



July 17, 2014

Via email (BDCP.Comments@noaa.gov)

BDCP Comments
Ryan Wulff, NMFS
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814

Subject: City of Antioch comments on the Draft Bay Delta Conservation Plan (BDCP) and associated Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS)

Dear Mr. Wulff:

The City of Antioch ("City") is submitting comments on the Bay-Delta Conservation Plan ("BDCP") and associated Environmental Impact Report/Environmental Impact Statement (EIR/EIS) during the public review period.

The City has reviewed the BDCP and the associated EIR/EIS and has found that not only are there significant adverse impacts to the City, but also that these documents are legally, factually, and scientifically flawed as described in detail within the documents attached to this cover letter. Even given the flaws in the document, it is clear that the Proposed Project will result in substantial impacts to the City's water supply, the City's financial condition, and the quality of life of the City's residents. The City does not believe that the EIR/EIS meets the fundamental purposes of CEQA or that these concerns can be addressed by responding to comments. Rather, the City asks that the EIR/EIS be withdrawn and reworked substantially.

Antioch has pre-1914 appropriate water rights. The City of Antioch, located along the San Joaquin River in the western portion of the Sacramento and San Joaquin River Delta ("Delta"), is one of the oldest towns in California. Since the 1860s, Antioch has obtained all or

part of its freshwater supply directly from its intake on the San Joaquin River (and from the tributary flow of the Sacramento River) pursuant to a pre-1914 appropriative water right with a priority of 1867.¹

BDCP will decrease the City's ability to use water at the City's intake. The BDCP project is expected to result in substantial impacts to the City, and no mitigation measures are proposed to address these impacts. The EIR/EIS indicates significant adverse impacts to the City's beneficial use of water and the City's ability to provide a reliable water supply to its citizens. As shown in **Appendices A** and **C**, DWR's model runs describing the proposed project show significant increases in salinity at the City's drinking water intake, and DWR's modeling shows conclusively that most salinity impacts are due to the BDCP project and not to sea level rise or other factors. For example, modeling of Alternative 4 Scenario H1 shows that the number of days Antioch will be able to use its intake during September is expected to decrease by 85%.

BDCP will cause significant impacts to recreation and the City's economy. As presently proposed, the BDCP will result in increased salinity in the western Delta, including at Antioch. Antioch's unique historic and cultural legacy within the Delta has been as a freshwater location for well over 100 years. Antioch is known as the gateway to the western Delta providing freshwater boating, recreation, and fishing. The BDCP has a detrimental effect on this sector of Antioch's economy. While the EIR/EIS recognizes the potential (primarily upstream) short-term impacts of construction on recreation, the EIR/EIS fails to adequately address the long-term impacts of the BDCP on recreation and fishing at Antioch. Further, the EIR/EIS fails to address any impacts that will be caused by higher salinity to public trust resources at Antioch, such as impacts to aesthetics, aquatic plant and wildlife, and navigation. See **Appendix B** for further details.

The BDCP analysis is technically deficient. As noted in **Appendix A**, the EIR/EIS analysis has several significant flaws and cannot be used to assess the significance of the impacts that will be caused by the project. The EIR/EIS uses a baseline model run that is not representative of existing conditions and that results in underestimating the impacts of the project. The "decision tree" that will be used to determine project operations (to select the appropriate operational scenario) has not yet been established. As a result, the City anticipates that impacts due to BDCP will be even worse than the impacts described as "significant and unavoidable" in the EIR/EIS.

¹ Antioch has vested pre-1914 water rights to water from the San Joaquin River as well as to the tributary flow of the Sacramento River via Georgiana and Three Mile Sloughs. This was determined as a matter of law by the California Supreme Court. Note also that information presented in **Appendix D** demonstrates conclusively that waters at Antioch prior to about 1918 were historically fresh, not saline.

No mitigation is detailed to address significant impacts at Antioch. The proposed mitigation strategy to address increased salinity in the western Delta consists entirely of additional study. Study is not a mitigation measure but there are mitigation measures that should be part of the BDCP. The EIR/EIS states that the impact to salinity in the western Delta “is considered to remain significant and unavoidable” (EIR/EIS at p. 8-429).

Additional details on these comments, plus additional legal comments, are provided in **Appendices A** through **D** that accompany this letter.

The Proposed Project will result in unacceptable impacts to the City. In summary, our review of the BDCP, the EIR/EIS, and the model results describing the Proposed Project indicate that the Project will result in unacceptable impacts to the City and its 106,000 residents. “Significant and unavoidable” impacts are predicted for the City’s water supply and water quality, and no mitigation is envisioned to address these impacts. As a result, the changes induced by the Proposed Project are expected to result in serious detrimental impacts to the City’s water supply, financial condition, and quality and way of life.

The City appreciates the opportunity to provide comments and requests that the EIR/EIS be withdrawn and reworked substantially. The City looks forward to working with all parties and agencies responsible for the preparation of the BDCP and the EIR/EIS as our comments are addressed.

Sincerely,



Steve Duran,
City Manager

Encls: Appendix A: Flow Science technical comment letter
Appendix B: Matthew Emrick’s legal comment letter
Appendix C: Additional technical analysis (Flow Science letterhead)
Appendix D: Historical reports, prior submittals, etc. (for the current record)
(Appendices by Regular Mail to Recipient Only)

cc: Felicia Marcus, State Water Resources Control Board
John Laird, California Secretary of Natural Resources
Senator Dianne Feinstein
Senator Barbara Boxer
Congressman John Garamendi
Congressman Jerry McNerney
Congressman George Miller
Senator Mark DeSaulnier
Senator Lois Wolk

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Assemblymember Susan Bonilla
Assemblymember Jim Frazier
Karen Mitchoff, Chair, Contra Costa County Board of Supervisors
Antioch City Council
Lynn Tracy Nerland, City Attorney
Ron Bernal, Public Works Director/City Engineer