



CITY OF STOCKTON

October 29, 2015

www.stocktonca.gov

VIA ELECTRONIC MAIL

BDCP/WaterFix Comments
P.O. Box 1919
Sacramento, CA 95812
BDCPComments@icfi.com

Re: City of Stockton Comments on the Bay Delta Conservation Plan/California WaterFix Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS)

To Whom It May Concern:

The City of Stockton (City) submits these comments on the Recirculated Draft Environmental Impact Report/Supplemental Draft Environmental Impact Statement (RDEIR/SDEIS) for the Bay Delta Conservation Plan (BDCP)/California WaterFix (CalWaterFix) Project (Project).

I. Introduction

The City of Stockton derives its primary water supply from the Delta. The City's Municipal Utilities Department provides potable drinking water to more than 47,000 residential, commercial and industrial customers with a service population of more than 170,000. One of the sources of water for treatment and delivery to City customers is the Delta Water Supply Project (DWSP) Water Treatment Plant (WTP). The DWSP WTP is a 30 million gallon per day facility that derives its source water from the Sacramento/San Joaquin Delta at the southwest tip of Empire Tract under a water right issued by the State Water Resources Control Board.

In addition to providing potable drinking water, the City of Stockton owns, operates and maintains wastewater collection and treatment facilities serving the entire Stockton Metropolitan Area population of 300,000 under a National Pollutant Discharge Elimination System (NPDES) permit issued by the Central Valley Regional Water Quality Control Board. Wastewater treatment and discharge to the San Joaquin River has been, and will continue to be, an essential service to the residential, commercial and industrial sectors of the City of Stockton.

The City of Stockton is greatly concerned that the Project will have significant impacts that would adversely affect the City of Stockton and its residents. The City expressed its concerns with the BDCP in its July 29, 2014 comments on the Draft

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EIR/EIS. Those comments identified numerous problems with the BDCP and DEIR/DEIS, which failed to adequately assess or mitigate the BDCP's impacts to the City's water supply and operations or the Delta ecosystem, among other concerns. Chief among these problems was the failure to recognize the City as a major diverter of water for municipal and industrial uses whose supply could be at risk by the BDCP.

To the City's surprise and dismay, none of the problems identified in our July 29, 2014 comments were addressed by the changes to the Project or the revised environmental documents. By altering flows and water quality in the Delta, the CalWaterFix Project, like the BDCP, threatens to have significant impacts that would adversely affect the City and its residents. The DEIR/DEIS contained no analysis of potential changes to water quality at the location of the City's drinking water intake on the San Joaquin River. Despite the City's comments, the RDEIR/SDEIS failed to incorporate, or address any of our concerns regarding potential water quality impacts at our intake. As a result, the City remains unable to understand the CalWaterFix Project impacts on the issues of greatest concern to our residents.

II. The RDEIR/SDEIS Fails to Address the City's Prior Comments on the Effects of the Proposed North Delta Diversions & Conveyance

The City provided extensive comments on the DEIR/DEIS. None of the concerns raised in these comments was addressed in the supplemental or revised analyses included in the RDEIR/SDEIS, including the new evaluation of Alternative 4A and Alternatives 2D and 5A. As noted, among the City's chief concerns with the BDCP was the potential for the North Delta diversion to adversely affect water quality and the City's water supply. In particular the City objected to the DEIR/DEIS's failure to evaluate water quality and flow changes at the location of the City's drinking water intake. The City also raised concerns about impacts to agricultural resources, groundwater, air quality, roadways and traffic, as well as socioeconomic impacts. These issues remain unaddressed in the RDEIR/SDEIS. Because no changes were made to the Project or RDEIR/SDEIS that would address the City's comments and concerns, to the extent new alternatives, including Alternative 4A, are similar to the previously proposed BDCP CM1, the City's prior comments apply to the CalWaterFix Project and RDEIR/SDEIS, and the City reasserts its prior comments here and incorporates them by reference as comments on the RDEIR/SDEIS and CalWaterFix Project alternatives.

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III. The RDEIR/SDEIS Repeats and Compounds the Problems of the DEIR/DEIS

The water quality impact analysis provided for Alternative 4A fails to answer or address any of the questions or concerns the City raised in its comments on the original project proposal. There is no discussion of water quality effects at the City's intake. Moreover, the analysis of impacts at the locations that were included is hopelessly vague, convoluted and, ultimately, uninformative. The analysis is made even more unintelligible and factually suspect by the RDEIR/SDEIS's reliance on the flawed modeling methodology of the DEIR/DEIS. Rather than conduct a comprehensive analysis of the fundamental project changes in the CalWaterFix Project, the RDEIR/SDEIS attempts to bootstrap an analysis of CalWaterFix impacts on to modeling that was unique to the abandoned BDCP. The authors thus spend considerable time explaining why the model results are not necessarily accurate, or predictive of actual Project impacts, with the result that the public is asked to take on faith the RDEIR/SDEIS's conclusion of no significant impacts.

An example is the discussion of electrical conductivity (EC) impacts for Alternative 4A on pages 4.3-24 through 4.3-26.¹ The section starts by attempting to explain the methodology used to estimate EC impacts and justify the lead agencies' decision not to model the effects of the Alternative 4A changes, which eliminate habitat restoration actions that affect Delta hydrodynamics, a fundamental factor in the analysis. The result of these shortcuts and omissions is that "the quantitative modeling results presented in this assessment is not entirely predictive of actual effects under Alternative 4A, and the results should be interpreted with caution In this assessment the modeling results are described and then in most cases are qualified in light of findings from sensitivity analyses." (p 4.3.4-23.)

Of even more concern to the City regarding adverse effects to the water quality is the failure of the RDEIR/SDEIS to adequately consider the effects of modified in-Delta flow regimes and increased residence time changes associated with the proposed project. For example, it is commonly accepted that flow is a prime driver of the undesirable proliferation of cyanobacteria (e.g. *Microcystis*) in the Delta. The occurrence and magnitude of this undesirable species is associated with low velocities and increased residence times in the system. While the RDEIR/SDEIS includes new information regarding *Microcystis* and other harmful aquatic species, the document does not properly link the acknowledged project-related increases in residence times in the Delta to a worsening of the *Microcystis* problem. The

¹ The problems with the RDEIR/SDEIS EC analysis are representative of the analysis in other water quality areas of key concern to the City, including bromide, chloride, organic carbon, nitrate and pesticides.

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RDEIR/SDEIS should be modified to acknowledge these impacts in the vicinity of the City's drinking water intake.

The RDEIR/SDEIS then states that model results show the Project will result in an increase in the number and frequency of exceedances of EC water quality objectives. However, the RDEIR/SDEIS downplays the significance of these exceedances, offering vague and noncommittal assurances that "modeling results without restoration areas would be expected to show a lesser effect and are expected to be able to be addressed [in] real time operations, including real time management of the north Delta and south Delta intakes, as well as Head of Old River Barrier management." (pp. 4.3-25 through 4.3-26.) Not only does this statement fail to quantify the actual exceedances, or the degree of any "lesser effect," but the assurance that effects could be "addressed" is not tied to any definable or enforceable *mitigation* commitment. The RDEIR/SDEIS provides no information about how "real time management" will occur, what type and extent of water quality sampling will occur to verify project effects on EC, the specific actions that Project operators will take, including the time lapse between identification of an exceedance and changes to operations, and the corresponding time lapse between any change in operations resulting from "real time management" and measured EC levels. Depending on the time sequence, EC levels could remain elevated above water quality objectives indefinitely. Without data and analysis based on actual Project effects, and information about the triggers for and concrete elements of such "adaptive management," these vague and unenforceable assurances do not demonstrate to the City that EC impacts will not be significant nor does this satisfy CEQA's requirement that an EIR actually mitigate significant environmental impacts.

The RDEIR/SDEIS does not indicate whether it intends to rely on mitigation measures included in the DEIR/DEIS, including DEIR/DEIS mitigation measures WQ11, WQ11a and WQ11b. However, even assuming reliance is intended, those measures contain the same flaws identified in the City's 2014 DEIR/DEIS comments and are especially inapplicable to mitigating effects of alternative 4A, as they are predicated on future assessment of impacts from the massive habitat restoration actions that were included in the BDCP but are no longer a part of the CalWater Fix Project or Alternative 4A. A mitigation measure that is based on an entirely different project (BDCP) with actions directed at study and adjustment of project elements that are no longer part of the proposed project (massive habitat restoration activities) cannot satisfy CEQA's requirement that actual project effects be clearly mitigated.

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IV. By Excluding Local Governments From Ongoing Aspects of Project Development, the EIR/EIS Does Not Fulfill CEQA and NEPA's Fundamental Purpose of Informed Decisionmaking and Public Participation

The purpose of an EIR is not only to protect the environment but also to demonstrate to the public that it is being protected. By omitting or deferring evidence and analysis on issues of key importance to the City and others, including the development of mitigation measures necessary to avoid significant environmental impacts, the DEIR/DEIS and RDEIR/SDEIS fail to demonstrate to City residents that they and their environment are being protected. These problems are compounded by the CalWaterFix Project's elimination of any role for affected local governments in the ongoing governance of BDCP/CalWaterFix. This change excludes those most affected by the Project from participating in or understanding the important processes and decisions that the DEIR/DEIS and RDEIR/DEIS rely on to excuse their lack of information about Project impacts and mitigation (i.e., adaptive management, facility design and construction, research, etc.). By allowing critical decision making processes such as the Real Time Operations Team to be dominated by South of Delta water supply interests² at the exclusion of local government, the CalWaterFix Project works an end run around CEQA and NEPA's fundamental purpose: informed decisionmaking and public participation.

V. The Project is Inconsistent with the Delta Plan

The State policy regarding the Delta, as set forth in the Delta Reform Act of 2009, states "it is the intent of the Legislature . . . to provide for a more reliable water supply for the state, to protect and enhance the quality of water supply from the Delta, and to establish a governance structure that will direct efforts across state agencies to develop a legally enforceable Delta Plan." (Wat. Code, § 85001(c).) To implement this policy, the Delta Plan requires that "covered actions," including the Project, demonstrate that they are consistent with all applicable Delta Plan policies as well as the State's coequal goals for the Delta of "providing a more reliable water supply for California" and "protecting, restoring and enhancing the Delta ecosystem." (Wat. Code, § 85054.) The Legislature's goal for a more reliable water supply includes areas in the Delta, and reliable water supplies for all beneficial uses, including cities and farmlands. The RDEIR/SDEIS fail to demonstrate the protection or enhancement of the quality of water supply from the Delta for users other than the BDCP/CalWaterFix proponents. Thus even assuming the Project may increase reliability of water supplies for South of Delta interests, its adverse effects on flows

² See, e.g., Appendix D, section 3.4.1.4.5 of the RDEIR/SDEIS.

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and water quality threaten to reduce the reliability of water supply for Delta water users, including the City. Moreover, given the scale of the Project's known adverse effects, including but not limited to impacts to fish and water quality, it would be an abuse of discretion to conclude that the Project furthers the coequal goal of "protecting, restoring, and enhancing the Delta ecosystem."

VI. Conclusion

For all the reasons stated herein, and in the City's July 28, 2014 comments on the DEIR/DEIS, and as amply demonstrated by the comments and criticism levied on the BDCP and CalWaterFix Project by federal resource agencies, the Delta Independent Science Board, local governments and nongovernmental organizations, the Project and accompanying environmental studies demonstrably fail to satisfy the requirements of CEQA and NEPA or the coequal goals for the Delta as established by the California Legislature. Because the BDCP/CalWaterFix fails to meet these standards, the City remains opposed to both the original project and the new alternatives, including the new preferred alternative 4A. Due to the numerous and overarching problems with the DEIR/DEIS and RDEIR/SDEIS, the only way to ensure that the City and other affected entities can understand the Project's impacts and meaningfully participate in the Project environmental review is for the state and federal lead agencies to start over and prepare a new draft EIR/EIS that addresses the concerns raised in comments on the DEIR/DEIS and RDEIR/SDEIS. So that the City can continue to participate in the development of adequate environmental documentation for the Project, please send the City any new or updated documents prepared pursuant to CEQA or NEPA. Also, please send the City any notices filed pursuant to those statutes, including any Notice of Determination (Pub. Resources Code §21092.2.)


for C. Mel Lytle, Ph.D., Director
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Gordon MacKay, Director
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David Kwong, Director
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Restore the Delta