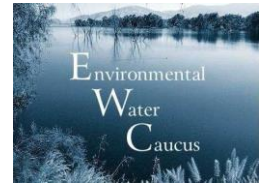




## FRIENDS OF THE RIVER

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## ENVIRONMENTAL WATER CAUCUS



September 10, 2014

[BDCP.Comments@noaa.gov](mailto:BDCP.Comments@noaa.gov) (via email)

John Laird, Secretary  
California Natural Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

David Murillo, Regional Director  
U.S. Bureau of Reclamation  
2800 Cottage Way  
Sacramento, CA 95825

Mark Cowin, Director  
California Department of Water Resources  
P.O. Box 942836, Room 1115-1  
Sacramento, CA 94236-0001

Ren Lohoefer, Regional Director  
U.S. Fish and Wildlife Service  
2800 Cottage Way  
Sacramento, CA 95825

Chuck Bonham, Director  
California Department of Fish and Wildlife  
1416 9<sup>th</sup> Street, 12<sup>th</sup> Floor  
Sacramento, CA 95814

Will Stelle, Regional Director  
National Marine Fisheries Service  
7600 Sand Point Way, NE, Bldg 1  
Seattle, WA 98115-0070

Additional Addressees at end of letter

**Re: Scoping Process for the recirculated BDCP Draft Plan, Draft EIR/EIS, Implementing Agreement coming out in 2015**

Dear Federal and California Agencies, Officers, and Staff Members Carrying out the BDCP:

This follows up the September 4, 2014 letter from our organizations, Friends of the River (FOR), the California Water Impact Network (C-WIN), the California Sportfishing Protection Alliance (CSPA), and the Environmental Water Caucus (EWC) (a coalition of over 30 nonprofit environmental and community organizations and California Indian Tribes). That letter focused on the need for the new recirculated Draft Bay Delta Conservation Plan (BDCP) documents coming out in 2015 to finally include and consider the Responsible Exports Plan alternative along with a range of reasonable alternatives reducing exports.

The BDCP website announced on August 27, 2014 that the California Department of Water Resources “and the other state and federal agencies leading the Bay Delta Conservation Plan will publish a Recirculated Draft BDCP, Draft EIR/EIS ), and Draft Implementing Agreement (IA) in

early 2015.” The announcement also states that: “The *scope* of the partially recirculated draft documents will be announced in approximately six to eight weeks. The recirculated documents will include those portions of each document that warrant another public review prior to publication of final documents.” (emphasis added).

A new or subsequent Bay Delta Conservation Plan Draft EIR/EIS—not just a supplement—will be required. This is because bringing the Draft EIR/EIS into compliance with legal requirements of the federal Endangered Species Act, the state Natural Communities Conservation Planning Act, NEPA, CEQA, the Delta Reform Act, and state and federal clean water laws will of necessity mean making more than “minor additions or changes” under 14 Code Cal.Reg. § 15163(a)(2).

The inadequacies of the BDCP Draft EIR/EIS are front and center in the comment letters from the U.S. Environmental Protection Agency of August 26, 2014, State Water Resources Control Board (SWRCB, July 29, 2014), and U.S. Army Corps of Engineers (July 16, 2014 letter). Each of these letters points out fundamental deficiencies that echo the criticisms and concerns leveled at BDCP by our organizations in our comments from June and July 2014. For instance, all the BDCP conveyance alternatives considered in the Draft EIR/EIS would reduce flows through the San Francisco Bay-Delta. As we stated in our comments and our letter of September 4, 2014, alternatives must be developed and considered that would increase water flows. The EPA said it best when it wrote, “operating any of the proposed conveyance facilities. . . would contribute to increased and persistent violations of water quality standards in the Delta, set under the Clean Water Act. . .” (EPA letter, p. 2). There are many more such serious flaws with the Draft EIR/EIS and related documents also identified by our organizations in our June and July 2014 comments. We will identify and summarize these flaws in a subsequent letter about what BDCP needs to include in the EIR/EIS’s new scope.

So that our organizations may be informed of BDCP’s progress with scoping, preparing and recirculating the Draft EIR/EIS, the Bay Delta Conservation Plan, and the Draft Implementing Agreement, we specifically request notice and compliance with National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) regulations pertaining to *scoping*.

### **NEPA Scoping Requirements**

Our organizations request to be invited to participate during the scoping process because we should be invited and also because NEPA Regulation 40 C.F.R. § 1501.7(a)(1) makes invitation to us mandatory upon this request.

We also request mail notice of all NEPA-related hearings, public meetings, and the availability of environmental documents during the BDCP scoping process pursuant to 40 C.F.R. § 1506.6(b).

We request that your agencies hold public hearings or public meetings during the scoping process because of the substantial environmental controversy concerning the proposed action, pursuant to 40 C.F.R. § 1506.6(c). We are advised that there were 8,000 or more comments on the BDCP Draft documents.

We also request that during scoping, you solicit appropriate information from the public pursuant to 40 C.F.R. § 1506.6(d).

### **CEQA Scoping Requirements**

Scoping is mandatory when a state agency prepares an EIR/EIS jointly with a federal agency. CEQA Regulation 14 Code Cal. Regs §15083. The BDCP project including the Water Tunnels or other new conveyance is a project of statewide, regional, and areawide significance. Our organizations request that the lead agencies conduct at least one scoping meeting as required for such projects by CEQA Regulation 14 Code Cal. Regs § 15082(c)(1). Our organizations request notice of such scoping meeting pursuant to the requirements of § 15082(c)(2)(D).

Our organizations also request that the notice of recirculation required by § 15088.5(d) and 15087 be given, and that the consultations required by § 15088.5(d) and 15086 be carried out.

#### **How do Interested Parties Contact You?**

Our September 4, 2014, scoping comment letter that we referred to at the outset went to your website at [BDCP.Comments@noaa.gov](mailto:BDCP.Comments@noaa.gov). What we received in return was “The public comment period is now closed. Visit [www.BayDeltaConservationPlan.com](http://www.BayDeltaConservationPlan.com) for more information.” But the BDCP page at present refers people to the NOAA site. We hope that the invisibility of the BDCP agencies at this time for purposes of communication and correspondence is not intentional.

Your agencies need to create a clear, inviting, and verifiable path for receipt of public correspondence and comments during this scoping period. Be advised that our September 4, 2014 letter, this letter, and any future letters will most certainly be part of the Administrative Record should there be future litigation over the BDCP.

#### **Please provide notices requested above to:**

Robert Wright, Senior Counsel  
Friends of the River  
118 20<sup>th</sup> Street, Suite 110  
Sacramento, CA 95811

Tom Stokely, Water Policy Analyst  
California Water Impact Network  
201 Terry Lynn Avenue  
Mount Shasta, CA 96067

Bill Jennings, Executive Director  
California Sportfishing Protection Alliance  
3536 Rainier Avenue  
Stockton, CA 95204

Conner Everts, Co-Facilitator  
Environmental Water Caucus  
5321 Amestoy Avenue  
Encino, CA 91316

### **CONCLUSION**

In a nutshell, the alternatives section is the declared “heart” of an EIS and an EIR. The BDCP Draft EIR/EIS had no “heart” because it failed to include the required range of reasonable alternatives and would make an already bad situation worse rather than start to improve water

quality in the Bay-Delta. Alternatives reducing exports to increase flows were not included in the Draft EIR/EIS but would lessen the significant adverse impacts of the project requiring recirculation under 14 C.F.R. § 15088.5(a)(3).

Because of the absence of the required range of reasonable alternatives, recirculation is also required under § 15088.5(a)(4) because the Draft EIR/EIS “was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” All the public got was the story the exporters wanted the public to know. The public never got to hear about the types of alternatives increasing flows raised by the EPA, SWRCB and Army Corps and raised by our organizations beginning two years ago. A new Draft EIR/EIS must include a range of reasonable alternatives “sharply” defining the issues and providing a clear basis for choice among options required by 40 C.F.R. § 1502.14—not another new conveyance advocacy piece.

Please contact Robert Wright, Senior Counsel, Friends of the River at (916) 442-3155 ext 207 or email to [bwright@friendsoftheriver.org](mailto:bwright@friendsoftheriver.org) with any questions you may have.

Sincerely,

/s/ Conner Everts  
Co-Facilitator  
Environmental Water Caucus

/s/ E. Robert Wright  
Senior Counsel  
Friends of the River

/s/ Carolee Krieger  
Executive Director  
California Water Impact Network

/s/ Bill Jennings  
Executive Director  
California Sportfishing Protection Alliance

Additional Addressees, all via email:

Maria Rea, Assistant Regional Administrator  
National Marine Fisheries Service

Michael Tucker, Fishery Biologist  
National Marine Fisheries Service

Ryan Wulff, Senior Policy Advisor  
National Marine Fisheries Service

Mike Chotkowski, Field Supervisor, S.F. Bay-Delta  
U.S. Fish and Wildlife Service

Lori Rinek  
U.S. Fish and Wildlife Service

Mary Lee Knecht, Program Manager  
U.S. Bureau of Reclamation

Patty Idloff  
U.S. Bureau of Reclamation

Deanna Harwood  
NOAA Office of General Counsel

Kaylee Allen  
Department of Interior Solicitor's Office

Jared Blumenfeld, Regional Administrator (regular mail)  
U.S. EPA, Region IX

Tom Hagler  
U.S. EPA General Counsel Office

Tim Vendlinski, Bay Delta Program Manager, Water Division  
U.S. EPA, Region IX

Stephanie Skophammer, Program Manager  
U.S. EPA, Region IX

Erin Foresman, Bay Delta Coordinator  
U.S. EPA  
Sacramento, CA

Lisa Clay, Assistant District Counsel  
U.S. Army Corps of Engineers

Michael Nepstad  
U.S. Army Corps of Engineers

Diane Riddle, Environmental Program Manager  
State Water Resources Control Board

cc:  
Congressman John Garamendi  
Third District, California

Congresswoman Doris Matsui  
Sixth District, California