UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
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OFFICE OF THE REGIONAL ADMINISTRATOR

David Murillo, Regional Director
Bureau of Reclamation, Mid-Pacific Region
2800 Cottage Way, MP-700
Sacramento, CA 95825

Subject: Supplemental Draft Environmental Impact Statement
Bay Delta Conservation Plan/California WaterFix CEQ# 20150196

Dear Mr. Murillo:

The U.S. Environmental Protection Agency has reviewed the Bay Delta Conservation Plan (BDCP)/California WaterFix Supplemental Draft EIS pursuant to the National Environmental Policy Act, Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and our NEPA review responsibilities under Section 309 of the Clean Air Act. The San Francisco Bay/Sacramento-San Joaquin Delta is an important estuarine system, supporting over 750 species and supplying drinking water to 25 million people and irrigation water to 4 million acres of farmland.

Background

The WaterFix project evolved from the BDCP, which was proposed as a Habitat Conservation Plan (HCP) to support the issuance of a 50-year incidental take permit under Section 10 of the Endangered Species Act (ESA). A joint federal and state Draft Environmental Impact Statement/Draft Environmental Impact Report (DEIS/DEIR) for the BDCP was released on December 13, 2013, with the U.S. Fish and Wildlife Service (FWS), National Marine Fisheries Service (NMFS), and Bureau of Reclamation (Reclamation) as joint federal lead agencies for the DEIS, and the California Department of Water Resources (DWR) as the State lead agency for the DEIR. The BDCP included a major habitat restoration program, targeting over 150,000 acres, as well as a proposed new conveyance facility (tunnels) to transport water from the Sacramento River to existing pumps in the South Delta.

In August 2014, the federal and State lead agencies committed to supplement/recirculate the DEIS/DEIR in response to public comments received on that document, including those submitted by EPA on August 26, 2014. In a collaborative effort to resolve the issues that we had raised, EPA met frequently with DWR and the original federal lead agencies for several months after submitting our comments on the DEIS, and we appreciate the attention given to the analysis of the proposed project's impacts on specific water quality parameters.

In April 2015, Reclamation and DWR announced fundamental changes to the proposed project and changed its name from BDCP to the California WaterFix. The WaterFix project focuses on the construction and operation of proposed new water export intakes on the Sacramento River to divert water into a proposed 40 mile twin tunnel conveyance facility. Reclamation is now the sole lead federal agency. The proposed federal action has changed from implementing a Habitat Conservation Plan under

Section 10 of the ESA to modifying operations of the federal Central Valley Project (CVP) in order to accommodate new water conveyance infrastructure.

Project Benefits

The proposed project and alternatives would provide greater water supply reliability for the users of exported Delta water and would reduce certain adverse impacts of the CVP and State Water Project (SWP) on fish. The SDEIS shows that transporting water in tunnels would reduce the risks to CVP/SWP exports in several ways. The proposed tunnel project would provide greater protection against sudden degradation of exported freshwater caused by the catastrophic failure of the earthen levees in the Delta and the consequent intrusion of saltwater that could foul supplies of water for municipal, agricultural and industrial consumption. Given the potential for earthquakes and floods in the region and the numerous earthen levees encircling the Delta islands, water supply security is a significant concern. Transporting water via tunnels would substantially address longer term threats to export water quality caused by sea level rise, with its concomitant salt water intrusion. The proposed project would also enhance CVP/SWP project flexibility by adding a northern diversion point. The current system, which relies solely on the southerly intakes, provides limited operational flexibility and at times results in reverse flows in Old and Middle Rivers which are associated with decreased survival of endangered fishes. Added flexibility would enable better real-time management of the export operations in response to observed movement of special status fish populations. Furthermore, the SDEIS predicts that flexible use of the proposed new intake facilities, combined with the establishment of biological criteria for operation, the installation of state-of-the-art fish screens, and the reduction of reverse flows in Old and Middle Rivers, would reduce the entrapment of certain fish species into poor habitats and the entrainment of fish into the CVP/SWP system. By making these physical and operational changes in the Delta, the proposed project would address some of the many identified stressors to aquatic resources in the Delta. In addition, although not part of the WaterFix project, the State of California has launched a separate EcoRestore initiative to pursue the restoration and stewardship of 30,000 acres of floodplains, riparian forests, and wetlands within the Delta over the next four years. As this significant conservation effort was not part of the SDEIS, it was not reviewed or rated as part of our NEPA review.

Project Purpose and Need

As stated in the SDEIS, the purpose and need for the WaterFix project, as was the case for the BDCP, is to advance the co-equal goals set forth in the Delta Reform Act of 2009. Those are (1) to provide a more reliable water supply for California, and (2) to protect, restore, and enhance the Delta ecosystem. EPA recognizes the crucial public health, economic, and ecological importance of both goals. The proposed project and the alternatives evaluated in the SDEIS support the water reliability component, but largely defer actions necessary to protect water quality and aquatic life to the future.

As has been discussed throughout the development of this project, the most essential decision for achieving the desired balance between water reliability and restoration of the Bay Delta ecosystem is how freshwater flows through the Delta will be managed. This key decision is not described in the SDEIS and is, instead, deferred to future regulatory processes administered by the State of California in consultation with federal resource and regulatory agencies. The decision by the State of California and Reclamation to defer these decisions means that the impacts of the WaterFix project on the Delta ecosystem cannot be fully evaluated at this time, and that any attempt to describe the environmental impacts of the project is necessarily incomplete. Once those decisions, described below, are concluded, the evaluation of possible impacts and consideration of alternatives can be completed.

Aquatic Habitat and Water Quality
As noted above, the project has been significantly revised since the initial DEIS, yet the SDEIS relies on modeling results that are based on the BDCP alternatives. Information in the SDEIS indicates that the modeling completed for the BDCP alternatives is not necessarily representative of the environmental effects resulting from the WaterFix alternatives. NMFS and FWS concluded in 2008 and 2009, respectively, that continued operation of the CVP/SWP would jeopardize the existence of delta smelt, winter-run Chinook salmon, green sturgeon and several other fish species. Even with the predictive limitations of the modeling, the SDEIS predicts a loss of valuable aquatic habitat for many fish species in the Delta and upstream tributaries due to the combined effects of the WaterFix project, CVP/SWP exports, climate change, and increased water diversions upstream of the Delta in the Sacramento River Basin. These species have experienced sharp population declines in the last decade and showed record low abundance over the last five years. Information presented in the SDEIS shows that the WaterFix project could reduce habitat conditions for delta smelt, winter-run Chinook salmon, green and white sturgeon, striped bass, and American shad, and result in a decline of longfin smelt abundance. For example, according to the SDEIS, winter-run Chinook salmon and sturgeon may be negatively impacted when migrating past new intakes, because significant volumes of freshwater flows are diverted at the intakes resulting in less water that is also of lower quality downstream of the intakes. The SDEIS also predicts that selenium concentrations in sturgeon would increase by 12-19% as a result of the proposed project, and would exceed the FWS and NMFS benchmark for adverse impacts to sensitive species.

The modeling results presented in the SDEIS show predicted exceedances of a salinity standard at both Prisoner's Point and Emmaton. The water quality modeling predicts that the Western Delta and Suisun Marsh will become saltier over time, which is likely to cause increased exceedances of chloride criteria near municipal water supply intakes. Mitigation actions are identified in the SDEIS to prevent exceedances, and the compliance history shows that salinity standards have rarely been exceeded in non-drought years. Nevertheless, if the proposed project operations contribute to a general increase in salinity in the Delta, the flexibility that Reclamation and DWR have to operate the system to ensure that water quality criteria are met will be seriously diminished, and the two agencies will have little room for error in operating the system to protect beneficial uses and achieve the co-equal goals.

While the impacts stated above may be mitigated by appropriately timed increased flows and habitat restoration, the WaterFix project does not propose additional flows in the Delta, nor does it propose significant habitat restoration (See EcoRestore above). CVP/SWP operation scenarios that propose additional outflow, such as BDCP Alternatives 7 and 8 from the DEIS, could provide substantially more water for resident and migratory fish and provide benefits to aquatic life; however, these were not evaluated as alternatives in the SDEIS.

Pending Regulatory Actions
Several pending regulatory actions are important to understanding the full impacts of the project. First, the State Water Resources Control Board (State Water Board) will be acting on Reclamation's and DWR's recent request to add points of freshwater diversion from the South Delta to the Sacramento River in the North Delta (at the northern end of the new conveyance facility). This State regulatory action is likely to include terms and conditions, including flow requirements, that could modify proposed WaterFix operations sufficiently to produce environmental and water supply effects that have not been analyzed in the SDEIS. Additionally, the State Water Board is in the midst of comprehensively updating water quality standards through the Bay Delta Water Quality Control Plan (Bay Delta WQCP). The updated standards could result in freshwater flow management provisions and corresponding changes to water supply diversions throughout the watershed that have not been analyzed

in the SDEIS. The Delta is listed as impaired for several water quality parameters under Section 303(d) of the CWA. EPA is working closely with the State Water Board to ensure that the revised standards are sufficient to address impaired water quality conditions in the Delta and reverse the declines in the fish species. The updated standards could result in altered environmental and water supply impacts that have not been analyzed in the SDEIS.

Second, ESA Section 7 consultation with FWS and NMFS regarding the construction and operation of new conveyance facilities is underway. We understand that the FWS and NMFS are not relying solely on the SDEIS for the Section 7 consultation process and that additional information is being generated to identify criteria for operating the new WaterFix facilities, to be included in the Biological Opinions and Incidental Take Permits. This information and such operating criteria could result in environmental impacts that have not been analyzed in the SDEIS.

Third, construction of WaterFix's new water intake and conveyance infrastructure would require authorization under Clean Water Act Section 404, as well as a Rivers and Harbors Act Section 14 modification of levees permit, from the U.S. Army Corps of Engineers. Water quality and aquatic life analyses in the SDEIS show that the proposed project may cause or contribute to violations of state water quality standards and significant degradation of waters of the U.S.; therefore, additional avoidance and minimization of environmental impacts and/or compensatory mitigation may be necessary in order to comply with CWA Section 404. It is also likely that additional information and analysis not included in the SDEIS will be required to support those permit decisions and that information and analysis will better inform the overall evaluation.

All of the above listed regulatory processes will develop new data and likely new compliance requirements beyond those provided in the SDEIS. EPA understands that these as yet incomplete regulatory requirements will be addressed through the pending actions by the State Water Resources Control Board, FWS, NMFS, and Corps of Engineers. These key decisions, and the analysis that will support them, are not yet done. Our statutory responsibility is to review the NEPA document that is in front of us at this time, however, the reality is that these future regulatory processes will have an important bearing on the project. Because these subsequent regulatory processes are likely to generate real world operational scenarios that are significantly different from the operations proposed in the SDEIS, the information is not yet available to reach definitive conclusions concerning the environmental impacts of the proposed project.

The tunnels that are discussed in detail in this draft NEPA document are an important improvement for water reliability, but the choices that will affect the operation of the tunnels, and thus the overall impacts of the project, will not be made until future regulatory actions are completed. These future decisions will supply the missing pieces necessary to determine the environmental impact of the entire project. The unusual circumstances of this project mean that the information is not yet available for a complete evaluation of environmental impacts – and for that reason a rating of *"3"(Inadequate)* for the SDEIS is required – but EPA expects that the project will continue to move forward, with those necessary additional pieces to be supplied as the later regulatory processes proceed. Under the unique circumstances of this case, the additional data, analysis and public input associated with these future regulatory processes are expected to provide the needed supplemental information to allow a full review of the environmental impacts without requiring another draft supplemental EIS. EPA will have the opportunity to support Reclamation, other federal agencies, and the State of California as they collectively continue to define an environmentally sound and effective project that would operate in a manner that simultaneously supports water supply reliability and enhances the Delta's ecosystem. EPA

believes that the upcoming actions by USFWS, NMFS, the State Water Board, and the Corps of Engineers will be critical next steps in the design and review of the project, and EPA looks forward to continuing to work with these agencies as the project moves forward.

If you have any questions, please contact me at 415-947-8702. Alternatively, your office may contact Kathleen Johnson, Enforcement Division Director. Ms. Johnson can be reached at 415-972-3873.

Sincerely,

Jared Blumenfeld