November 8, 2010

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

Re: **Concerns Regarding the State's Sept. 9 BDCP Discussion Document**

Dear Secretary Snow:

On behalf of the undersigned organizations, we offer our responses to the State's September 9 "Draft Issues for Discussion for the Bay-Delta Conservation Plan." We appreciate that this document was prepared "only for the purposes of facilitating discussion," but we are also aware that the State anticipates the release of a draft of the BDCP in November and that some elements of that plan may be based on some components of the discussion draft. For these reasons, we believe it would be helpful to forward our views to help inform the State's deliberations prior to the release of the November document.

We agree that a transition document for the next Administration regarding the status of the BDCP could be very helpful. We recommend that such a document mark the status of BDCP and establish a roadmap for resolving key issues.

The September 9 discussion draft raises a number of concerns that some of the undersigned organizations have discussed previously with you and other members of the State Administration in recent months. These include specifically the following categories:

Lack of Mechanisms to Ensure Environmental Restoration: The document includes strategies to provide water supply assurances for the state and federal projects. But, as some of the undersigned organizations have discussed with you and other members of the State Administration in recent months, this draft does not include parallel mechanisms to ensure that the BDCP's ecosystem restoration goals and objectives will actually be achieved. This is a core issue that must be addressed in any draft plan.

Conflicts with the Best Available Science: The proposals for long-term and near-term water project operations in the discussion document do not appear to be supported by the best available science. There is substantial consensus that the key elements of a BDCP must be supported by credible, independently verified scientific analysis. Such analysis can narrow the differences within the stakeholder community and lead to workable solutions. In our view, the reviews conducted by the State Water Resources Control Board (SWRCB) and the National Academy of Science (NAS) should be given considerable deference.

Inadequate Analytical Foundation: The BDCP process has not completed key analytical tasks that would serve as the foundation of a credible plan. For example, we are deeply concerned that this far into the process the BDCP has not developed a comprehensive set of quantified biological objectives, has not completed a scientifically credible Effects Analysis, and has not analyzed the most scientifically credible project operations, such as Range B and a scenario based on the SWRCB flow criteria. The document also contains no commitment to revise the Effects Analysis with a completed set of objectives. As we and others have noted several times, without specific, measureable, and time-bound objectives, the Effects Analysis can only compare changes (effects) expected from Plan implementation to the status quo. The status quo is not an acceptable outcome of plan implementation, yet we cannot compare the plan to conditions we are trying to achieve because those conditions have not been specified. A permittable BDCP plan will require a credible analytical foundation.

Inconsistency with State Law: Last year the Legislature passed a major package of water reform legislation, with several provisions intended to inform the BDCP. Although our organizations took different positions on that final package, we are united in our belief that the BDCP must move forward in a manner that complies with the key provisions of the new state law. Several elements in the discussion draft appear to be inconsistent with SB 7x 1 including:

- the lack of analysis of the SWRCB's flow criteria;
- the focus on water supply goals that would require increases in diversions rather than consideration of reductions; and
- the lack of measures to reduce reliance on the Delta as called for in the new state policy.

Inconsistency with NCCPA/ESA Obligations: Although the NCCPA requires that plans provide for the recovery of listed species, the discussion draft does not contain even basic requirements designed simply to meet the substantially less protective standard of avoiding jeopardy under the federal ESA. For example, the document proposes lengthy delays in the restoration of salmon habitat that are inconsistent with the restoration requirements contained in the current salmon biological opinion. Specifically, the document proposes to modify Fremont Weir by year 10 (p. 32), and does not anticipate significant floodplain habitat until year 40. Both of these timelines are inconsistent with pre-existing habitat restoration requirements in the salmon and delta smelt biological opinions, which require, respectively, that: half of the required floodplain restoration of 17,000-20,000 acres be completed by 2016; the Bureau and Corps of Engineers embark on a plan by September 30, 2009 to alter Fremont Weir and any other facilities or operations requirements of the Sacramento River Flood Control Project or Yolo Bypass facility in order to provide fish passage; and that DWR create or restore a minimum of 8,000 acres of intertidal and associated subtidal habitat in the Delta and Suisun Marsh by 2019. (It is worth noting that there are no pending legal challenges to these requirements.)

Imbalance in Governance: The document would potentially delegate considerable new control over habitat planning, adaptive management (including the annual operation plan), science/monitoring, budgeting and staffing to water users. Such provisions appear to be inconsistent with the state's co-equal goals requirement, as well as the Central Valley Project Improvement Act (CVPIA), which requires the Secretary of the Interior to manage the CVP for ecosystem restoration, as well as other project purposes.

Reviving the Environmental Water Account Approach: The discussion draft includes a proposal to revive key features of the Environmental Water Account, an approach that in our view failed to provide the ecosystem benefits anticipated. This approach limited the ability of fishery agencies to require necessary protections for Delta fisheries and in our view played a significant part in the Delta's decline over the last decade. We would not support inclusion of this approach in the BDCP.

Lack of Credible Economics and Financing: To maximize the BDCP's chances of success, issues related to financing and economics should be addressed as early as possible. In our view, CALFED was not successful in part because it did not prepare a reliable financing plan and projected levels of public funding that failed to materialize. Therefore, rather than simply focusing on maximizing water yield, we recommend that the BDCP focus on designing a cost-effective project, and one that can more easily incorporate environmental protections, leading to superior economic and environmental performance. In developing a draft plan, we urge the state to evaluate the cost effectiveness of an isolated facility at various sizes, with protective, scientifically credible operating criteria.

We note that there are a number of provisions in this document with which we agree and which would represent progress, if incorporated into a final BDCP, such as the language appropriately limiting the role of the water user JPA. Nevertheless, the many flawed provisions in this document make it an inappropriate starting point for a credible draft BDCP plan.

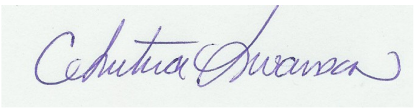
Several of the undersigned organizations have raised these and related issues for many years. We include for your reference, a table (Attachment 1) prepared by EDF that lists the correspondence that EDF and several other organizations has prepared over the course of the BDCP in this regard.

In order for the BDCP to move forward into the future successfully, we urge you to issue a document in November that details the work conducted to date by the BDCP, but also set forth a clear process by which the critical outstanding issues can be resolved as soon as possible. We do not believe that a document – like the September document – in which the state takes positions on unresolved and critical components of the BDCP – is the best way to lay out the next phase of the BDCP. Such an approach will only divide those who have been working towards a credible BDCP and cause organizations to move away from a collaborative approach within this process to a more positional approach. Instead, we urge you to work to address the foundational and analytical problems facing the BDCP, such as revising the purpose and need statement, developing biological objectives, modeling fully scientifically credible long-term operations, and preparing a scientifically-credible Effects Analysis. Such an effort would greatly increase the BDCP's prospects, by laying a foundation for economically credible, science based decision-making that is currently lacking in the process. Our organizations are committed to the development and implementation of a plan that would successfully address the serious problems facing the Delta.

We look forward to discussing these concerns with you.

Sincerely,

Laura Harnish
Environmental Defense Fund



Tina Swanson
The Bay Institute

Kim Delfino
Defenders of Wildlife

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Jonas Minton
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Attachment #1: Summary of documents EDF and others submitted during the Bay-Delta Conservation Plan process

Date	Doc. #	Title	Topics
10/2/06	1	"Comments on the Proposed Planning Agreement for the Bay-Delta Conservation Plan"	NCCP standard, review of interim projects
1/15/08	2	"Recommendations for Next Phase of the Bay-Delta Conservation Plan Evaluation"	NCCP standard, flows, Coordinating other processes, analytical tools
3/24/08	3	"Scoping Comments on the Proposed EIS/R for the Bay-Delta Conservation Plan"	Conservation goals, alternative supplies, geographic scope
5/30/08	4	"Scoping comments on the BDCP EIS/R"	Lack of measurable biological goals/objectives, range of alternatives
7/24/08	5	"Why we should BDCP identify quantitative objectives now?"	Lack of quantitative biological objectives necessary to develop and assess conservation measures, adaptive mgmt, linkage to permit terms and conditions
8/6/08	6	"Recommendations for Improving the Initial DRERIP Coarse Evaluation Exercise and the Development of Conservation Measures"	Lack of biological goals/objectives and linkage to flow measures, lack of inclusion of published findings on flow-abundance relationships
12/17/08	7	"Bay-Delta Conservation Plan's Implementation of, and Consistency with, the Delta Vision Strategic Plan's Implementation"	Need enhanced flow measures, canal capacity alternatives, governance, financing, need to consider alternative water supplies
2/10/09	8	"Unresolved Issues in the BDCP Process"	NCCP standard, need to consider full range of flows, canal capacity alternatives, need to consider alternative water supplies, governance, lack of quantified biological goals/objectives
4/25/09	9	"Fundamental Elements of a Successful Bay-Delta Conservation Plan"	NCCP standard, lack of quantified biological goals/objectives, need to

			enhance flow measures, habitat, governance/assurances, financing
7/21/09	10	"Proposed Long-term BDCP Water Operations Range of Criteria"	Need to enhance flow measures, need for appropriate baseline operations
9/16/09	11	"Draft Near-Term Operations Analysis"	Inadequate ecosystem protection and high uncertainty of proposed operations, inadequate science incorporated
12/20/09	12	"Draft Conservation Plan (Chapter 3)"	Lack of quantified biological goals/objectives, inadequate science incorporated, lack of adaptive management
1/17/10	13	"Critical Issues in 2010 for the Bay-Delta Conservation Plan"	Lack of quantified biological goals/objectives, need to comply with State legislation, need to revise project purpose and need
1/22/10	14	Letter re: Conditions for moving forward with preliminary projective description for the purposes of analysis	Lack of quantified biological goals/objectives, need to enhance flow measures, need for adaptive management, governance
2/10/10	15	Letter re: Implications of the TRO on the BDCP	Need for State to fully implement CESA with regard to salmon and Delta smelt
6/4/10	16	"Recent BDCP Accomplishments and Remaining Tasks"	Lack of quantified biological goals/objectives, effects analysis, need adequate range of alternatives, need to incorporate SWRCB flow criteria, governance
6/11/10	17	"Conveyance and Project Operations Alternatives for the BDCP and the Delta Plan	Need adequate range of alternatives, need to revise project purpose and need, inadequate range of flow measures, lack of inclusion of alternative supplies
7/22/10	18	"Recommendations on Refining Purpose and Need Statement"	Request to revise project purpose and need

10/15/10	19	"Governance and Biological Objectives"	Role of the permitting agencies, linkages between biological objectives and water supply assurances
10/20/10	20	" Selection of CEQA/NEPA Alternatives for BDCP"	Need for credible effects analysis, need for adequate range of alternatives, need to incorporate SWRCB flow criteria and comply with State legislation