



Butte County Board of Supervisors

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Members of the Board

Bill Connelly | Debra Lucero | Tami Ritter | Steve Lambert | Doug Teeter

April 16, 2020

Delta Conveyance Scoping Comments

Attn: Renee Rodriguez

Department of Water Resources

P.O. Box 942836

Sacramento, CA 94236

Dear Ms. Rodriguez,

The Butte County Board of Supervisors understands the critical importance of achieving the co-equal goals of improving water supply reliability and restoring the Delta ecosystem for the entire State of California. Butte County and the northern Sacramento Valley region have an interest in the overall health and stewardship of the Delta. The northern Sacramento Valley region is the area of origin for much of the water that flows through the Delta, and the region is a major source for California's overall water supply. Local surface water resources include Lake Oroville, as well as a network of creeks and rivers that are tributary to the Sacramento River which feeds into the Delta. The resources in the region are more than just the water supply for the Delta and the State, they provide the life blood for the local agricultural-based communities, economy and environment. Much of the local water supply comes from various groundwater basins throughout the region that are recharged through these creeks and rivers. Therefore, Butte County has a vested interest that the Delta Conveyance Project (DCP) will not adversely affect the local economy, communities and environment.

Butte County hopes that the DCP will not follow the failed attempts of the Bay Delta Conservation Plan (BDCP) and California WaterFix. Butte County actively engaged in the BDCP and WaterFix processes and offered constructive recommendations over the course of its development. The Butte County Board of Supervisors submitted comments on the BDCP Scoping Document (May 14, 2009), requested the formation of a Local Issues Group (March 30, 2010) and commented on the BDCP Public Release Draft (December 14, 2010). On July 25, 2012, the state and federal agencies released documents describing their preferred plan for BDCP. The preferred plan did not address the concerns previously submitted by Butte County. On August 14, 2012, the Butte County Board of Supervisors adopted a Resolution in Opposition to the BDCP. Butte County's list of concerns with the BDCP/WaterFix is more than legal technicalities; the failures would have led to actions that would have ultimately damaged the region's economy, environment and communities. Unfortunately, the previous Administration ignored every suggestion offered by Butte County and intended to move forward with little regard to legal requirements or mitigating impacts. We applaud Governor Newsom for putting an end to the WaterFix project. As the Department of Water Resources (DWR) begins the new Delta Conveyance Project process, we implore DWR to avoid the flawed path of the BDCP/WaterFix. The following summarizes the failings of the BDCP/WaterFix and the recommendations for the DCP.

First, contrary to stated commitments of state and federal agencies, implementation of BDCP/WaterFix would have redirected impacts and imposed obligations on communities, water users and the environment in the northern Sacramento Valley. These impacts and obligations would have occurred despite the fact that the northern Sacramento Valley region was not a party to, or a direct beneficiary of, BDCP/WaterFix. As proposed, the BDCP/WaterFix ignored fundamental state water policies, disregards area of origin water rights, violated the water right priority system and redirects impacts to the northern Sacramento Valley without fully assessing or mitigating those impacts. The DCP must honor the water right priority system, area of origin water rights and not redirect impacts to northern Sacramento Valley.

One of California's fundamental water policies mandates that "each region that depends on water from the Delta watershed shall improve its regional self-reliance for water through investment in water use efficiency, water recycling, advanced water technologies, local and regional water supply projects, and improved regional coordination of local and regional water supply efforts" (Water Code, § 85021). Additionally, the Sustainable Groundwater Management Act of 2014 (SGMA) emphasizes the principle of regional self-reliance by requiring local agencies enact long-term plans to sustain their groundwater basins. Most of the beneficiaries of the DCP are in basins subject to SGMA and the policy of regional self-reliance. The BDCP/WaterFix ignored the cumulative impacts from implementation of SGMA by various groundwater sustainability agencies without any documentation or data. The DCP must account for SGMA and, again, avoid redirecting impacts to the northern Sacramento Valley.

The BDCP/WaterFix would have jeopardized the regional self-reliance of the northern Sacramento Valley. The health, vitality and sustainability of northern Sacramento Valley depends upon the exercise of water rights and honoring area-of-origin rights. The Legislature expressly recognized that water rights and area-of-origin rights shall not be impaired or diminished as a result of any program or project in the Bay-Delta (Water Code, § 85031). Specifically, the BDCP/WaterFix called for extracting more water from the northern Sacramento Valley. The BDCP/WaterFix would deplete and, in some instances, draw down upstream reservoirs to dead pool conditions. The result would have created conditions that prevent other water users from obtaining supplies that they are entitled to under contract or water rights. In doing so, the BDCP/WaterFix would have violated long-standing principles of California water law by causing upstream senior diverters to forego diversions, thereby allowing the continued export of water by junior appropriators. The approach to subvert the area-of-origin statutes is a clear violation of those statutes intended to protect areas of origin, including the protection of northern Sacramento Valley water supplies from injury by export projects.

A more direct impact from the BDCP/WaterFix came from the disclosure that there is an expected increase in groundwater use in the Sacramento Valley to make up for any shortfalls in surface water supply of Central Valley Project (CVP) contractors. The EIR/EIS discussed the potential for the BDCP to result in "minor decreases in water supply availability to CVP water users in the Sacramento Valley" (See *Analysis of Groundwater Conditions in Areas that Use SWP/CVP Water Supplies*, EIR/EIS, p. 7-32, lines 30-40). The estimated decrease in supply is 50,000 acre-feet/year. The section concludes, "[a] 2% increase in groundwater use in the Sacramento Valley to make up for any shortfalls in surface water supply is not anticipated to substantially impact the groundwater resources as long as the additional pumping is not concentrated in a particular area of the valley". No information is provided as to where additional pumping will take place, whether it will interfere with existing water supplies, or whether it will exacerbate existing groundwater overdraft or cause groundwater overdraft in locations where that condition does not presently exist. Despite the acknowledgement that the BDCP/WaterFix would affect Sacramento Valley groundwater, analysis of the impact to the region's groundwater was specifically eliminated. In the EIR/EIS, Chapter 7, *Groundwater* states that for the "purposes of this analysis, the groundwater study area (the area in which impacts may occur) consists of the Delta Region, ... the Upstream of the Delta Region and ...". On page 7-13 the description of the Sacramento Valley points out that portions of the region are showing early signs of declining groundwater elevations. On page 7-37 the EIR/EIS states, "The CVHM domain was reduced by eliminating most of the Sacramento Valley and San Joaquin Valley from the domain when developing CVHM-D. This modification allowed for greater

precision in model output in the Delta Region.” The decision to eliminate the Sacramento Valley from hydrologic modeling demonstrated the disregard of the region and creates an inconsistency within the EIS/EIR. The sensitivity of groundwater basins in the region necessitates that the DCP fully disclose and assess groundwater impacts upstream of the Delta.

The BDCP/WaterFix included a goal of facilitating groundwater substitution transfer programs which is a blatant attempt to redirect impacts. The EIR/EIS Section 5C.10 *Potential Sources of Upstream-of-Delta Water Transfers and Potential Impact* indicated that the BDCP expected additional water from upstream of the Delta without identifying the source of the water. The EIR/EIS ignored any environmental consequence from groundwater substitution programs and failed to acknowledge that groundwater substitution programs must comply with applicable County ordinances. In Butte County, groundwater substitution transfer programs are governed by the Groundwater Conservation Ordinance (Chapter 33 of the Butte County Code). The DCP must fully disclose, assess and mitigate the impacts of the plans to incorporate north of Delta groundwater basins into the state water project.

The DCP should not expect additional water from the northern Sacramento Valley. It must consider that some of the water supplies currently being exported may not be available in the future due to increased demand in the areas in which the water currently being exported originates. California law expressly recognizes the prior right of communities in those areas to water currently being exported, to the extent that water will be needed to adequately supply the beneficial needs of those areas (Water Code, §§ 10505, 10505.5, 11460, 11463 and 11128; also *id.*, §§ 12200-12220). That demand for water and the need to sustain groundwater basins, as required through the implementation of the SGMA, will increase in the Delta and areas north as population grows. The likelihood that less water will be available for export uses is reasonably foreseeable and must be evaluated in the EIR/EIS. The DCP must follow the principle of regional self-reliance.

The DCP and the EIR must fully describe the project’s socioeconomic impacts in every impacted area. The BDCP/WaterFix limited the analysis of socioeconomic impacts to Delta counties (Sacramento, San Joaquin, Yolo, Solano, and Contra Costa Counties). However, as noted elsewhere in the EIR/EIS, the BDCP/WaterFix would have impacted a much larger area. For example, the operational changes to Lake Oroville that were acknowledged in the BDCP/WaterFix. Appendix 5.C (page 5C 1.1) of the BDCP document states that “*No substantial changes in reservoir operations are expected as a result of the BDCP, with the potential exception of Lake Oroville, where the BDCP could shift substantial releases from summer months to spring months under high outflow scenario to contribute to spring outflow criteria*”. Actions through the BDCP/WaterFix would have further eroded the region’s economic, recreation and ecosystem benefit. For example, the BDCP document, Chapter 1 (page 1-21) stated,

*“Because the SWP and CVP water infrastructure is operated as an integrated system, the effects of implementing the BDCP may extend to aquatic systems beyond the Delta, both **upstream** and downstream, and will implicate water operations parameters as well as species and their habitats located in those areas. As such, the BDCP effects analysis (Chapter 5, Effects Analysis) takes into account these upstream and downstream aquatic effects, both positive and negative, and describes, analyzes, and addresses the overall effects of the BDCP. **Areas potentially affected by the implementation of the BDCP located outside of the Plan Area, have been included in the analysis of effects to ensure that all of the potential effects within the action area (all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action), as defined by Section 7 of the ESA, have been adequately assessed.**”*

Although the BDCP made this statement, the EIS/EIR failed to assess the direct and indirect impacts from the BDCP outside of the Delta. The DCP must assess the impacts to the region north of the Delta consistent with State and Federal law. The DCP must analyze the socioeconomic impacts of the entire affected environmental setting of the proposed project and alternatives.

As part of the alternatives evaluation, DWR should consider non-conveyance alternatives. Many of the proposed DCP objectives could be met through actions other than a new Delta conveyance. The alternatives analysis of the DCP EIR should not be limited to alternative conveyance options. For example, the proposed Improvement of levees and establishing setback levees could meet the objectives of the DCP. The objective to protect water supply reliability can be met through actions other than a through Delta conveyance. As previously stated, south of Delta water exporters must follow state policy by reducing their reliance on the Delta and manage the water available. The intended objective to provide operational flexibility to improve aquatic conditions has previously been shown to result in more harm to aquatic species that provide protection. An objective and robust cost/benefit analysis in the DCP EIR should be conducted.

The impacts from climate change must be fully addressed in the DCP EIR. Specifically, the DCP EIR must consider the most recent version of the California Climate Assessment. As noted in the March 5, 2020 comments from Restore the Delta, DWR has failed to incorporate the latest scientific findings from the Forth California Climate Assessment. Avoiding the reality of water supply reliability from climate change will negate a credible EIR. We call upon DWR to fully evaluate the water supply reliability and other implications from climate change.

Finally, the DCP must clearly identify funding sources that are not based on speculation or assumptions. The funding of the DCP must clearly identify the increased cost to ratepayers. The DCP cannot assume that State Water Project Contractors have committed to providing funds for the construction and operation of new water facilities, as well as for mitigation necessary to address impacts to terrestrial and aquatic impacts associated with construction and operation. The State Water Project Contractors are continuing negotiations with the Department of Water Resources on financing of the DCP. Despite the extensive negotiations agreement remains out of reach. As a State Water Project Contractor, Butte County would derive no benefit from the DCP and has gone on record opposing any financial obligation. Additionally, if the DCP assumes that other funding sources (e.g., federal government, state bond funds) would provide funding commitments for the DCP, those funding sources must be substantiated.

In closing, DWR must avoid the flaws, inconsistency and violations of state and federal law of the BDCP/WaterFix. The EIR for the DCP must comply with State water law and fully assess the environmental and socioeconomic impacts, including those in the northern Sacramento Valley. Further, if the actions of the DCP would result in damage to the region's economy, environment and communities, the Butte County Board of Supervisors would vehemently opposed the DCP and will consider taking appropriate measures to protect the County's economy, environment and communities. However, we remain hopeful that the DCP represents a new approach to address water supply reliability and ecosystem restoration in the Delta.

Sincerely,



Steve Lambert, Chair
Butte County Board of Supervisors

Attachments:

Board of Supervisors comment letter, May 14, 2009
Board of Supervisors comment letter, March 30, 2010
Board of Supervisors comment letter, December 14, 2010
Board of Supervisors Resolution adopted August 14, 2012

cc: Butte County Board of Supervisors
Karla Nemeth, Director, DWR
Senator Jim Nielsen
Assemblymember James Gallagher
Assemblymember Megan Dahle
Paul Yoder, Yoder, Shaw, Antwih
Paul Gosselin, Butte County, Director – Water and Resource Conservation



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May 14, 2009

Ms. Delores Brown, Chief
Office of Compliance
Department of Water Resources
P.O. Box 924836
Sacramento, CA 94236

Re: Bay-Delta Conservation Plan Scoping Document Comments

Dear Ms. Brown:

In August 2008, Butte County submitted comments to the Delta Vision Blue Ribbon Panel on the Delta Vision Strategic Plan. In those comments Butte County voiced support for the restoration of the Delta ecosystem through the Bay Delta Conservation Plan (BDCP). We continue to support the BDCP process but remain concerned over the lack of project specifics, scientific uncertainty of the options and a disregard for assuring protections throughout the Delta watershed.

Butte County and the entire northern Sacramento Valley region is a critical component of the Delta watershed and the Area of Origin for much of the water that flows through the Delta. Our surface water resources include the crown jewel of the State Water Project (SWP) located at Lake Oroville, the headwaters of the Central Valley Project (CVP) located at Lake Shasta, as well as a network of creeks and rivers that are tributary to the great Sacramento River which feeds into the Delta. In addition, much of our local water supply comes from the various groundwater basins throughout the region that are recharged through these creek and rivers.

Our water resources are more than the source of water for the Delta. They provide the life blood for our agricultural-based communities, economy and environment. The delicate balance of our natural resources comes from the care and planning of local governments, private landholders and water agencies. For these reasons, local governments within our region have a vested interest in the overall health and stewardship of the Delta as well as

assuring the sustainability of water resources in our region.

The BDCP scoping document focuses primarily on options to address ecosystem issues within the Delta estuary. However, many of the options could result in depletion of water resources in the upstream area of the Delta watershed. Unfortunately, the BDCP neither references nor considers potential impacts to the Delta watershed. The ecological sensitivity of the upstream portion of the Delta watershed are worthy of protection. For example, Butte Creek is home to one of the last remaining wild sources of spring run Chinook salmon. Ignoring the ecological sensitivity of the Delta watershed could end one of the few remaining wild runs of a threatened species.

In pursuing options to protect the Delta ecosystem, we recommend that the BDCP recognize and provide for equal protection for the upstream portion of the Delta watershed. The BDCP will be a failure if it focuses solely on protections of the Delta estuary while relegating assessment of potential impacts to the greater Delta watershed to the end of the process. Such an approach would likely result in redirecting impacts to the upstream Delta watershed and be counterproductive to the ecosystem goals of the BDCP.

We look forward to continue working with you on a scientifically and ecologically sound way to restore the Delta. Please feel free to contact Paul Gosselin, Director, Butte County Director of Water and Resource Conservation in this regard.

Sincerely,

Bill Connelly

Bill Connelly,
Chair,
Butte County Board of Supervisors



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March 30, 2010

Karen Scarborough, Undersecretary
California Natural Resources Agency
1416 Ninth Street, Suit 1311
Sacramento, CA 95814

Re: Bay Delta Conservation Plan (BDCP) Local Issues Group

Dear Ms. Scarborough:

Butte County and the northern Sacramento Valley region have an interest in the overall health and stewardship of the Delta and the outcome of the BDCP process. The northern Sacramento Valley region is the Area of Origin for much of the water that flows through the Delta and therefore, our region is a major source for California's overall water supply picture. Our surface water resources include the crown jewel of the State Water Project (SWP) located at Lake Oroville, as well as a network of creeks and rivers that are tributary to the great Sacramento River which feeds into the Delta. Our region's water resources are more than the water supply for the Delta and the state. They provide the life blood for our agricultural-based communities, economy and environment. Much of our local water supply comes from the various groundwater basins throughout the region that are recharged through these creek and rivers.

The BDCP process offers a great opportunity to remedy many of the challenges facing the Delta ecosystem and uncertainty over the state's water supply system. Balanced against those benefits is the potential that the BDCP effort could result in unintended impacts to Butte County and much of the northern Sacramento Valley region. Based on the significance of the BDCP, Butte County requests that the BDCP Steering Committee form a local issues group for the northern Sacramento Valley region. Such a step will enhance the dialogue between the BDCP program and upstream interests.

We understand the challenges facing the Delta and the importance of a successful BDCP. Equally, I hope you understand our legitimate concerns over the potential impacts to upstream areas and our sincere desire

to play a constructive role in the BDCP process. I look forward to your acceptance of our recommendation that the BDCP Steering Committee establish a local issues group for the northern Sacramento Valley region in order to provide meaningful and constructive input into the BDCP process. Please contact Mr. Gosselin Director of the Butte County Department of Water and Resource Conservation by phone at (530) 538-4343 and by email at pgosselin@buttecounty.net.

Thank you for your consideration.

Sincerely,

Bill Connelly

Bill Connelly, Chair
Butte County Board of Supervisors

Cc: Paul Gosselin, Butte County



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December 14, 2010

Karen Scarborough, Undersecretary
California Natural Resources Agency
1416 Ninth Street, Suit 1311
Sacramento, CA 95814



Re: Bay Delta Conservation Plan (BDCP) Public Release Draft

Dear Ms. Scarborough:

Butte County and the northern Sacramento Valley region have an interest in the overall health and stewardship of the Delta and the outcome of the BDCP process. The northern Sacramento Valley region is the Area of Origin for much of the water that flows through the Delta and therefore, our region is a major source for California's overall water supply picture. Our surface water resources include the crown jewel of the State Water Project (SWP) located at Lake Oroville, as well as a network of creeks and rivers that are tributary to the great Sacramento River which feeds into the Delta. Our region's water resources are more than the water supply for the Delta and the state. They provide the life blood for our agricultural-based communities, economy and environment. Much of our local water supply comes from the various groundwater basins throughout the region that are recharged through these creek and rivers.

The BDCP process offers a great opportunity to remedy many of the challenges facing the Delta ecosystem and uncertainty over the state's water supply system. Balanced against those benefits is the potential that the BDCP effort could result in unintended impacts to Butte County and much of the northern Sacramento Valley region. As the BDCP process has progressed, Butte County and others in the region voiced concerns about the direction of the BDCP and offered constructive comments. Unfortunately the BDCP Steering Committee chose to ignore our comments, leaving the November 18, 2010 Progress Report on the BDCP ambiguous, legally suspect and potentially harmful to northern Sacramento Valley.

Butte County's concerns with the BDCP regarding water rights, funding, impacts/obligations of parties

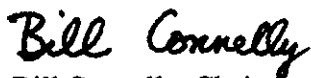
outside of the Plan Area are best articulated in the letters from the Northern California Coalition (November 4, 2010) and Somach Simmons & Dunn on behalf of the Glenn Colusa Irrigation District (September 3, 2010). These concerns arise from the BDCP's failure to provide a clear description of its scope and a full assessment of its potential impacts. During the BDCP process, Butte County and others in the region sought clarity about potential impacts but were been given vague reassurances. For example, contrary to the expectation that the BDCP would remain within the geographic scope of the Delta (i.e. Plan Area), statements exist in the BDCP that the Plan Area may be expanded during implementation if needed (Chapter 1, page 21). The notion of expanding the Plan Area at some future date creates enormous concern and questions the integrity of the BDCP process.

The concerns over the lack of clarity are not isolated to those relegated as outsiders. Recent controversies and disagreements among the BDCP Steering Committee members illustrate the lack of clarity of the BDCP. The internal controversies raise a heightened concern that when push comes to shove among the BDCP participants on balancing the "co-equal" goals, the politically expedient step will be to shift the impacts and burdens outside the Plan Area and to entities not seeking regulatory permits.

During the BDCP scoping process in 2009, Butte County raised concerns about the impact of the BDCP on Lake Oroville. Unfortunately, the draft BDCP acknowledges that it will potentially affect the operation of the State Water Project facilities, including Lake Oroville, but a specific assessment of recreational, ecologic and economic impacts were not conducted. Lake Oroville is more than a part of the SWP system. Lake Oroville is an integral to our recreation, economic and ecosystem for those in its Area of Origin. The Butte County remains in dispute with the State of California over its failure to meet its obligation regarding the Lake Oroville facility. Actions through this BDCP that further erode Lake Oroville's economic, recreation and ecosystem benefit cannot be dismissed or ignored. The BDCP must include a detailed analysis on the specific changes to the operation of Lake Oroville and assess those impacts in the Environmental Impact Statement/Environmental Impact Report.

We understand the challenges facing the Delta and the importance of a successful BDCP. However, we believe that the BDCP must address the concerns raised by Butte County and others in the region. In doing so, the BDCP proponents will take a meaningful step to recognize and provide for protection for the upstream portion of the Delta watershed while achieving the goals of the BDCP in a legal and moral manner.

Sincerely,


Bill Connelly, Chair

Cc: Butte County Board of Supervisors
Paul Gosselin, Butte County, Department of Water and Resource Conservation



Resolution No. 12-096

RESOLUTION OPPOSING THE BAY DELTA CONSERVATION PLAN (BDCP)

WHEREAS, the California Natural Resources Agency and the U.S. Department of Interior are the lead agencies in preparing the BDCP in partnership with other interested parties; and;

WHEREAS, the BDCP is being developed in compliance with the Federal Endangered Species Act (ESA), the California Endangered Species Act and the California Natural Communities Conservation Planning Act (NCCPA), and;

WHEREAS, the BDCP intends to meet the co-equal goals of improving the Delta ecosystem and water supply reliability, and

WHEREAS, the Butte County Board of Supervisors has offered the BDCP lead agencies specific actions to ensure a successful BDCP without impacting the northern Sacramento valley:

- Establish a Local Issue Group to improve consultation with the northern Sacramento valley;
- Formalize an assurance that water rights and area of origin water rights would be protected;
- Avoid devastating local and regional economic impacts from the lowering storage in Lake Oroville;
- Assess local and regional socioeconomic impacts;

WHEREAS, on July 25, 2012 the State of California and U.S. Department of Interior announced their preferred option for the BDCP; and

WHEREAS, the preferred BDCP option fails to address the concerns of Butte County and the region, and;

WHEREAS, the preferred BDCP option may cause Butte County and the region severe economic, societal and environmental harm, and;

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Butte County Board of Supervisors **OPPOSES** the Bay Delta Conservation Plan until such time adequate assurances and protections are provided to Butte County and the region.

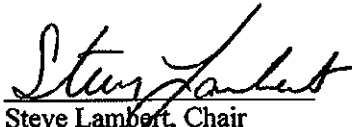
PASSED AND ADOPTED by the Butte County Board of Supervisors this 14th day of August, 2012 by the following vote:

AYES: Supervisors Connelly, Wahl, Kirk, Yamaguchi and Chair Lambert

NOES: None

ABSENT: None

NOT VOTING: None


Steve Lambert, Chair
Board of Supervisors

ATTEST:
Chief Administrative Officer
and Clerk of the Board of Supervisors

by 