

**Assembly Water, Parks and Wildlife Committee
Oversight Hearing on Delta Stewardship Council and Bay Delta Conservation Plan
Progress and Updates
Tuesday May 11, State Capitol, Room 437**

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On behalf of Reclamation District 999 and Stone Lakes National Wildlife Refuge Association

Introduction

I would like to thank the Chair of the Committee for holding this oversight hearing because the Legislature’s oversight is desperately needed in these processes. I have been involved in the Bay Delta Conservation Plan (BDCP) process for over two years, advocating for consideration of local concerns, including those of Reclamation District 999 and Stone Lakes National Wildlife Refuge Association. In this capacity, the BDCP process has been frustrating because local concerns have not been afforded any consideration at times, and even when they are considered, they have not been a priority.

Any major capital project generates concern from those that will be affected by it. For any development project, there is a calculus that occurs with respect to how engaged and responsive to be to the concerned community. Unlike a normal or even large development project, however, BDCP is proposing the largest engineering project in modern California history with massive new intakes and conveyance structures on the Sacramento River, along with up to 110,000 acres of created or restored habitat located in various “opportunity areas” – all within existing fragile habitat and communities. Two of these intakes are proposed to be located just west of the Stone Lakes National Wildlife Refuge shown map I have provided. (Attached hereto.) Working directly with local communities to solve the myriad of challenges and opportunities created by the BDCP is the only equitable way to move forward.

Five Critical Issues that Must Be Resolved for the BDCP to Move Forward Successfully

- 1. Affected Communities Must be Included as Stakeholders**
- 3. The BDCP Must be Supported by Best Available Science**
- 2. The BDCP Must Address All Major Stresses on the Delta Environment**
- 4. The BDCP Must Include Benefits for Local Communities**
- 5. Publicly Funded Elements of the BDCP Must Confer Public Benefits**

Detailed Discussion

- 1. Affected Communities Must be Included as Stakeholders**

Normally, Habitat Conservation Plans (HCPs) are developed by landowners within the project area, among other stakeholders. In this instance, third-parties from outside the region are

proposing to dramatically alter the Delta landscape without regard for existing communities, and without their participation as equals in the process. In short, the local community has been treated as an outsider though the community's support for this project is essential to its success.

Three years into the process, the feedback loop for addressing local concerns, which is critical to the success of the project, has still not been developed. BDCP has focused on getting its messages out to the exclusion of getting messages in from the interested public. This is not for lack of trying on the part of stakeholders to present their concerns in an organized, concise manner. For instance, out of the seven technical comments that have been submitted Reclamation District 999, only three were even posted to the BDCP website. Despite numerous written (November 19, 2009) and other requests for "disposition" of comments from affected stakeholders, there have been no responses to any of these comments, or any other stakeholder that does not sit on the Steering Committee.

Moreover, the process for obtaining the most basic information is nonexistent. For instance, the BDCP has recently focused on developing the details of an all tunnel project. While on-the-ground impacts could be lessened through this alternative, a tunnel entails a larger footprint for the associated facilities. When we learned of the potential siting of two intakes directly west of the Stone Lakes National Wildlife Refuge, we asked for the maps to see where intakes and associated facilities, including the 730-acre forebays, would be located to allow collaboration on the manner in which these facilities are designed. The Stone Lakes National Wildlife Refuge Association was told by BDCP to formally request the maps; later DWR responded that the requested maps would not be made available for almost four months. A collaborative process would not ignore, then stonewall, the local Refuge Association concerned with preserving habitat around an important migratory bird stopover on the Pacific Flyway.

Conflict will always accompany a large project, but successful large projects and HCPs actively involve affected landowners. Many problems can be avoided or lessened by a better understanding of, and making adjustments for, community and landowner concerns. *For a watershed-scale project such as this to succeed in the long-term, Delta landowners and land managers must be treated as stakeholders in the process.*

2. The BDCP Project Must be Supported by Best Available Science

The basic components of the BDCP – massive new conveyance and habitat creation and restoration – were selected in 2007, before it was even possible for the public to access basic information about the process and the project. The BDCP Steering Committee gained its first Delta agency in 2009, the North Delta Water Agency, in 2009. Under the BDCP Planning Agreement, only the Potentially Regulated Entities, such as the Westlands Water District and the Metropolitan Water District, have decisionmaking authority. Neither the public resource agencies, the environmental group representatives or any in-Delta interests have voting authority on the Steering Committee. Thus, key decisions about the BDCP's basic components

(including the decision to maximize the size of conveyance, create/restore up to 110,000 acres of habitat with questionable species benefits according BDCP's own Independent Science Advisory panel and the National Academy of Sciences report, and exclude consideration of water conservation) were all made by the *applicants* for the take authorization, as if this was an average-sized, private development project.

The scientific basis for proposed actions needs to be established, documented, and independently verified and has not been. The BDCP's own Independent Science Advisory panel, Reclamation District 999 and others have repeatedly identified flaws in the science underlying major components of the BDCP, such as reliance on habitat creation to address species needs. These comments have been left completely unanswered. *The Legislature must require the BDCP to respond to and address the questions raised by its own scientific advisors.*

3. The BDCP Must Address All Major Stressors on the Environment

The BDCP purports to be a comprehensive package of actions to address the decline of special status species in the Delta. The BDCP, however, myopically focuses on certain issues of concern while completely ignoring others. For instance the BDCP includes a conservation measure to address pesticide runoff from farming within the Delta, but completely ignores that most of the pollutants have been documented to come from urban runoff or other non-Delta sources of pollutants. In particular, the BDCP has ignored this issue, failing to recognize that water from the projects are part of a serious, existing pollution problem that must be addressed as part of any comprehensive HCP. The San Joaquin River and its tributaries are contaminated with selenium and other salts, herbicides, and pesticides which threaten Delta water quality and listed species. The RWQCB is poised to again extend, not enforce, the deadline for reducing selenium discharges into the Delta from the Projects. Continued exports of Delta water to the San Joaquin Valley without solving the drainage issues will just make the impacts of this contamination from the Projects worse, and it must be resolved.

The BDCP must face up to the part current and future water exports out of the Delta will play when those same waters pollute the Delta. The repercussions of a poorly designed and implemented project will affect all of California, not just a few people. *The Legislature must require the Projects and the BDCP to reduce its load of contaminants to the Delta.*

4. The BDCP Must Include Benefits for Local Communities

Under the current BDCP approach, Delta communities receive only the burdens, and not any of the benefits of the project. If the attempts to improve habitat and listed species populations actually succeed, existing agricultural uses have to have legal protection from ESA take provisions. The project cannot legitimately protect itself from legal jeopardy and provide the community with no legal protections from the take provisions of ESA and CESA.

Moreover, protecting key Delta islands from earthquakes and the consequences of flooding is one of the key arguments that the BDCP advocacy machine uses, yet the BDCP includes only the most minimal efforts to fix these key levees. The main way the BDCP proposes to address seismic and flooding concerns is by adding new diversion points on the Sacramento River even though the pumps in the South Delta will continue to be relied upon by the Projects. Fixing and maintaining key Delta levees has to be a primary, fully funded effort for the BDCP to have any legitimacy. *The Legislature must make this a mandatory provision.*

5. Publicly Funded Elements of the BDCP Must be Confer Public Benefits

The BDCP is being promoted as part of the solution for the serious challenges facing the Delta. Beyond securing a more reliable water supply for the water exporters, the BDCP will allegedly improve conditions for listed species. This is an important goal that Delta communities support. As explained above, however, the scientific basis for the key components of the BDCP is lacking.

Public resources are pouring into the BDCP planning process through the participating agencies at all levels of government, including funding from our limited budgets simply to have participate in the process. The \$11+ billion project that is currently being discussed can only be accomplished with the help of public funds. As the BDCP progresses, the public will continue to pay for the costs of planning for and implementing the BDCP and because of that the public deserves the best possible outcomes.

The exporters and others have repeatedly claimed that the project will be funded on a user pays basis. But federal, state, and other public funds have, and are planned to be, expended in support of the BDCP. Moreover, a considerable portion of the Water Bond (up to \$2.25 billion) is directed at funding the BDCP planning process and paying for the mitigation that will be required to carry out the BDCP. With so much public investment in this project, it is essential that the project actually confer benefits on the public at large by helping to address the challenges of the Delta – not just replumbing it so certain interests can have better quality water and leaving the rest of the state, including the people of the Delta, paying for a project from which they will receive no benefits.

Conclusion

The deep flaws in the BDCP process can *only be fixed by the Legislature*. Additional sideboards need to be placed on this process in order for it to result in anything that will begin to meet both the goals of the water exporting community while also respecting and preserving the communities in which the BDCP is proposed to take place.

The 2009 Water Package could be a positive step forward in addressing statewide water issues and the Delta. The Legislature's work on these issues, however, is not done. To begin to address the concerns listed above, we recommend:

BDCP Specific Proposals

1. The Legislature should exercise approval authority over any new diversion point, associated facilities and conveyance that: (1) has a volume of over 3,000 cubic feet per second, or (2) is located above ground. Besides irreparably altering the Sacramento River and the Delta and permanently disrupting existing human and natural communities, the larger sized facilities being discussed are terribly inefficient with respect to waste of both water and power. Moreover, at the larger size being contemplated, the asset would be stranded much of the time because of limits on pumping for instream flows and to avoid reverse flows. Moreover, above ground facilities will divide existing natural and human communities and cannot be seriously considered. Should BDCP choose to press forward with projects as large as are being discussed, the Legislature must be involved to protect the public interest.
2. The Legislature should specify that the BDCP is required to operate on a willing seller only basis, at the very least for the habitat mitigation, creation and restoration components of the plan. Take of property in the context of an HCP sets a terrible precedent for future conservation and polarizes rural communities that have been doing their part to protect special status species in the Delta.
3. The Legislature should require that the BDCP pay in lieu taxes to the counties when lands for habitat will be acquired and removed from the tax rolls by the BDCP. Counties need to maintain their tax base despite being included within the BDCP planning area.
4. The Legislature should require the BDCP proponents and other stakeholders to report back on how the process for incorporation of stakeholder concerns is being improved in two months. We cannot wait for the BDCP to be finalized, which is planned for Fall 2010, to address this issue. Process issues should have been addressed years ago and it is critical that process be addressed now, before it is entirely too late.

Proposals Regarding the 2009 Water Package

1. The Legislature should add conflict of interest provisions for appointments to the Delta Stewardship Council. The appointment process has already been mired in controversy over incompatible offices, which undermines the Council's credibility and ability to carry out its mission. The lack of such criteria in SB 7x1 was an oversight that should be corrected.
2. The Legislature should freeze appointments to the Water Commission to ensure that the public interest at large is served by the Commission, especially if the Water Bond should pass. The Governor should not be allowed to appoint Commissioners that will make key decisions about the Delta and the expenditure of Water Bond funds as he is leaving office.

By moving forward on these action items, the Legislature will advance the co-equal goals described in the 2009 Water Package and help avoid the certain failure the BDCP appears to be headed toward.

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Thank you for the opportunity to share this information with you today. I would be happy to answer any questions.