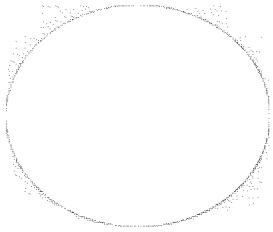


September 30, 2011

John Laird, Secretary
Dr. Gerald Meral, Deputy Secretary
California Resources Agency
1416 Ninth Street, 13th Floor
Sacramento, CA 95814

David Hayes, Deputy Secretary
U.S. Department of the Interior
Michael Connor, Commissioner
U.S. Bureau of Reclamation
1849 C Street, N.W.
Washington, DC 20240

Gentlemen,

Thank you for taking the time recently to meet with us about the status and direction of the Bay Delta Conservation Plan (BDCP). Our organizations have invested considerably in the BDCP and are committed to its success. However, there are significant concerns across the NGO community regarding the BDCP process and how we move through a very ambitious project-EIR/EIS timeline next year. BDCP is at a critical interval in the months ahead. As we have discussed with you at length, the BDCP's problems are systemic, foundational, and persistent and the process is in danger of failing. Absent your immediate attention to the issues raised below, we will have little choice but to oppose the BDCP process in its current form. We emphasize as strongly as possible that this is not our preferred approach, and we encourage you to work in greater partnership with the environmental community going forward.

On its current trajectory, it is unlikely that the BDCP will contribute to the recovery of species or conserve the Delta ecosystem: Under both federal and state law, the BDCP must meet a high standard in contributing to the recovery of listed species and the conservation of natural communities – not simply avoid jeopardy, mitigate the effects of infrastructure projects, or end current litigation. The recovery of imperiled species is critical to achieving sustainability, emerging from crisis management, and improving the predictability of water deliveries. Yet, as

the process enters its final year, the BDCP is not meeting that standard. The plan's foundation, the specific, measurable, achievable, relevant, and time-bound objectives that should define BDCP's appropriate contribution to recovery and conservation (and that are critical both to plan design and adaptive management), have yet to be developed. As the National Academy of Sciences found, there is little basis for confidence that the currently proposed conservation measures will achieve a meaningful level of recovery. Moreover, there are no assurances as yet developed that the plan will be implemented to maximize the likelihood that its objectives, once identified, will be achieved in the face of emerging threats, new information, and conflicts over implementation.

BDCP's analysis inappropriately focuses on a limited set of conservation measures rather than achieving the plan's legally mandated ecological goals: Several independent scientific reviews of the process have confirmed the prior findings of federal and state agencies and our organizations that the analysis to date has been deeply flawed and that a credible adaptive management program is not included. There are three reasons why this is so. First, the desired endpoints for the BDCP in recovering species, conserving communities, and improving water supply reliability have never been adequately defined in the form of objectives, robbing the analysis of a solid planning foundation. Second, the analysis has proceeded by selecting conservation measures and then searching for scientific justification, rather than by relying on a sound analytical framework like the "logic chain" to develop and iteratively refine the set of measures that are most likely to achieve the biological objectives. Third, the consultant teams charged with preparing the analysis have not had the requisite expertise and experience in Delta issues, processes and ecology, and in particular have deferred the fish biology analysis to the very same biologists employed by the export contractors in challenging the science used by the federal government and adopted by the state biologists to protect endangered species. There has been a serious effort by our organizations to develop and win support for an alternative planning approach using the "logic chain" framework and relying more heavily on work by independent scientists that would remedy these problems with the analysis, but the response to our efforts has been unsatisfactory. Defining BDCP success from an environmental perspective will require more significant NGO oversight in shaping biological goals and objectives – the foundation that will shape every aspect of this effort in the months ahead.

The Delta's problems cannot be solved in the Delta alone: California can and should meet the co-equal goals of restoring the ecosystem and providing for a more reliable water supply. But there is no scientific support for the position that infrastructure and habitat changes in the Delta, alone, can meet both goals. The Delta ecosystem is too degraded– in large part as a result of flow alteration – and the system that exports water from northern to southern California too vulnerable

to all kinds of disruption, to ignore solutions that exist beyond the Delta's boundaries. The California legislature recognized this when it adopted the policy of reducing reliance on the Delta for future water supplies. The claim that the Plan is limited to the Delta is neither strictly true nor ultimately relevant. We have an obligation to consider how water management actions outside the Delta can directly contribute to meeting the BDCP's water supply reliability goal.

The state and federal governments must decide who owns the BDCP: The agencies that operate the federal and state water projects, and the fishery agencies with trust responsibilities for this extraordinary ecosystem, are accountable for the BDCP process. Since its inception, however, export contractors have had a remarkable degree of control over the decision-making regarding the design and analysis of the Plan and special access to and influence over materials developed for the process. Over the last year the transparency of the process has decreased , eroding confidence in its integrity. Political commitments (if not legally binding ones) have been made on a host of key issues without public scrutiny. These actions threaten the prospects for success going forward.

We would welcome the opportunity to work with you in a revised process that addresses these problems. However, it is even more pressing that the agencies address our concerns regarding the substantive direction of the BDCP. The BDCP is not on track to meet any of our collective goals. To remedy these problems, as we believe can be done, the state and federal governments should immediately take the following actions:

- Make completion of the quantified BDCP objectives the highest priority for current analytic efforts, and a condition for completion of the draft environmental documents (and adjust workplans and reallocate resources to achieve this purpose).
- Ensure that the Effects Analysis is able to measure projected effects against the BDCP objectives using an iterative application of the "logic chain" type approach.
- Designate the Delta Science Program or a similar independent science entity as the primary manager of the objective setting and analytical framework efforts, and ensure more frequent independent review of the development of the environmental documents.
- Develop and include in the alternatives for further analysis approaches (designed to succeed rather than to be checked off) that significantly reduce export water supply reliance in the Delta using demand management and alternative supplies. (We have recently provided your agencies with more detailed recommendations regarding the alternatives that BDCP should consider in the EA and EIS/R.)

- Develop a credible adaptive management process including specific triggers for future action based on whether objectives are being attained and a clear allocation of responsibility for how decisions will be made.

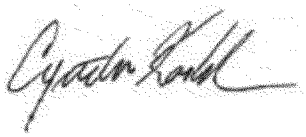
We believe there is a possible positive outcome, but the BDCP's current path poses substantial challenges if we are to sustain and build public confidence that the plan will be consistent with the state's "co-equal goals" for the Delta and in that spirit, be consistent with the emerging Delta Plan. We are prepared to continue our longstanding partnership with you in developing an adequate and durable BDCP. That partnership depends on the willingness of the federal and state agencies to make hard and long-deferred decisions to commit to assured recovery and conservation outcomes.

Sincerely,

John Cain
American Rivers

Gary Bobker
The Bay Institute

Kim Delfino
Defenders of Wildlife



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