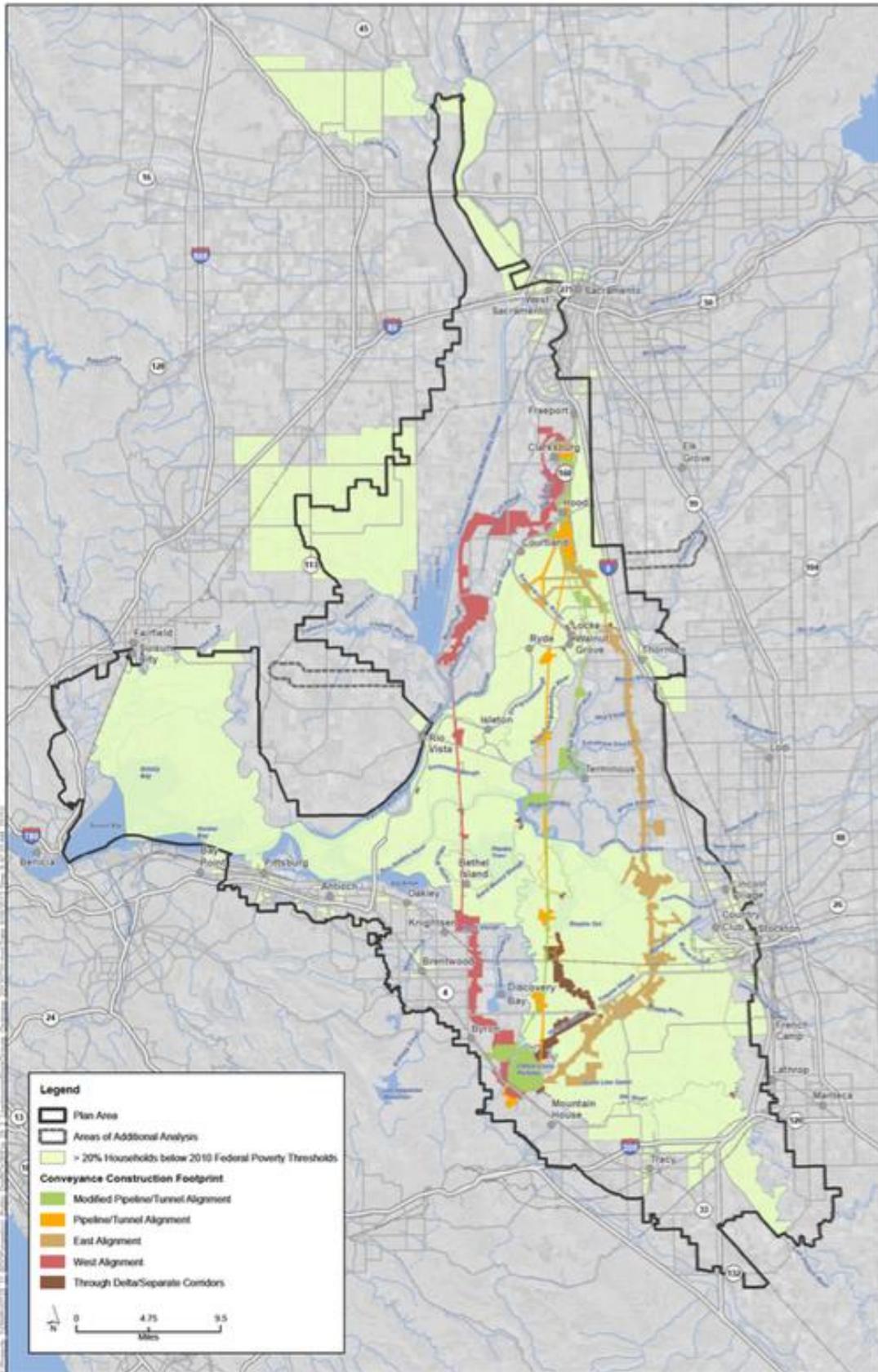
Figure 28-1 Minority Populations in the Plan Area



Source: Plan Area, ICF 2012; Area of Additional Analysis, ICF 2012; Census Data, U.S. Census Bureau, 2012

Figure 28-1
Minority Populations in the Plan Area

Figure 28-2 Low-Income Populations in the Plan Area



Source: Plan Area, ICF 2012; Area of Additional Analysis, ICF 2012; Income Data, U.S. Census Bureau, 2010; Poverty Threshold, U.S. Census Bureau, 2010

Figure 28-2
Low-Income Populations in the Plan Area