BDCP New Direction Talking Points Memo

Issue: CA Department of Water Resources is proposing to alter the BDCP by transitioning to a tunnels-only construction project without the restoration components of a Habitat Conservation Plan.

(1) EPA has been engaged with the federal lead agencies since 2008. We sent Administrative Draft comments in 2012 and 2013, and were engaged in review of the public draft in 2014.
(2) DWR's new direction presents significant procedural issues. (b)(5)(Deliberative) [redacted]
(3) Substantive (b)(5)(Deliberative) [redacted] issues could still remain under the new approach. The operation of the tunnels could still violate water quality standards. The tunnels' construction and proposed operation could likely have negative effects on endangered aquatic species.

Additional Talking Points

- EPA has been engaged from the very beginning and has not given any of the federal or state agencies any late hits (see attached BDCP Record of Communication). We sent scoping comments in 2008 and 2009 and Administrative Draft comments in 2012 and 2013. During our review period of the public draft in 2014, we briefed the heads of the federal lead agencies that the proposed project would violate water quality standards.
- NEPA is a procedural statute. This new approach will have a new lead agency, a new project scope, a new proposed action, and potentially a new purpose and needs.
- Most, if not all, of EPA's issues will likely remain. The operation of the tunnels could still violate water quality standards- salinity and flow. The tunnels' construction and proposed operation could likely have negative impacts across the species of fish- endangered, threatened and resident.
- The potential for public confusion is high. NEPA requires fair notice about what the project entails. Since the proposed action is changing, the public will need to have an opportunity to weigh in.
- The lead agency will change and it is unclear what the federal action that will be the subject of this DEIS will be.
- Most impact analyses will be applicable but significant technical editing will need to be undertaken. One possible problem is that some of the analyses for water quality impacts for the tunnels included hypothetical restoration footprints. How will the impacts be appropriately separated if the restoration will not be proposed?
- Mitigation for the impacts from the construction and operation of the tunnels will need to be included in the DEIS. Does DWR plan to have this document serve the Corps needs related to Section 14 of RHA and Section 404 of the CWA?
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