Federal Agency BDCP Issues/ Concerns

January 10, 2011

The Federal agencies have identified several issues/concerns pertaining to the ongoing BDCP process that potentially threaten the BDCP schedule and might adversely affect the quality of the product. We continue to raise these issues in the hope that solutions can be found that will not imperil either the quality of BDCP or its schedule.

BDCP Schedule

Alternative 1A Analysis. There continues to be a lack of analysis for Alternative 1A (Scenario 6 with fall X2) in any product the Federal agencies have received thus far, including the Entrainment, Flow and Fish Population technical appendices. The State and ICF have made it clear that the BDCP Effects Analysis will provide detailed analyses of both Alternative 1 and 1A. However, the modeling for Alternative 1A has apparently not been completed, and only Alternative 1A CALSIM data has been provided to date. DWR has scheduled a one-hour meeting on 1/12/12 to discuss the "analytical approach" for this analysis, but it is not clear what work has actually been done. The situation presents two potential problems for meeting the current schedule: (1) ICF will need to add the Alternative 1A analysis to all products produced thus far and re-submit them either in-part or in-total; and (2) the Federal agencies will need to go through the entire review/comment process on applicable documents. This will need to be added to the schedule.

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Analysis of EIS/EIR Biological Effects. ICF has not provided lead agencies with sufficient detail on their proposed methods or analytical framework for how they intend to compare the biological effects of the EIS/EIR alternatives in their "Batch C" chapters (including lack of issuance of the EIR/EIS Alternatives Screening Analysis report). Much attention has been given to the framework and methods for the effects analysis of the 2 BDCP alternatives (1 &1A), but there has been limited information on the architecture of the "lower level" analysis (Alternatives 1-9) that will be conducted for the NEPA/CEQA process. For NEPA/CEQA it will be necessary for ICF to have a robust, quality analysis that allows for distinction of biological effects among the various alternatives. This is related to the schedule issues above in that we feel lead agencies must receive, review, and comment on a description of the proposed EIS/EIR analytical methodologies before that analysis occurs. This review is not accounted for in the current schedule.

Incomplete Contractor Products. Many of the products the agencies are receiving from BDCP consultants are incomplete or have significant sections that are "under development", stating completed information will follow. As an example, several critical appendices are missing from the EIR/EIS Chapters. In those situations, to provide a complete review, Federal agency staff will need to review the completed documents when they become available before release of the public draft. This will require an additional review not accounted for in the schedule.

Contractor Product Rescheduling. There are instances where document release dates have been or are being modified by BDCP consultants, including additional unexpected information and documentation. While this may be necessary to better insure a more complete and thorough

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product, it impacts the ability of Federal agencies to plan reviews, could reduce their thoroughness, and potentially hampers inclusion of agency recommendations and comments into BDCP documents given schedule mismatches. Considering no change is being proposed to the BDCP schedule, modification of release dates should be avoided if possible as they may adversely impact the timeliness and adequacy of Federal agency reviews.

Alternative BDCP Intake Analysis. A technical team was created to review and provide recommendations on the 2010 Steering Committee Proposed Project intake placement and operation. The team created a report regarding intake placement, size and operations related to river depth, screen height, varying diversion capacities amongst the intakes, sweeping and approach velocity minimums and phasing. To date, the analysis of phasing, intake sites below Sutter and Steamboat sloughs, and operational criteria have not been provided. Including these analyses and agency review of analytical documents will require additional time in the schedule.

Addressing Cooperative Agency Comments. As of December 2011, the BDCP Environmental Coordination Team (BECT) is meeting again. This team includes lead and cooperating/responsible agencies as allowed under NEPA and CEQA, respectively. Associated with this participation and the provision of their technical expertise, these groups will provide recommendations and comments on the EIR/EIS. There is no time allotted in the current BDCP schedule for considering comments from cooperating/responsible agencies in the NEPA/CEQA process.

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Product Quality

Need for Agency Review of Revised Drafts. Federal agency staffs have not been provided revised draft versions of revised documents to check for comment inclusion or addition of new information. The absence of this "close-the-loop" step is problematic, as evident in management of the Entrainment Technical Appendix. A revised version of this document was released to the Delta Science Program for scientific review without Federal agency review. The document included new language and did not address all agency comments, resulting in several extremely problematic statements. One example of the serious problems in the revised document is found on Table A-2, including a "*BDCP Conservation Measure: Increase total amount of water exports (relative to currently constrained export levels)*". Another example is in section A.3.4.4, which states that EBC2 (existing biological conditions baseline #2) "*captures the requirements of the ESA Section 7... baseline*". This is not true and the Federal agencies have stated this fact on many occasions.

Submittal of provisional materials for independent science review, such as unrevised appendices or an un-reviewed roll-up strategy, has set an unfortunate precedent for the conduct of the more substantial review planned for early 2012. The schedule already calls for the Federal agencies to get the first view of the critical "roll up" document at the same time it is being sent for independent science review. Having other products still in an unrevised, not agreed-upon status at the time of that review could be counterproductive and will undermine the quality, value, and acceptability of the review. The Federal lead agencies staffs believe schedules should reflect the necessity of "closing-the-loop" on the review and revision of all products, including those where independent science review will occur after agency reviews. The development of complex

scientific products like the BDCP effects analysis is inherently an iterative process, as the Federal lead agencies have argued repeatedly, and as the BDCP independent review panel also clearly stated in its October report.

Inclusion of Scientific Review Recommendations. Inter-agency agreement has existed for some time on the need for scientific review as a continuing part of the BDCP process. However, the process to ensure inclusion of recommendations from scientific review needs to be clear and include the Federal agencies. A plan for responding to these comments is in the works, but has not yet been released for our review. Moreover, the evaluation and inclusion of these recommendations is not currently reflected in the BDCP schedule. Agencies should work to better identify and appropriately include these review recommendations. Example reviews that have occurred include:

- Anderson, J., R. Kneib, D. Reed and K. Rose. 2011. *Bay-Delta Conservation Plan Science Advisors Draft Report on BDCP Goals and Objectives for Covered Fish Species.* Reprinted in Appendix G.

- National Research Council. 2010. *A Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California's Bay Delta*. Washington, DC: National Academies Press. 104 pp.

- National Research Council. 2011. *A Review of the Use of Science and Adaptive Management in California's Draft Bay Delta Conservation Plan*. Washington, DC: National Academies Press. 93 pp.

- Review Panel Summary Report. 2011, *Bay Delta Conservation Plan (BDCP) Effects Analysis Conceptual Foundation and Analytical Framework and Entrainment Appendix. Sacramento, CA: Delta Science Program.*

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Biological Goals and Objectives. Federal and state resource agencies have provided new information to help complete BDCP terrestrial and aquatic goals and objectives, however they are not finalized. As a result, much of the existing analysis and documentation lacks sufficient "direction" to allow comment on whether the actions might address biological needs. At this time, more refined goals and objectives are being formed for aquatic and terrestrial species and habitats. A synergistic effects discussion seems essential to identify necessary changes to aquatic targets as a result of changed terrestrial targets and vice versa. If new goals and objectives require a reevaluation of BDCP Conservation Measures, the alternatives and analyses may need to be modified, possibly impacting the schedule.

Timely Data Access. The Federal agencies continue to seek access to existing data used for BDCP analyses, including that for hydrologic, hydrodynamic and GIS analysis. This information is essential for Federal agencies to evaluate methods, assumptions and results of potential BDCP alternatives. Currently, we are evaluating BDCP documentation about these analyses without fully understanding the validity of the analysis and what the results might mean. Including review of appropriate data will require additional time and may affect the schedule.

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Resolution Process

The Federal lead agencies would like to propose that these issues (and any similar issues that may be suggested by the State) be designated as the primary topics for discussion at upcoming 5-Agency meetings. At those meetings the agencies need to come to agreement on the appropriate steps necessary to resolve each of these urgent issues.

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