



July 17, 2014

Via Email (BDCP.Comments@noaa.gov)

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

Subject: City of Antioch Specific Comments on the Draft Bay Delta Conservation Plan (BDCP) Draft Implementing Agreement

Dear Mr. Wulff:

The City of Antioch (“City”) is submitting the following comments on the Bay-Delta Conservation Plan’s (BDCP) Draft Implementing Agreement (“IA”). The City has reviewed the Draft BDCP IA and has several concerns regarding potential impacts to the City’s water supply, the City’s financial condition, and the quality of life of the City’s residents that will result from the implementation of the BDCP.

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 Therefore, we are very concerned about the following issues with the Draft Implementing Agreement:

1. The IA lacks any operational safeguards or criteria to protect senior water rights holders such as Antioch who will be impacted from BDCP operations as the result of increased salinity. For example, the Decision Tree process only applies to outflows to satisfy biological objectives. The lack of mitigation measures in the BDCP and the lack of any specific operating mitigation criteria in the IA appear to indicate that the BDCP process has no intent to mitigate adverse impacts to senior water rights now or in the future.

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.

2. The IA and the BDCP appear to be attempting to change water rights priorities within the Delta. The vast majority of water to be diverted by the BDCP will go to agricultural uses – not to environmental uses. The BDCP agricultural diversions have lower priority rights to water than does Antioch, which provides drinking water to over 106,000 residents. The BDCP’s lower priority agricultural diversions, however, will significantly impact Antioch’s ability to use its higher priority rights to provide water for drinking purposes as well as for health and safety purposes within the City. By failing to provide any mitigation or operating criteria to protect Antioch’s superior water rights, the IA is effectively attempting to give the BDCP’s junior water rights higher priority than Antioch’s superior water rights.
3. The Five Year and Annual Operating Plans required in the IA do not require the protection or consideration of the impacts on non-BDCP-related in-Delta water quality. The IA fails to explain (or set forth operational criteria) how BDCP planned actions to meet export water supply and BDCP-related ecosystem goals will meet the State Water Resources Control Board (“SWRCB”) water quality requirements under various SWRCB decisions.
4. The IA fails to incorporate any specific funding and operational provisions for mitigation to protect and sustain non-BDCP-related in-Delta water quality, beneficial uses, or non-BDCP-related public trust resources. Again, this indicates that the BDCP does not intend to mitigate such impacts at all.
5. The IA provides certain guarantees and assurances to BDCP participants and beneficiaries regarding flows and water that could potentially conflict with the BDCP’s requirements to comply with other applicable laws such as the Delta Protection Act and the co-equal goals of the Delta Reform Act. The IA commits only to operating to address covered species and provides no commitment or operational provisions to comply with other legal requirements with respect to water supply and water quality such as protecting in-Delta water supply and rights.
6. The IA does not provide adequate funding assurances for habitat conservation, restoration and management, which are the primary measures to protect and recover the specified covered species. Instead, the IA provides a broad and non-binding outline of potential funding sources including alleged funding sources that are “generally available” and potential future state and federal bonds and grants. The IA fails to specify how funding would be collected and secured from the contractors. Given the projected construction and operation costs of the BDCP conveyance and habitat restoration, the IA needs to provide firm funding commitments and sources of such funding. It would certainly be ironic and unjust if in-Delta water users adversely impacted by the BDCP end up having to pay portions of operational and restoration costs via bonds or administrative fees.

7. The IA governance structure includes project beneficiaries (e.g. contractors) in position to make critical determinations of implementation and operation. This creates a conflict of interest. At the same time, the governance structure fails to provide any consultation with potentially impacted, non-BDCP parties and no administrative remedies for those parties (unless such parties agree to become part of the BDCP process).
8. The Bureau of Reclamation operates the largest export project and is not a party to the IA. And yet, Reclamation has specified duties under the IA. Reclamation's compliance with its obligations under the IA is a yet to be disclosed "other" agreement. It is simply not possible to properly assess and comment on the IA, the BDCP and the EIR/EIS without having all applicable implementation documents provided for review.
9. The SWRCB needs to be a significant part of BDCP's governance structure given that BDCP operations will impact Delta water quality, non-covered public trust resources and downstream beneficial uses such as senior water rights. There needs to be a streamlined administrative process to allow impacted Delta landowners, recreational users, water right holders and others to address such impacts directly to the SWRCB.

The City appreciates the opportunity to provide these comments on the IA and looks forward to receiving a detailed response.

Sincerely,



Steve Duran
City Manager

cc: Byron Buck, State and Federal Water Contractors Agency
Terry Erlewine, State Water Contractors
Felicia Marcus, State Water Resources Control Board
John Laird, California Secretary of Natural Resources
Mark Cowin, Department of Water Resources
Senator Diane Feinstein
Senator Barbara Boxer
Congressman John Garamendi
Congressman Jerry McNerney
Congressman George Miller
Senator Mark DeSaulnier
Senator Lois Wolk
Assemblymember Susan Bonilla
Assemblymember Jim Frazier

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