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Defenders of Wildlife
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Natural Resources Defense Council

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Re: **Conveyance and Project Operations Alternatives for the BDCP and the Delta Plan**

We are writing to offer the recommendations of our organizations regarding the consideration of alternative approaches to water conveyance and water management in the development of the BDCP and the Delta Plan. Both are at critical points and face tight timelines for the development of draft plans. We believe that a sound approach to analyzing alternative approaches is critical to the development of credible draft plans and to avoiding unnecessary delays.

The recommendations in this letter are confined to water conveyance and water management issues. Both the BDCP and the Delta Plan must address additional issues, such as habitat restoration. The Delta Plan must also address a broader range of land use, flood management and other issues. In each of these areas, the consideration of alternatives will be an important step in the planning process.

We are encouraged by recent progress by federal agencies regarding the development of biological goals and objectives for the BDCP process (e.g. Federal Agency White Paper on Application of the 5-point Policy to the Bay Delta Conservation Plan, 4/29/10.) We are hopeful that this letter can contribute to a similar resolution of critical outstanding issues regarding the development and analysis of alternatives. With this in mind, we offer the following recommendations.

The Development and Analysis of Alternatives Should be Undertaken Early in the Development of the HCP and the Delta Plan.

The discussion of the analysis of a full range of alternatives in the BDCP process has frequently been focused on the CEQA/NEPA process, also known as the DHCCP process. Those statutes require the analysis of a reasonable range of alternatives. We support a robust analysis of alternatives in that process, and will provide comments as appropriate, as that effort moves forward. However, we believe that the development and analysis of a full range of alternatives should begin immediately, and should not wait until the preparation of a NEPA/CEQA document. There are several reasons why the early development and analysis of alternatives is particularly appropriate in the BDCP and Delta Plan processes:

SB 7X 1. This legislation requires the BDCP to consider a range of alternatives, including a "reasonable range of flow criteria, rates of diversions and other operational criteria" and a "reasonable range of Delta conveyance alternatives, including through-Delta, dual conveyance, and isolated conveyance alternatives and including further capacity and design options." Water Code §§ 85320(b)(2)(A) and (B). Likewise, the Council is required to "promote options for new and improved infrastructure related to the water conveyance in the Delta." *Id.* at § 85303. Therefore, the consideration of alternatives is fundamental to the BDCP and the Council's legislative mandate, not merely to compliance with other legal requirements. As a result, the consideration of alternatives must be integral to these planning processes.

Integrated Planning: Both of these efforts are focused on the development of an integrated approach to Delta management. A broad and even-handed analysis of alternatives is fundamental to integrated planning efforts, particularly in a system as complicated as the Delta.

Section 10 of the ESA: The ESA requires the analysis of alternatives to take of listed species. As explained in the joint U.S. Fish and Wildlife Service/National Marine Fisheries Service Habitat Conservation Planning Handbook, "Under the Endangered Species Act [Section 10(a)(2)(A)] and Federal regulation [50 CFR 17.22(b)(1), 17.32(b)(1), and 222.22], a conservation plan submitted in support of an incidental take permit application must detail … [a]lternative actions the applicant considered that would not result in take, and the reasons why such alternatives are not being utilized." HCP Handbook, p. 3-10. The Bay-Delta is an extraordinarily complex system, with many listed species under state and federal law. If the BDCP and Delta Plan wait until they enter the ESA compliance process to begin a comprehensive analysis of alternatives, it may require reopening analytical work that was undertaken earlier in the planning process, resulting in unnecessary delays.

Cost-Effectiveness: Implementing the BDCP could cost well over ten billion dollars. The full cost of a comprehensive Delta Plan will be many tens of billions of dollars. It is essential to the success of these efforts that the planning processes be designed to explore alternatives in an effort to design a cost-effective approach. This is particularly important because most of these costs are likely to be borne by beneficiaries. The legislature has already, for example, required that any new conveyance facility be financed by the water users who would use such a facility.

Those water agencies will require careful analysis to justify committing billions of dollars to the implementation of a Delta Plan. A robust consideration of alternatives is essential to assist water agencies and others in convincing rate-payers that the BDCP and the Delta Plan are sound, cost-effective investments. Without such an analysis the BDCP and the Delta Plan would face increased difficulties in securing necessary financing – additional challenges that these efforts cannot afford.

Credibility in the Delta. A balanced, thorough analysis of alternatives is critical to the development of a BDCP and Delta Plan that will be seen as credible in the Delta. The BDCP in particular is an unusual process. In particular, the lead agencies for this process do not own the Delta. This circumstance is unlike most terrestrial HCPs, in which much of the land in question is owned by HCP applicants. Delta landowners, stakeholders and local elected officials have expressed concern regarding the potential impacts of the BDCP on their communities. Implementation of the BDCP and the DSC will depend, to a great extent, on the cooperation of Delta communities. United opposition to these efforts in the Delta could add decades to the implementation timeline.

The BDCP Should Adopt a Revised Project Purpose to Guide the Development of Alternatives.

The BDCP project purpose, included in the February 13, 2009 NOI for the BDCP EIS, states that it is the purpose of the BDCP to "restore and protect the ability of the SWP and CVP to deliver up to full contract amounts." This project purpose will be used to shape the alternatives considered in the BDCP process. Some may argue that this project purpose should be used to eliminate from analysis alternatives that would maintain or strengthen current environmental protections. (Indeed, our groups have faced challenges within the BDCP process in our efforts to secure commitments to the analysis of a comprehensive range of alternatives.) Although we do not agree with this simplistic reading, the current project purpose is confusing at best and is potentially in direct conflict with the state policy to "reduce reliance on the Delta in meeting California's future water supply needs through a statewide strategy of investing in improved regional supplies." Water Code § 85021. Therefore, the existing project purpose would increase the challenges facing the BDCP as it works to develop a plan that can be integrated successfully into the Delta Plan. It is important to note that the current project purpose was released prior to the passage of SB 7X 1. This project purpose heightens our concerns regarding the development of an appropriate range of alternatives. We urge the Council and the BDCP to collaborate in the development of a new project purpose that is consistent with the requirements of state law. Specifically, with regard to water supply, the BDCP project purpose should focus on reducing the physical vulnerability of the projects rather than increasing total diversions or achieving the delivery of full contract amounts.

The current project purpose is also inconsistent with the conclusions of the Delta Vision Task Force, which played a major role in the creation of the Council. The Task Force recommended increases in regional self-reliance and concluded that "(d)ramatically improved water use efficiency conservation, and alternative supply development must be the bedrock of California

policies at the local, regional and state levels." Delta Vision Task Force Strategic Plan, p. 32. Similarly, the Task Force concluded that "the more water left in the system…the greater the health of the estuary overall." *Id.*, p. 31. Thus, a project purpose that could be read as requiring increased Delta diversions is inconsistent with the Task Force's recommendations regarding self-sufficiency and Delta ecosystem health.

The BDCP and the Council Should Develop a Broad Range of Alternatives Regarding Conveyance Capacity, Project Operations and Regional Investments.

As per the discussion above, this letter is only addressing conveyance and water operations issues. We recommend that the BDCP and the Council consider the following issues in constructing a broad range of alternatives.

Conveyance Capacities: DWR is currently undertaking what we understand to be a limited analysis of conveyance alternatives ranging from 3,000 cfs to 15,000 cfs, in increments of 3,000 cfs. Several groups (e.g. PPIC, PCL, CCWD) have advocated the analysis of specific alternatives within this range. In addition, the alternatives analyzed should include at least one alternative that would not include an isolated facility. For example, several Delta organizations have advocated for an alternative that they refer to as Delta Corridors, which does not include an isolated facility. In addition, while the BDCP has focused on dual-conveyance options, an alternative analyzing the impacts of conveyance solely through an isolated facility would provide a more comprehensive view of a full range of conveyance scenarios. We believe that analysis of this broader range of options would represent a reasonable range of capacity alternatives.

Project Operations: In addition to total conveyance capacity, project operations play a large role in determining the potential environmental impacts of any new facility. For example, an alternative with a larger facility could have reduced impacts in comparison with an alternative with a smaller facility, if the second alternative were to include less protective restrictions on operation. Therefore, any meaningful analysis of conveyance alternatives must include a range of project operations. Such a range of analysis is required to identify the operations that would best accomplish the protection and recovery requirements of the ESA and NCCPA.

Specifically, we recommend that project operations alternatives include, for isolated facilities, several options for increased flows into, through and out of the Delta, including both "Range B," and the related action alternative that expands on Range B, as currently developed by the BDCP. BDCP and the Council should develop an additional alternative approach to operations based on the draft flow criteria to be released by the State Board in July. Turning these draft flow criteria into operating criteria for the CVP and SWP will require the development of assumptions regarding the respective responsibility of export and upstream diverters in achieving the Board's ultimate flow recommendations. This alternative should be further refined when the Board finalizes these criteria. Such an alternative would assist in the integration of the BDCP and the State Board processes.

We do not endorse the operations alternatives that BDCP describes as "Range A" and "draft proposed project". However, if the agencies proceed to analyze the impacts of an alternative that

would dramatically increase exports, we recommend against including two such similar proposed operational alternatives.

Regional Investments: Consistent with the new state policy to reduce reliance on the Delta, alternatives for Delta water management should include increased regional water supply investments. In particular, alternatives that would provide reduced average export supplies from the Delta should include, as an additional component, increases in regional investments in water efficiency, wastewater recycling, improved groundwater management, urban stormwater capture, water transfers and other tools. For example, if an alternative were developed that would reduce current average exports by 500,000 acre-feet per year, that alternative could be paired with increased regional investments in alternative sources that would provide 500,000 acre-feet of supply per year.

Including such increased investments in regional self-reliance would reflect recent history, as well as the water supply plans of many export agencies. Today, many South of Delta water agencies have adopted water supply plans that assume that increased Delta export supplies will not be available in the future. Rather, these plans anticipate greater investment in regional self reliance. The inclusion of these investments in alternatives would allow the BDCP and the Council to evaluate alternative strategies to achieve water supply goals. In addition, including regional investments in these alternatives will allow export water agencies to compare alternatives with greater reliance on Delta facilities with alternatives with greater investment in regional self-reliance.

One factor to be considered in evaluating such alternatives is that such regional investments could begin almost immediately, allowing for a transitional period before a change in Delta conveyance were to take place.

The BDCP and the Council Should Develop Screening Criteria to Select Among Alternatives.

To assist in the development of an open planning process, (see additional recommendations below), the Council and BDCP should collaborate in the development of criteria to assist in the process of screening alternatives, following their initial analysis. These screening criteria should include specific goals regarding ecosystem health. The development of specific ecosystem screening criteria will be assisted by the implementation of the "logic chain" process to develop quantifiable biological goals and objectives, and to use those goals and objectives as the foundation of the planning process. Environmental screening criteria should include non-ESA criteria, such as reducing dry and below-normal year diversions, restoring inundated floodplain habitat, restoring more natural flow patterns, increasing delta outflow during critical periods for non-listed fish, assisting in the doubling of anadromous fish, as required by state and federal law, and the State Water Resources Control Board's Bay-Delta Water Quality Control Plan. The screening criterion regarding water supply reliability should focus on reducing the physical vulnerability of water supply from the Delta.

The screening criteria should not include a requirement to increase Delta diversions or deliver full contract quantities. Such a requirement assumes that such an increase is compatible with species conservation goals. Experience over the last several decades has shown that such a criterion is at odds with ecosystem protection. It would also reflect a bias against alternatives that would increase regional self reliance. In addition to conflicting with the state policy promoting a reduction in reliance on the Delta, such a criterion could conflict with the goals of key water agencies. Many retail water agencies that must, ultimately, pass on the cost of any Delta conveyance facility to their customers, are working hard to decrease their reliance on the Delta.

The BDCP, the DHCCP and the Council Should Adopt an Open and Transparent Process to Develop and Analyze Alternatives.

Given the broad interest in the future of the Delta, the complexity of these issues and the need for a credible, broadly accepted plan, it is essential that alternatives be developed in an open and transparent manner. We recommend that this process include the following:

Fully Developed Alternatives. Alternatives should be fully developed, in order to give different approaches a realistic chance to succeed. We do not believe that would be appropriate to develop a single proposed project, followed by minor adjustments to test a range of capacity or operations. Such a "sensitivity analysis" approach, although it might provide useful information, would not represent a credible analysis of alternative approaches.

A Common Level of Analysis. In each round of analysis, all alternatives should be subjected to a common level of analysis.

Opportunities for Public Involvement. The development of alternatives should be done in an open process, including open meetings to allow the public to provide recommendations and offer new approaches. Draft alternatives and screening criteria should be released in advance, in order to allow public comment prior to the start of analysis.

Equal Treatment of Stakeholders. All stakeholder groups should receive equal access to information and opportunity to comment on issues related to the development of alternatives.

Integrating Upstream Operations. Analysis of alternatives by the Council and BDCP must include the full integration of upstream operations and resources. Without such an analysis, it is not possible to fully understand the potential impact of changes in Delta facilities and operations. In addition, the federal agency plan to prepare a single biological opinion for the CVP and SWP will require Delta and upstream operations to be fully integrated.

Thank you for considering these recommendations. We look forward to working with you to resolve these important issues, in order to allow the development of the BDCP and the Delta Plan in an expeditious manner.

Sincerely,

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