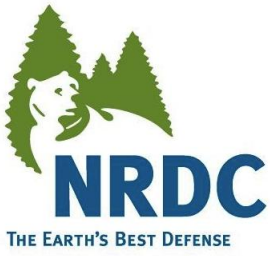


March 1, 2012

Dr. Gerald Meral
Deputy Secretary
Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

Re: BDCP Draft Effects Analysis

Dear Dr. Meral,

Our organizations are writing in response to the draft Bay Delta Conservation Plan (BDCP) Effects Analysis, released on February 29, and the statements of Secretary Laird, Director Bonham, and Director Cowin regarding that draft. We remain committed to an effective and visionary plan to achieve the co-equal goals in the Delta Reform Act and to meet the requirements of the Endangered Species Act and the Natural Community Conservation Planning Act. As the draft Effects Analysis confirms, the project analyzed therein falls far short of these goals. Accordingly, we welcome the Agency's affirmation that this proposal does not represent its proposed project, and that it is committed to a transparent and scientifically rigorous process going forward. To this end, we look forward to working closely over the next few months with state and federal water and wildlife agencies; multiple water contractor interests; local governments; and many other constituencies that share a vital interest in the restoration of the Delta in defining a more viable project.

Our organizations believe that there are viable BDCP project proposals that could meet the co-equal goals of restoring the Delta ecosystem and improving overall water supply reliability. In order to build and maintain public confidence necessary for the BDCP to succeed, such proposals must be subjected to a thorough Effects Analysis based upon clearly defined Biological Objectives for the BDCP. There is no substitute to the

foundation of sound and comprehensive scientific analysis in building a deeper understanding of the ecological crisis in the Delta and the need for a successful long-term restoration and conservation strategy. While we recognize that the BDCP is limited in scope and cannot address all conditions or stressors that threaten the ecological viability of the Delta, the BDCP is also a key building block for achieving long-term sustainable conditions in the Delta. In order to succeed, the BDCP must also be in alignment with the emerging Delta Plan (still in development); updated Bay-Delta Water Quality Control Plan standards (now before the State Water Resources Control Board) and attain other important outcomes including enhanced overall regional flood protection; achieve multiple land use and habitat objectives; and promote regional agricultural & economic viability; and complement regional planning, open space and conservation strategies. Overall, the BDCP must be implemented in a manner that recognizes that operation of the State Water Project and Central Valley Project do cause substantial impacts in the Delta and that those impacts are significant in the drier two-thirds of water years. Because a primary purpose of the BDCP is the conservation of covered endangered and threatened species – ultimately leading to recovery of these species – clear operational controls and restraints on exports should be determined by a governance structure that is directed by the wildlife agencies to ensure that the habitat conditions of the Delta drive viability of particular export strategies.

Specifically, our organizations have identified the following elements as the basis of a credible project meeting the co-equal goals. For reasons described elsewhere, we believe that the project parameters used in the recent ICF Effects Analysis would not qualify for necessary permits from water and wildlife agencies:

Balanced Water Supply for Urban, Agricultural and Natural Systems

BDCP needs to include operational requirements that reflect the best available science regarding flow needs of covered species and are consistent with anticipated changes to Bay-Delta water quality standards and other regulations. To help meet this need, our organizations have worked with BDCP participants to develop a set of operations for a dual conveyance proposal – referred to as "Proportional Watershed Flow" or "Scenario 7a" operations. We believe that this scenario should serve as the starting point for a credible operations plan that has the potential to improve ecosystem conditions by increasing and maintaining flows through the ecosystem – especially during the drier two-thirds of water years – as part of a comprehensive program to conserve covered species and restore the Delta ecosystem. We have received encouraging modeling results from Proportional Watershed Flow runs to date. We are in the process of completing additional model runs of the Proportional Watershed Flow operations to assess operations across a range of potential new facility sizes. Those runs should allow us to further refine these operational rules and assess the costs and benefits associated with different facility sizes, including the amount of water available for export on a sustainable basis. That amount is likely to be less than current average exports. As the Public Policy Institute of California stated recently, "(g)iven the extreme environmental degradation of this region,

water users must be prepared to take less water from the Delta, at least until endangered fish populations recover."

Designing Delta operations that can be permitted will require the consideration of upstream issues. BDCP has defined its scope of authority as the legal Delta and encompassing only the CVP and SWP export contractors. These contractors should not alone be expected to meet the full flows and other measures needed to protect and restore public trust resources in the estuary. Other upstream water users, including other CVP and SWP water users, can and do have a significant impact on the amount of flow diverted from the Delta, and must also contribute a fair share to ecosystem recovery. A comprehensive Delta solution of which BDCP is a part must address these other water users, through a more comprehensive ESA section 7 analysis of CVP/SWP operations and through updated State Water Resources Control Board decisions.

Investment in Additional Non-export Water Supplies

Improving water supply reliability entails addressing the physical security of California's water infrastructure and ensuring protection from significant water supply interruption due to earthquakes, levee breaks, or sea level rise. However, it does not necessarily require increased average exports from the Delta. In fact, the crashing Delta ecosystem demonstrates that we have exceeded the limits of sustainable water diversions from the estuary, and must reduce our reliance on the Delta by investing in alternative ways to meet our state's future water supply needs. Thankfully, these alternative water supply tools are available, cost-effective and plentiful.

The upper end of estimates included in the Department of Water Resources' 2009 water plan update shows that water agencies can generate up to 8.4 MAF of water by investing in just four tools: improved urban and agricultural efficiency, more water recycling, and better groundwater management. DWR's more conservative estimates suggest that these tools can generate approximately as much new water supply from non-export sources as the total amount that the CVP and SWP currently export from the Delta. Even partial development of these alternatives would allow reduced reliance on Delta water supplies in the future, as required by State law. In addition, the State Water Resources Control Board has set a goal of generating 1 MAF by 2030 from stormwater capture and reuse. Any Delta solution must include significantly increased investment in these local and regional water supply enhancement tools beyond the minimum efficiency requirements already ensconced in state law.

Funding for Timely and Targeted Habitat Restoration

Significant restoration of functioning wetlands habitat is a vital component of recovering the Delta ecosystem. Most BDCP alternatives establish a target of approximately 116,000 acres of wetland habitat restoration in the Delta. As the National Academy of Sciences noted, habitat restoration must be targeted to meet biological performance

objectives, and must be implemented in a timely fashion. A Delta solution must ensure that significant progress in implementing habitat restoration will be made over the next 15 years to begin to contribute to ecosystem recovery before any new facility imposes new and uncertain stressors on the system. An ambitious goal is only the beginning of an effective habitat restoration program – the CALFED Plan, for instance, included a significant Delta habitat restoration goal that has not been implemented. BDCP must ensure that habitat restoration is science-based and that the funding needed to fully implement this program will be available as needed on a continuing basis.

Linkages to Assure Biological Performance

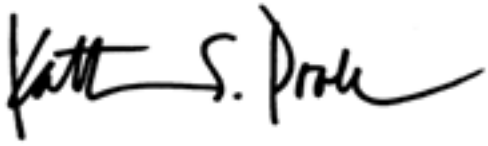
BDCP proposes to issue a 50-year permit, covering 63 species, to operate a massive new facility, the impacts of which are highly uncertain, and which will not be constructed and operational for at least 15 years. Strong biological performance assurances will be necessary to ensure that any such facility is operated responsibly and in a manner that provides measurable ecosystem benefits. Such assurances are also essential to the implementation of habitat restoration, adaptive management and other BDCP program components. In order to ensure restoration of the Delta ecosystem, biological assurances must be even stronger if the BDCP contains water supply assurances. For example, fish and wildlife agencies must ensure that projects are implemented to achieve biological goals and objectives. We will continue to develop biological assurance mechanisms that we have proposed over the past several years.

Comprehensive Analysis Pursuant to Widely Accepted Principles

After developing one or more viable projects incorporating the above elements, those projects must be analyzed pursuant to scientific methodologies and frameworks agreed to by the permitting agencies and consistent with generally accepted scientific practices. Project elements should be designed and selected for inclusion in the Plan on the basis of their ability to achieve specific Plan objectives. Uncertainties and assumptions regarding the ecosystem response to physical changes to the Delta must be clearly identified and a detailed adaptive management program developed to direct research, experimentation, and performance monitoring and assessment efforts. To this end, the Plan must ensure that implementation of Plan elements will be phased as appropriate and adjusted during implementation to better allow achievement of biological goals and objectives and to incorporate new information. To date, BDCP has not adopted that approach, but has instead performed analyses that have been criticized by the permitting agencies, independent scientific review panels, and academia. Our organizations have developed detailed recommendations laying a credible and scientifically defensible framework for completing the design and analysis of BDCP elements, described elsewhere.

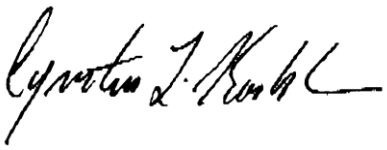
We recommend that BDCP focus on addressing these five priority issues to develop a revised alternative or alternatives.

Sincerely,



Katherine S. Poole
Natural Resources Defense Council

Kim Delfino
Defenders of Wildlife



Cynthia Koehler
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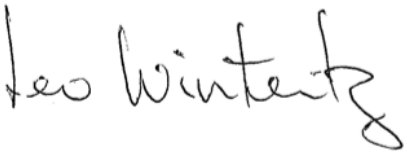

Leo Winternitz
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