



S J C O G , I N C .

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THE COUNTY OF
SAN JOAQUIN

October 29, 2015

BDCP/WaterFix Comments
PO Box 1919
Sacramento, CA 95812

Re: Bay Delta Conservation Plan/California WaterFix Partially Recirculated Draft
Environmental Impact Report/Supplemental Draft Environmental Impact Statement
(RDEIR/SDEIS) Comment Letter Pertaining to SJMSCP

Dear BDCP/California WaterFix staff:

SJCOG, Inc., as the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP), is providing this individual comment letter on the Bay Delta Conservation Plan (BDCP)/California WaterFix (CWF) Recirculated RDEIR/SDEIS to place on the official record the project's impacts to the SJMSCP. Concurrently, SJCOG, Inc. echoes the conclusions of the Delta Independent Science Board's (Delta ISB) written response on September 30, 2015 regarding the RDEIR/SDEIS document.

Our correspondence with BDCP/CWF staff indicates all alternatives are still being considered with the new alternative although not included in the RDEIR/SDEIS documents. With that understanding, SJCOG, Inc. is resubmitting the prior comment letters associated with prior project alternatives from July 25, 2014 to be incorporated into the public record for all alternatives still being considered. These letters are provided as attachments.

As to the general and specific comments in the RDEIR/SDEIS, SJCOG, Inc. provides the following comments regarding the splitting of the former BDCP into the CWF and the EcoRestore programs:

General Comments:

1. Although the project has been parsed into two parts, the overall impacts of the two projects to the Delta estuary, the region as a whole and the SJMSCP should not be considered as separate but as one entire project. . The project and restoration components

will have significant, long-term impacts on the ability of the SJMSCP to function and meet the obligations of the existing permits issued by USFWS and CDFW to all signatories of the SJMSCP.

2. The lack of a fully comprehensive and completed Financial Analysis and/or a Cost Benefits Analysis on CWF project clouds whatever benefits the project provides considering no 'new water' is actually being created.
3. In the near future, EcoRestore will need approximately 30,000 acres for restoration projects. Without a complete understanding of where, how and when the future projects will be done, the effects to the SJMSCP can be devastating in meeting the obligations of the under USFWS and CDFW permits.
4. The restoration plans all seem to be in some way, affiliated with public lands and projects/programs which have been in existence for some time under various public/private restoration endeavors as and seem to be potentially harmful to other programs (e.g. SJMSCP) due to unknown/unidentified areas of where restoration is to occur.
5. The short window of time for response to the recirculation of the CWF's RDEIR/SDEIS documents for such a massive public works project (e.g. costs at estimated \$16 billion and impacts to the Delta estuary across multiple counties). Our agency, no agency, cannot conduct a thorough review and analysis and provide comments on the projects impacts to the SJMSCP.
6. As pointed out by the Delta ISB September 30, 2015 comment letter, the 'effects of California WaterFix extends beyond water conveyance to habitat restoration and levee maintenance. These independent issues of statewide importance warrant an environmental impact assessment that is more complete, comprehensive and comprehensible than the current draft.'

Specific Comments:

The preferred alternative for the CWF project as a lone project under the Section 7 federal process and Section 2081 state process does minimize the overall acreage of impacts with regards to the SJMSCP but still has multiple concerns to the county-wide plan.

1. The CWF will still require mitigation to be conducted within the SJMSCP permit area of up to 6,100 acres of land. This number seems small in comparison to the prior mitigation in the BDCP, however, the project and restoration of 6,100 acres can make up almost 10% of the needed agricultural lands above mean sea level for the SJMSCP in the overlap areas.

- i. Since the CWF does not have any constraints with mean sea level acquisition requirements, all lands for mitigation (e.g. swainson's hawk) should be considered for those lands below sea level.
 2. For existing preserves and protected lands within San Joaquin County, the alignment of the preferred alternative may be below ground but will still have impacts to some existing preserve lands for protected species (e.g. sandhill crane, swainson's hawks, egrets, etc.) along New Hope Tract and Staten Island.
 - a. The alignment of the tunnels will be encroaching on lands within San Joaquin County identified as 'Known' giant garter snake habitat causing an issue for the proliferation of the specie. Federal/state take permits allow take to occur, however, SJMSCP does not allow take within identified areas (attached map). The specific tracts of land identified at the beginning of the SJMSCP permit term in 2001 were noted as "Known Occupied" but those tracts do not include the most recent research and sightings of the GGS specie to the west and south within SJ County. The excerpt of Section 5.2.4.8 of the SJMSCP describing the "Known Occupied" areas under the SJMSCP is provided below:

5.2.4.8 Giant Garter Snake

Full avoidance of giant garter snake known occupied habitat is required in compliance with Section 5.5.9 (C) for the following SJMSCP Covered Activities with the potential to adversely affect the GGS and which have not been mapped: golf courses; religious assembly; communications services; funeral; internment services; public services - police, fire and similar; projects impacting channel or tule island habitat; major impact projects including landfills, hazardous waste facilities, correctional institutions and similar major impact projects; recreational trails and campgrounds, recreational outdoors sports clubs; utility services, museums and similar facilities. Known occupied habitat for the giant garter snake is that area west of I-5 on Terminous Tract, Shin Kee Tract, White Slough Wildlife Area, and Rio Blanco Tract. New sites identified during the life of the SJMSCP as confirmed habitat sites for the giant garter snake shall be considered known occupied sites for the purposes of this section.

3. The CWF document is ambiguous regarding the potential mitigation and restoration associated with the current preferred alternative impacts. As noted in prior documents and continued with this recent released draft document, the project alternative does not provide enough detail (e.g. ratios, timing, location, restoration plans, etc.) or evaluate the near/long term effects of those requirements on the Delta as a whole, the farming community, local economies and other habitat program restoration within the overlap the project area.
 4. This RDEIR/SDEIS document continues to fail, as with the prior released draft documents, in being clear, concise and detailed with the project relating to the adaptive management, collaborative science based decision making, levees coupled with the

project operations/maintenance, climate change over the longer term on the Delta because of the preferred alternative, and mitigation/restoration in the broader context of the Delta.

Our staff looks forward to working with the BDCP/California WaterFix staff and consultants on the continued development of the BDCP document and BDCP final EIR/EIS (and accompanying documents) to insure a greater likelihood that the BDCP and SJMSCP will be complimentary to each other rather than conflicting.

Please feel free to contact myself or Steven Mayo, Program Manager, on my staff with any comments, concerns or additional needed information regarding the SJMSCP and the continued work on behalf of the county-wide habitat plan in San Joaquin County.

Sincerely,



STEVE DIAL
Deputy Executive Director / Chief Financial Officer

Cc: BDCPComments@icfi.com
Josh Emery, United States Fish and Wildlife Service
Kurstien Sheridan and Robert Stanley, California Department of Fish and Wildlife
Kathy Miller, San Joaquin County Board of Supervisor and Delta Coalition Chair

Attachments:

1. SJCOG, Inc. Letters from July 25, 2014
 - a. BDCP draft EIR/EIS Comments
 - b. BDCP Public Draft Comments
 - c. BDCP Draft IA Comments
2. SJMSCP GGS Known Occupied Tracts Map



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July 25, 2014

BDCP Comments
Ryan Wulff, NMFS
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Re: BDCP Draft Environmental Impact Report/Environmental Impact Study (EIR/EIS)
Comment Letter Pertaining to SJMSCP

Dear Mr. Wulff:

SJCOG, Inc. is the administrator of the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). Our staff has continuously been involved with the evolution of the Bay Delta Conservation Plan (BDCP) since the inception. In addition to this individual comment letter on the BDCP Draft EIR/EIS, SJCOG, Inc., in conjunction with other Delta Initiative Coalition stakeholders, is submitting a separately transmitted joint comment letters. As reference, our agency also concurs with the issues raised in the 'Friends of the River' letter dated May 15, 2014 regarding the extension the comment period due to the failure to release the draft Implementation Agreement (IA).

We identified issues in the prior releases of the BDCP draft document which were again not fully addressed in those specific BDCP document sections nor in this BDCP Draft EIR/EIS. The continued concerns with the BDCP and this Draft EIR/EIS are very similar to those our agency has voiced previously to BDCP staff regarding overlapping parts of San Joaquin County covered by the SJMSCP. They are:

- The unforeseen impacts to the SJMSCP with regards to the federal and state permits being implemented under the existing SJMSCP to balance development and protection of species within San Joaquin County which the BDCP draft EIR/EIS does not fully addressed.

- Certain proposed activities and oversight of the BDCP, such as the types and extent of restoration in the Delta which may have a negative impact on existing preserves and our ability to acquire future preserves within San Joaquin County.
- The future impacts by the BDCP requiring excessive administrative time and costs to the SJMSCP to provide the vast amount of coordination and information to minimize the potential devastating effects to the existing habitat plan.

A further concern our staff had after review of the Draft EIR/EIS is all the Delta counties which have or are developing HCPs or NCCPs approved or to be approved by federal and state regulatory agencies are not being given a full voice with the overlap of the plans.

Focusing on the SJMSCP, the plan area covers approximately one-third of the Sacramento-San Joaquin Delta in both the Primary and Secondary Zones. The SJMSCP is a permitted habitat conservation plan containing existing agreements with our federal partners United States Fish and Wildlife Service (USFWS) and state partners California Department of Fish and Wildlife (CDFW) agencies including a very complicated Biological Opinion issued with the take permits. These existing agreements are a major difference between SJMSCP and the others under development. Therefore, the SJMSCP (and other implementing plans) should be considered an existing condition and included as such as the baseline.

The SJMSCP has been diligently fulfilling the terms of the Implementation Agreement and issued federal and state take permits by mitigating for development in San Joaquin County through acquisition of conservation easements and establishment of habitat preserves under an existing conservation strategy which include areas considered under the proposed Delta Plan and the incorporated BDCP.

After numerous hours of analysis of the enormous amount of text of the various documents which make up the Draft BDCP and the Draft BDCP EIR/EIS, our staff continues to have the same concerns previously expressed in our communications to BDCP staff and consultants as well as new concerns from the Draft BDCP and Draft EIR/EIS which need to be addressed/examined/explained more completely. All these concerns are matters which can cause great conflict between the already approved implementing SJMSCP under federal and state take permits and the proposed developing BDCP.

Therefore, SJCOG, Inc. strongly recommends the following be addressed by any subsequent drafts or documents of an EIR/EIS:

Chapter 4 –

- Section 4.1.2 Project Level and Program Level Analyses

As described as a short-coming of the document in this section, the future planned *‘locations for restoration and preservation actions within the conservation zones have not been specifically identified at this time’* which means the document is guessing about the impacts to other implementing (e.g. SJMSCP and East Contra Costa HCP/NCCP) and developing (Solano, South Sacramento, Yolo) plans surrounding the Delta. The

document states the *'analysis is being done at a programmatic level based on theoretical effects of typical construction, operation and maintenance activities that would be undertaken for implementation of CM2-CM22 at a program-level of analysis, describing what environmental effects MAY occur in future project phase.'* The document pushes future project-level review (as necessary) prior to implementation of specific measures other than CM-1. The reality of approving one of the largest infrastructure projects which can greatly affect existing and planned habitat conservation plans in the Delta without fully vetting the actual impacts seem near sighted.

The Draft EIR/EIS should take a step back to further detail the specific sites, acreages and restoration/preservation concepts to fully evaluate the impacts in consultation with the specific habitat plan administrators before release of the final EIR/EIS document.

- Section 4.2.1.1 CEQA and NEPA Baselines

The 'Existing Conditions' assumed in the baseline employed in this draft EIR/EIS document is supposed to take into account facilities and ongoing programs that existed as of February 13, 2009. The SJMSCP has been in existence since 2001 and implementing in partnership with the USFWS, under a Section 10 take permit, and CDFW, under a Section 2081 take permit successfully within San Joaquin County which covers approximately 33% of the Sacramento San Joaquin Delta area. Over that time, the SJMSCP has employed a Conservation Strategy which is the back bone of the preserve system to off-set the loss of thousands of acres of covered activities within San Joaquin County over the 50-year term of the take permits. The BDCP Draft EIR/EIS has not based the document on the full build out of the SJMSCP for the overlap areas of the two very different plans which can create unrecoverable impacts to an existing habitat plan.

The Draft EIR/EIS should consider the full build out of the SJMSCP (covered activities and preservation) as the baseline. Also, our agency cannot fully comment on the draft EIR/EIS without **adequate time** to review in concert with the important accompanying document of the draft IA.

- Section 4.2.5.2 Cumulative Effects Analysis

The Draft EIR/EIS states the SJMSCP was accounted for as an existing condition under the cumulative effects analysis based on Appendix 3D, *Defining Existing Conditions, the No Action/No Project Alternative, and Cumulative Impact Conditions*, but in the section described it only mentions 'the contribution of the BDCP to other programs, projects and policies' rather than the destructive conflicts which would occur from the BDCP overlapping the already existing SJMSCP which has been implementing since 2001.

The Draft EIR/EIS should note the BDCP does contribute but also has adverse impacts in the cumulative aspect of the existing conditions.

- Section 4.2.5.3 Mitigation Approach

The Draft EIR/EIS states the *'mitigation related to restoration and other activities in CM3-CM22 shall be the responsibility of a larger group of agencies (including DWR and Reclamation) as set forth in relevant portions of the BDCP'* and *'responsibilities for particular measures will be described in the **Mitigation Monitoring and Reporting Program** to be issued in connection with the Final EIR/EIS.'* Unfortunately, our staff was unable to identify the mitigation (who, what, when, why, where) details with relation to impacts to the existing SJMSCP areas which overlap the proposed BDCP conservation zones or locate the **Mitigation Monitoring and Reporting Program** noted.

We respectfully request a copy of the **Mitigation Monitoring and Reporting Program** to be provided and discussed fully with all the surrounding habitat plan administrators and regulatory agencies (e.g. USFWS and CDFW) to review and comment further before the Final EIR/EIS is released.

Chapter 12 -

- Section 12.0.2.1 Natural Communities

The Draft EIR/EIS touched on a list of 'Natural Communities' with relation to terrestrial species but for simplicity, the cultivated lands were not studied in-depth.

The cultivated lands must be studied in-depth to understand the reality of the environment for terrestrial species between the agricultural land types (e.g. row and field crop habitat, multi-purpose habitat, irrigated pasture habitat, etc.) because each classification has specific impacts to various species (e.g. swainson's hawk, burrowing owls, tricolor black bird, etc.). The breakdown of the type of cultivated lands will greatly affect the surrounding plans which may require conservation of these types of cultivated lands that are in conflict with the proposed BDCP.

- Section 12.0.3 Environmental Consequences

The Draft EIR/EIS calls out the first eleven conservation measures (CM 1 – 11) in this section. The CM 1, which regards construction and operation of water conveyance facilities, and CM 2 - 11 are measures which restore, protect, manage or enhance.

The section does not differentiate that CM1 actually deteriorates the value of the environment while CM 2 – 11 may provide actual benefit to the environment for BDCP. The use of building the facility as a conservation measure would be like considering the building of a large cement gas extraction pad for equipment as a benefit to the agricultural and natural environment it is within. The CM 2 – 11 providing benefit to the SJMSCP is still to be determined.

- Section 12.0.6.2 Comparison of Effects of the Alternatives