October 21, 2010

David Hayes
Deputy Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Lester Snow
Secretary
California Natural Resources Agency
1416 Ninth Street, Suite 1311
Sacramento, CA 95814

RE: Selection of CEQA/NEPA Alternatives for BDCP

Dear Deputy Secretary Hayes and Secretary Snow:

On behalf of the Bay Institute, Defenders of Wildlife, Environmental Defense Fund, and Natural Resources Defense Council, we are writing to express our substantial concerns regarding the selection of CEQA/NEPA alternatives to be evaluated in the Bay Delta Conservation Plan (BDCP) process. These previously expressed concerns have not been addressed to date, and are perpetuated in the "Draft Alternatives to be Considered for Full Modeling," distributed on September 29, 2010 via email. The range of operational and conveyance alternatives in this document does not reflect the range previously and explicitly agreed to by the BDCP Steering Committee, fails to consider a full range of alternatives as required by last year's State legislation, relies on operations that the federal fishery agencies have been on record stating may result in jeopardy to one or more listed species, and fails to include the operational alternatives requested by the State Water Resources Control Board.

It is true that we have studied our existing system in detail and we know it well. But we are considering an investment well in excess of 10 billion dollars along with fundamental changes in how water would move upstream of, within and from the Delta. Until much more work has been done to construct an adequate analytical basis for determining what the proposed project should be, including a technically credible effects analysis and a more robust set of alternatives, it is premature to consider selecting long term operational and sizing alternatives for detailed analysis as the proposed project. Instead, we urge you to commit to the following process for developing the range of alternatives for the EIS/EIR:

1. Revise the range of long term operations based on (a) information from a technically credible effects analysis (assuming the serious defects of the current analysis have been corrected), (b) the potential ability of different alternatives to meet quantified biological objectives for the BDCP, and (c) the findings of the State Water Resources Control Board's Delta flow criteria report, as part of the iterative process promised in the BDCP Steering Committee (initially committed to at the Jan 29, 2010 meeting and restated numerous times since) and in compliance with the Delta Reform Act of 2009.

2. At a minimum, at least one of the alternative operational regimes to be evaluated must reduce exports as compared to the existing biological opinions, as specifically requested by the State Water Resources Control Board. All of the alternatives should demonstrate how the project will be consistent with the state's policy of reducing reliance on the Delta for future water supplies as established in the Delta Reform Act.

3. Once the long term operational range is revised per point (1), analyze a matrix of operations and canal sizes (including 3,000 cfs and smaller canal sizes), so that every canal size is analyzed under a range of operational criteria, including Range B.

4. Maintain an initial focus on correcting the defects of the effects analysis, quantifying biological objectives, and revising the long term operations range. Defer analysis of the effects of near-term operations or further development of the near-term operations range in order to avoid the mistakes made in analyzing the long-term operational alternatives.

We believe that this approach is far more likely to result in a successful BDCP process and final plan. On the pages that follow, we explain the flaws in the current approach and the rationale for this proposal.

First, it is important to recognize that as of now, there are no "BDCP Proposed Operations." On January 29, 2010, the BDCP Steering Committee agreed to analyze a range of operations for purposes of analysis only. The meeting notes from that date confirm that, "A point was made that the proposed operations column has been approved for purposes of analysis only and is not the Steering Committee's final approved BDCP proposed operations. It is expected that the Full Effects Analysis will provide information sufficient to identify operating parameters for initial water operations and a range for the adaptive management of operations." After discussion, "The Steering Committee generally agreed that the Full Effects Analysis should be commenced, bearing in mind that this is an iterative process in which the Full Effects Analysis informs the Steering Committee whether changes to the conservation strategy are necessary." *See* BDCP Steering Committee Meeting Notes from January 29, 2010. Likewise, several of the NGOs wrote a letter to the Steering Committee dated July 21, 2009 confirming that these operations were solely for analytical purposes and did not represent proposed operations. A decision to use this inaccurately-named "midpoint" of the range as proposed operations not only runs counter to these commitments but also ignores the guidance from the preliminary review by federal agencies, as discussed below.

Second, the so-called "proposed operations" for analysis provide substantially weaker protections than the requirements in the existing biological opinions, notwithstanding the fact that BDCP must achieve greater protection for listed species (rather than merely avoiding jeopardy and adverse modification). The Fall X2 measure for delta smelt, the San Joaquin E:I measure for salmon, and OMR measures for salmon and smelt all are weaker or nonexistent in what has been variously described as the BDCP long term proposed operations, the middle column operational range, or the "Initial Operational Criteria" in the State's discussion document (Appendix A). Unsurprisingly, the federal fish agencies have expressed concerns for over a year that these operating criteria likely cannot be permitted under the ESA (a concern shared

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repeatedly by many of the NGOs in written and verbal comments).. All of these parties have questioned whether the "proposed operations" will avoid jeopardy, let alone contribute to recovery – and questioned whether the current effects analysis is adequate to evaluating the impacts of those operations.

Third, to date our understanding is that full modeling of the effects of Range B in the long term operational criteria has never been done, including a sensitivity analysis of canal sizing with these operating criteria (if such analysis has been done, it has never been presented to the Steering Committee). There has been limited analysis of portions of the Range B operational criteria, but there has never been an analysis of the criteria as a whole using the full suite of modeling tools. *See, e.g.,* "Analysis of Tunnel Sizing Informational Briefing Only," July 1, 201 (sizing analysis that includes analysis with increased outflow and more protective OMR requirements, but never with both in place). The Steering Committee committed to a full analysis of Range B, and this analysis is critical to making preliminary determinations about the appropriate range of long-term operations.

Fourth, the State legislation adopted last year, which many of the BDCP participants supported, requires that BDCP analyze a full range of operational criteria and conveyance alternatives (including capacity). *See* Water Code section 85320(b)(2)(A)-(B). That legislation also directed that BDCP "be informed by" the Delta flow criteria report prepared by the State Water Resources Control Board. *See* Water Code section 85086(c)(1). To analyze these flow criteria, it will be necessary to develop an operations scenario that incorporates substantial elements of the flow criteria and preliminarily apportions the burden of fully protecting Public Trust values among the CVP, the SWP and upstream water users. To date, little to no analysis of the SWRCB's Delta flow criteria report has occurred in BDCP, with respect to the Public Trust flows, their underlying biological objectives or the State Board's scientific analysis. Finally, the legislation also established a state policy of reducing reliance on the Delta, and investing in alternative sources, for future water supplies. *See* Water Code section 85021. However, the existing analysis fails to meaningfully consider any alternative which reduces Delta exports and/or which includes actions that reduce water supply reliance on the Delta as a component of BDCP.

Lastly, the State Water Resources Control Board has explicitly stated that BDCP should consider a wide range of alternatives, that the analysis should include alternatives that reduce delta exports as compared to the existing biological opinions, and that the analysis should include an alternative that supports a more natural Delta outflow (and potentially Delta inflow) hydrograph. *See* letters from Dorothy Rice to Delores Brown dated May 30, 2008 and May 15, 2009.

Analysis of a wide range of alternatives will be necessary not only to indentify initial operating criteria for the BDCP, but to determine an appropriate adaptive management range. A successful BDCP will depend on a broad adaptive management range that can be adjusted to accommodate uncertainty and improved scientific data, and allow for project operations to best meet both water supply and ecosystem objectives.

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In light of these concerns, it is premature to select a final suite of alternatives for analysis at this time. Instead, we strongly recommend that BDCP adopt the iterative process outlined on the first page of this letter to develop alternatives for the BDCP EIS/EIR.

Sincerely,

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The Bay Institute

Kim Delfino
Defenders of Wildlife

Laura Harnish
Environmental Defense Fund

Doug Obegi
Natural Resources Defense Council

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