



March 19, 2014

Attention: Imported Water Committee

Authorize the General Manager to submit a comment letter on the Bay Delta Conservation Plan Draft EIR/EIS. (Action)

Staff Recommendation

Authorize the General Manager to submit a formal comment letter on the Bay Delta Conservation Plan Draft Environmental Impact Report/Environmental Impact Statement.

Alternatives

- 1) Modify the list of subject areas to be included in the comment letter.
- 2) Do not authorize submittal of a comment letter.

Fiscal Impact

There is no fiscal impact related to submittal of a comment letter.

Background

This report presents the preliminary questions and concerns identified during review of the Bay Delta Conservation Plan (BDCP) Draft Environmental Impact Report/Environmental Impact Statement (EIR/EIS) and associated documents.

The BDCP is a joint Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) intended to restore and protect ecosystem health, water supply, and water quality within a stable regulatory framework. The objective of the BDCP is to obtain long-term state and federal Endangered Species Act (ESA) permits for the operation of the State Water Project (SWP) and Central Valley Project (CVP).

The issuance of ESA permits is a discretionary action subject to the California Environmental Quality Act (CEQA) and National Environmental Policy Act (NEPA). Both CEQA and NEPA are designed to ensure that the potential environmental impacts of proposed activities are disclosed to decision-makers and the public before the activities are approved. For proposed activities having the potential to significantly affect the environment, CEQA and NEPA require the preparation of an Environmental Impact Report (EIR) and Environmental Impact Statement (EIS), respectively. When both state and federal ESA permits are necessary, and to provide consistency, the state and federal lead agencies can agree to prepare a single joint environmental review document known as an EIR/EIS.

For the BDCP process, the lead agency for CEQA is the California Department of Water Resources (DWR); the lead agencies for NEPA are the U.S. Bureau of Reclamation (USBR), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). These agencies prepared a joint Draft EIR/EIS document that analyzes the potential environmental impacts of implementing the BDCP. The Draft EIR/EIS and Draft BDCP were released for a 120-day public review period commencing on December 13, 2013. Recently, the public review period was extended another 60 days, with public comments due no later than June 13, 2014.

Discussion

The Board has received numerous briefings on various aspects of the BDCP over the past nine months. This memo focuses specifically on the CEQA/NEPA environmental compliance process;

BDCP affordability for the Water Authority service area is being evaluated separately and will be the subject of future Board discussions.

While the Draft BDCP contains 22 separate Conservation Measures (CM), the Draft EIR/EIS only analyzes CM 1 (Water Facilities and Operations) in sufficient detail to allow construction and operation. The remaining 21 CMs are examined programmatically and will require additional CEQA and/or NEPA review before implementation. The public review Draft EIR/EIS and accompanying Draft BDCP consist of well over 30,000 pages of information, not including the numerous studies and reports cited or referenced in either document. These supporting documents are also subject to public review; one document of particular interest is the Final Draft Conceptual Engineering Report, dated October 1, 2013, which was the subject of Board discussions on January 9 and February 13, 2014.

Because the BDCP documentation is so extensive, the Draft EIR/EIS, the Draft BDCP and the Final Draft Conceptual Engineering Report were reviewed by staff using an inter-departmental multi-disciplinary approach. Reviewers of the Draft EIR/EIS focused on the sufficiency of the document in identifying and analyzing possible impacts on the environment and ways in which the significant effects of the BDCP might be avoided or mitigated. Importantly, staff did not attempt to recreate any technical studies or analyses. BDCP staff and technical consultants were made available to clarify specific issues and answer technical questions which helped provide Water Authority staff a clearer understanding of the BDCP environmental and planning documents. Key subject areas identified to date are included in the attached table; staff intends to submit a formal comment letter by the June 13, 2014 deadline.

Next Steps for BDCP

After the close of the public review period, the lead agencies will consider all comments received and prepare a written response to each. The responses may require revisions to the Draft EIR/EIS and/or Draft BDCP. Responses will be incorporated into the Final EIR/EIS and made available for public review prior to certification/adoption of the document. Once the Final EIR/EIS is certified/adopted, the lead agencies must decide whether or not to approve the Final BDCP. This will entail execution of an Implementing Agreement (IA) that describes the roles and responsibilities of each HCP/NCCP permittee, as well as each wildlife agency (USFWS, NMFS, and California Department of Fish and Wildlife), to implement the various BDCP provisions. Concurrent with execution of the IA, the wildlife agencies will make required biological findings for each species and issue separate federal and state ESA permits. In order to issue permits, the wildlife agencies must be assured that adequate financial resources are designated to implement the BDCP. Once permits are issued, from the perspective of the state and federal ESA, the conservation measures contemplated by the BDCP can commence.

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Reviewed by: Glenn A. Farrel, Government Relations Manager
Approved by: Dennis A. Cushman, Assistant General Manager

Attachment: Key Subject Areas for BDCP Comment Letter

Key Subject Areas for BDCP Comment Letter

Draft BDCP	
Governance	
Permit Oversight Group	Active participation of permitting agencies in day-to-day decision-making, including having veto authority, during implementation is inappropriate.
Responsible Agencies	All HCP/NCCP permit applicants should be listed as CEQA responsible agencies.
Authorized Entity Group	Current membership is too limited; must include all HCP/NCCP permit holders.
Implementation Office	Unclear how this new governmental office would be organized; extent of authority is confusing.
Implementation	
CM1	Lack of a minimum guaranteed supply yield resulting from Decision Tree Process. Discussion on non-contractor access to facilities for water transfers is lacking.
CM4	Permit timing assumptions for tidal community restoration on public lands seem unrealistically optimistic without further substantiation. Additional time to implement restoration affects timing and availability of potential supply yields.
CM3, CM4, CM 9, CM10	Implementation schedule to restore over 44,000 acres of habitat in first five years seems unrealistically optimistic without further substantiation. Additional time to implement restoration impacts timing and availability of potential supply yields.
Implementation Agreement	Proposed Implementing Agreement that HCP/NCCP permit recipients must sign is missing and should be included in Final document.
Funding	
Contractor Obligations	Necessary contractual agreements for individual SWP and CVP contractors to fund CM1 is unclear; process for revising SWP/CVP allocations if individual contractors decline to participate is not defined.
State/Federal Obligations	Firm commitments to ensure state and federal funding for CM 2-22 is lacking.
Public Obligations	Discussion of alternate funding sources should bonds for CM 2-22 not be approved by the public is missing.
HCP/NCCP Findings	Provisions to ensure adequate funding by participants as required for HCP/NCCP approval are lacking.
Economic Benefits	
Unit Costs	Calculation of unit cost of BDCP Alternative and alternate supplies appear to be based on different cost methodologies. Cost comparison between BDCP and alternate supplies should be on “apples to apples” basis e.g. annual debt service plus operating costs divided by annual yield.
Alternative Water Supplies	The purpose of incorporation of alternative water supplies in benefits analysis is unclear and may lead to a comparison that is not “apple to apples” in terms of what makes up the costs.

Reduced Seismic Risk	The basis for the estimated amount of water supply available for post-earthquake scenario is not included in the document and the assumptions used need to be detailed.
Demand Forecast	Analysis uses outdated SANDAG growth forecast which likely overestimates future demand in early years. Updated Series 13 forecast should be used in final document.

Draft EIR/EIS	
Environmental Analysis	
Growth Inducement Impacts	Significance findings not supported by analysis, which details unknowns concerning when and where growth will occur and lack of state jurisdiction over land use decisions. Speculative to determine significance with so much uncertainty.
Water Use by Hydrologic Region	Water use estimates used in Growth Inducement analysis do not have most up to date demographic forecast, which affects demand forecast model output.
Environmental Baseline	
Multiple Baselines	Use of different baselines for CEQA/NEPA and economic analysis is confusing and requires better explanation as to the purpose, basis and use of each baseline.
Decision Tree	
Future Studies	Timing and extent of future scientific studies to determine spring and fall outflows is not defined.
Water Operations	Incomplete information on timing and extent of studies and monitoring required to ensure flow compliance.

Conceptual Engineering Report	
Schedule	
Proposed Schedules	The schedules in the Summary and Appendix C are inconsistent
Constrained Project Tasks	Several of the tasks identified in the Appendix C schedule have their completion dates constrained.
Cost Estimate Accuracy	
Contingency	Cost estimate accuracy is listed as +50 percent to -25 percent accurate, yet 36 contingency percent is stated. Inappropriately low contingency estimate given current 10% level of design.
Project Risks	
Risk Matrix	Project risks should be identified and managed using a risk matrix.
Property Acquisition	A property acquisition plan is missing.
Tunnel Methodology	Additional design is necessary to define the type of tunnel boring machines (TBM); how many TBMs will be needed; tunnel muck disposal; tunnel ventilation; and adequate skilled labor to operate the TBMs.
Power Requirements	Cost and impact of providing two separate power supplies to key BDCP facilities are not identified or analyzed compared to benefits of redundancy.
Access and Utility Conflicts	Time and resources necessary to relocate roads and associated utilities at two Sacramento River intake locations has not been identified.

Access and Utility Conflicts	Plan to address relocation or avoidance of known and unknown natural gas wells is missing.
Lack of Geotechnical Information	Additional discussion of required geotechnical information is needed and how it will be obtained in order to proceed to the next phase of design.
Project Delivery Method	No evaluation of possible alternate project delivery methods.
Available Resources	No evaluation of the availability of tunnel boring machines, borrow material, specialized contractors and technical experts necessary to complete the project.