

December 17, 2008

Karen Scarborough  
Resources Agency  
1416 Ninth Street, Suite 1311  
Sacramento, CA 95814

**RE: Bay Delta Conservation Plan's Implementation of, and Consistency With, the  
Delta Vision Strategic Plan's Recommendations**

Dear Ms. Scarborough:

On behalf of the Natural Resources Defense Council, the Bay Institute, the Environmental Defense Fund, Defenders of Wildlife, and our combined members and activists, we are writing regarding the implementation of the Delta Vision Strategic Plan through the development of the draft conservation plan for the Bay Delta Conservation Plan (BDCP). BDCP is regarded with keen interest by all of us – whether it is as participants or observers – particularly considering the critical role that the state and federal water projects must play in helping to restore and sustain California's salmon fishery and the native fish and wildlife populations that live in, or migrate through, the Delta.

At the end of October 2008, the Delta Vision Blue Ribbon Task Force, appointed by Governor Schwarzenegger pursuant to Executive Order S-17-06 and SB 1574, adopted its final Strategic Plan for the Delta, following on the Delta Vision adopted by that body in 2007. We believe that the BDCP could play an important role in the implementation of the Delta Vision Strategic Plan, and in addition, we strongly believe that BDCP is much more likely to succeed if it is consistent with the Strategic Plan. To that end, we recommend that measures be taken now to ensure that the BDCP conservation strategy and its supporting analysis will be consistent with Delta Vision's recommendations.

Consistency with Delta Vision's Flow Recommendations:

The Delta Vision Strategic Plan adopted several recommendations to increase instream flows and Delta outflows to benefit the Delta ecosystem and native species, including: (a) increased spring outflow (Strategy 3.4.3); (b) increased fall outflow variability, with higher outflow in normal, above normal, and wet years (Strategy 3.4.4); (c) increased San Joaquin River spring outflow and fall pulse flows (Strategies 3.4.5 and 3.4.6); and (d) increased inundation of the Yolo Bypass (Strategy 3.1.1). *See* Delta Vision Strategic Plan at 71, 83-87. The Strategic Plan directs the State Water Resources Control Board to further refine these strategies and implement them through changes to the Bay Delta Water Quality Control Plan and in water right decisions and orders. *Id.* at 83-87. In addition to implementing these specific flow improvements for the ecosystem, the Strategic Plan also calls for an overall shift in diversion from dry and average periods to the wettest periods, in order to reduce stress on biological resources during more

sensitive periods and avoid reliance on diverting every drop of water surplus to minimum regulatory requirements (Strategy 3.4.2). *Id.* at 86-87.

In light of these recommended changes to existing flow standards in the Delta and upstream, we recommend that the BDCP: (a) comprehensively analyze Delta Vision's flow recommendations in Strategy 3.1 and 3.4; (b) develop and analyze operational criteria and water management strategies that shift diversions to the wettest periods; and (c) include these flow recommendations and diversion shifting criteria in the draft conservation plan.

We strongly encourage the BDCP to ensure that the conservation plan is consistent with these measures, for at least three reasons. First, Delta Vision directs the State Water Resources Control Board to revise the Bay Delta Water Quality Control Plan to incorporate these measures, which almost certainly would lead to water rights decision(s) that would require CVP and SWP operations to meet these standards. The State Water Resources Control Board will review the 2006 Bay-Delta Water Quality Control Plan and conduct other, related public trust proceedings to improve Delta protections beginning in 2009. Second, the Fish and Wildlife Service's recently released biological opinion on Delta smelt, and the National Marine Fisheries Service's forthcoming biological opinion on salmon, steelhead, and sturgeon, for the coordinated operations of the CVP and SWP do and/or will incorporate many, if not all, of these measures in some form. The OCAP biological opinions will provide an obvious yardstick for measuring the adequacy of the BDCP conservation plan, regardless of whether they constitute the regulatory baseline for the analysis. Third, Delta Vision's proposed governance structure would require the BDCP permits to be consistent with the California Delta Ecosystem and Water plan, which presumably will include these flow requirements. *See* Delta Vision Strategic Plan at 130.

Therefore, we believe the BDCP process has a far greater chance of success if it proposes water project operations that are consistent with these measures.<sup>1</sup> At a minimum, BDCP must provide meaningful analysis of the measures proposed in the Delta Vision Strategic Plan and their effects on listed species, and BDCP should include them as one or more alternatives in its CEQA/NEPA analysis of its conservation plan.

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<sup>1</sup> In a similar vein, there may be some who believe that habitat conservation and restoration measures will allow relaxation of the operational restrictions that have been or are likely to be imposed by the OCAP biological opinions and DFG CESA permitting. We are pleased that the BDCP participants have been working to address some of the "other stressors" on the Delta ecosystem, and we hope that addressing these measures will help restore and sustain native fish populations. That said, we continue to believe that CVP and SWP operations are a critical variable we can control that affects listed fish populations. We do not believe that the present information and analysis supports an approach that would trade habitat restoration for operational restrictions. It is possible that habitat restoration will, at some point in the future, help restore native fish populations that are jeopardized by existing project operations, but until such time that the measures actually benefit the species, there is little justification for relaxing operational controls that prevent currently jeopardy to these species. For some species, like delta smelt, we know of little scientific justification that restoring tidal habitats will benefit the species; for other species, like Chinook salmon, there is substantial evidence that restoring floodplain habitat can benefit this species. While we believe BDCP should address these "other stressors" and restore habitat, we do not believe that BDCP should anticipate relaxed operational criteria, particularly in the near term, and we hope that habitat restoration is undertaken primarily to protect and restore species' habitats.

Consistency with Delta Vision's Recommendations Regarding Necessary Elements of the Analysis of Conveyance Alternatives

One of the primary measures proposed to be included in the draft BDCP conservation plan is some type of new conveyance facility on the Sacramento River, under the assumption that such a facility could reduce entrainment of listed species, as well as reducing the CVP/SWP's hydrodynamic modification in the Delta, which together results in the take of listed species and adverse modification of their critical habitat.

The Delta Vision Strategic Plan includes a conditional recommendation in support of a dual conveyance system, but it acknowledges that the "Task Force has concluded that much more analysis of sizing combinations, impacts, and costs of either an improved through-Delta channel or an isolated channel are needed to finalize any decision regarding conveyance that meets the co-equal goals." *See* Strategic Plan at 102. The Strategic Plan directs DWR and other agencies to address a number of critical questions, based on Delta Vision's June 30, 2008 letter to the Governor, before making any final decisions about new conveyance facilities. *Id.* at 103.

Delta Vision's June 30, 2008 letter emphasized that this analysis "must focus on more than the maximum amount of water that can be moved through the Delta." It recommended that the analysis include:

- A full range of sizing combinations for an isolated conveyance facility. If this analysis has already taken place, documentation should be provided.
- A full range of through-Delta flows and isolated facility flows, ensuring that "restoring ecological functions is a central component of the plan, and not merely treated as mitigation to offset continued water exports."
- Changes in reservoir operations that make more storage available through increased floodplain restoration and management.
- A clear statement of the processes and rules that determine diversion levels under a range of climactic and hydrologic conditions, as well as a quantification of "thresholds for water required in the Delta (in volume, timing, and quality at various locations) for effective functioning of the estuarine ecosystem."
- A full range of diversion levels and the implications of these diversions on migratory fish and upstream rivers (including carryover storage and temperature compliance requirements).
- A full range of water quality parameters in the analysis, including salinity, temperature, dissolved oxygen, pesticides, toxics, and turbidity.
- A comparison of alternative conveyance facilities and operations against a "common baseline that reflects current operations and legal requirements."

*See* Letter from Delta Vision Blue Ribbon Task Force to Governor Schwarzenegger dated June 30, 2008 (attached); Delta Vision Strategic Plan at 103.

Therefore, we are writing to recommend that BDCP explicitly address these critical questions in its analysis as the planning process moves forward. In addition, the BDCP should identify specific conservation criteria for analyzing conveyance and evaluating its impacts. We note that many of the analyses identified by Delta Vision are required by CEQA and other laws applicable

to BDCP, and therefore we strongly encourage BDCP to meaningfully analyze and address these critical issues in its analysis.

Consistency with Delta Vision's Governance and Financing Recommendations

One of the critical questions that Delta Vision addressed is the governance and financing of its Strategic Plan. Delta Vision has produced substantial, detailed recommendations for a new governance regime in the Delta, and we expect that the Legislature and Governor will address this issue in the 2009-2010 legislative term. Those recommendations include a new Council, with oversight authority over all state and federal operations in the Delta, to be composed of members appointed by the Governor and approved by the Senate; a delta Conservancy, to oversee habitat restoration measures; a strengthened Delta Protection Commission, to address land use consistency in the secondary zone; and subsidiary bodies, for instance to provide scientific and engineering support. Perhaps most importantly, Delta Vision recommended that the co-equal goals of water supply reliability and ecosystem restoration be established in an enforceable Delta plan that applies to operations of the state and federal water projects. This would help ensure that the water projects would be operated to meet more than minimal ESA compliance, which is particularly important for species that are not listed under the ESA, like fall run Chinook salmon that form the backbone of the state's sport and commercial salmon fishery. Achievement of the salmon doubling goal is an important performance measure in the Delta Vision Strategic Plan, and BDCP should be designed to achieve this goal.

As we all know, the BDCP has just begun to analyze the myriad of governance issues. We encourage the BDCP to propose and analyze governance options consistent with Delta Vision's governance recommendations. In particular, the BDCP must carefully evaluate options such as a Joint Powers Authority ("JPA") to operate a new conveyance facility because we are concerned that a JPA could be inconsistent with Delta Vision's recommendations.

In addition, the Delta Vision Strategic Plan recognizes the need for stable and sufficient funding sources, and it endorses a beneficiary pays approach to funding new facilities and operations, including identifying several new fees to ensure adequate funding for implementation. Consistent with this approach, several of the PRE's acknowledged that they would pay for new conveyance facilities in the Delta Vision process. See Delta Vision Strategic Plan at 134. In light of the ESA provisions that effectively require a strict guarantee of adequate financing for the life of a Habitat Conservation Plan and Incidental Take Permit,<sup>2</sup> BDCP will need to develop a financing plan for implementation. That financing plan will also need to be consistent with Delta Vision's recommended beneficiary pays approach.

Consistency with Delta Vision's Water Conservation Recommendations

Delta Vision recognized that water use throughout the state is critical to the health of the delta ecosystem and the reliability of future water supplies. Goal 4 of the Delta Vision Strategic Plan outlines a number of ways to reduce reliance on water exports from the Delta, develop alternative water supply sources (Which it recognizes are far cheaper, and environmentally friendly, than new investments in reservoirs and surface storage facilities), and increase water

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<sup>2</sup> See, e.g., 16 U.S.C. § 1539(a)(2)(B)(iii); 50 C.F.R. §§ 17.22(b)(2)(C), 222.307(c)(2)(v); *National Wildlife Federation v. Babbitt*, 128 F.Supp.2d 1274 (E.D. Cal. 2000); Habitat Conservation Planning Handbook at 3-33 to 3-35.

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use efficiency and water conservation measures. *See* Delta Vision Strategic Plan at 93-100. In particular, Strategy 4.1 requires a 20% reduction in per capita water use by urban consumers by 2020, and requires establishment of an agricultural water conservation target of 800,000 acre feet per year as a "starting point." *Id.* at 95.

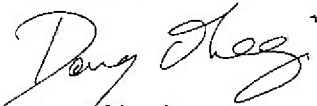
BDCP's environmental and water supply goals are much more likely to be met if the Delta actions under consideration in BDCP are linked to the water management actions upstream and in exporting areas that Delta Vision identified as critical to the success of any long-term management plan. Consistent with our scoping comments dated May 30, 2008, we believe that BDCP should incorporate these water conservation targets in its estimates of anticipated future water demand, and should analyze a range of water supply options that, consistent with Delta Vision's recommendations, move away from reliance on the delta as a source of water supply, and enhance regional self-sufficiency through improved groundwater management, stormwater capture and infiltration, water recycling, and desalination.

Conclusion:

The Delta Vision Strategic Plan presents a comprehensive approach to managing and restoring the delta ecosystem and ensuring its reliability as a water supply source. We believe it is critical to the likely success of the BDCP process that it be consistent with, and incorporate, Delta Vision's recommendations.

We look forward to your response to our recommendations, and would appreciate the opportunity to discuss this further with you at your convenience. Thank you for consideration of our view.

Sincerely,



Doug Obegi  
Natural Resources Defense Council



Gary Bobker  
The Bay Institute



Ann Hayden  
Environmental Defense Fund



Kim Delfino  
Defenders of Wildlife

Enclosure: June 30, 2008 letter from Delta Vision Task Force to Governor Schwarzenegger

cc: Michael Chrisman, Secretary, Resources Agency  
Don Koch, Director, Department of Fish and Game  
Lester Snow, Director, Department of Water Resources  
Senator Fran Pavley, Chair, Senate Natural Resources & Wildlife Committee  
Assemblyman Jared Huffman, Chair, Assembly Water, Parks and Wildlife Committee



Honorable Arnold Schwarzenegger  
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**Conclusions and recommendations on a preferred water conveyance alternative.**

Through review and discussion of the information presented to us, we have grown more confident that dual conveyance, including both an improved, resilient through-Delta conveyance component and an isolated component, is a strong choice, provided the chosen design fully embraces the co-equal goals of a resilient ecosystem and reliable water supply. This is not just a choice of conveyance, or even of conveyance and storage, but also a choice with large implications for the future Delta ecosystem.

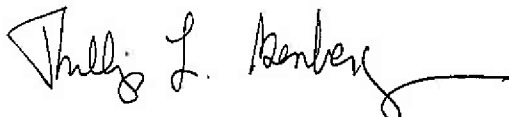
Analysis of conveyance facilities and associated storage must focus on more than the maximum amount of water that can be moved through the Delta. Beyond maximum flows, the analysis should determine the combination of facilities that can best achieve the management flexibility required to meet ecosystem needs, to provide greater reliability in water supply, to maximize the taking of water in wet periods when it is most available, and to accommodate the kinds of transfers and regional self-sufficiency needed. Management flexibility will be increasingly critical to capture water during wet periods and to cope with predicted increased volatility of weather and extreme weather events.

Much more analysis of sizing combinations, impacts, and costs of *both* an improved through-Delta component and an isolated component are needed to confirm any decision regarding dual conveyance and to finalize a design that contributes to our vision of co-equal goals for sustainable Delta management. In Attachment B, we recommend several elements for any conveyance facility investigation.

As your Delta Vision Blue Ribbon Task Force moves toward our final goal of developing a Strategic Plan to implement our Vision for the Delta and the water future of California, we again reemphasize that improvements to the existing through-Delta conveyance system must begin immediately. It is equally critical that improvements to the ecosystem must begin now to ensure progress as rapidly as possible. The recommended approach requires both analysis and action; as dual-conveyance is studied in greater detail, interim steps must be taken to improve the through-Delta conveyance system today.

Consistent with our Vision's first recommendation, our Strategic Plan will provide a framework within which a more resilient ecosystem and reliable water conveyance system can be effectively implemented and operated and may make additional recommendations regarding conveyance facilities and associated storage.

Sincerely,

A handwritten signature in black ink, reading "Phillip L. Isenberg". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Phillip L. Isenberg, Chair  
Delta Vision Blue Ribbon Task Force

cc: (See attached list.)

Honorable Arnold Schwarzenegger  
June 30, 2008

List of Courtesy Copies

Honorable Mike Chrisman  
Secretary for Resources  
Resources Agency  
1416 Ninth Street, Room 1311  
Sacramento, CA 95814

Mr. Lester Snow, Director  
Department of Water Resources  
1416 Ninth Street, 11<sup>th</sup> Floor  
Sacramento, CA 95814

Attachment A: Information provided since adoption of *Our Vision for the California Delta*

- The Task Force's Water Supply and Reliability and Healthy Ecosystem Work Groups have suggested that a wet-year diversion system (a shift of export diversion timing to wetter periods, when least harmful to the ecosystem) be considered as a strategy to achieve greater water supply reliability and ecosystem health. To do so would require increased storage and conveyance capacity statewide. A dual conveyance system would increase conveyance capacity and options, and could support a wet-year diversion system if properly managed.
- CALFED submitted a "Summary Review of Prior Delta Conveyance Reports", which reviewed the findings of over 100 reports that dealt with Delta water conveyance and potential effects on water quality and ecosystem health and resilience. The report identified data gaps, especially regarding ecosystem performance, in previous studies and conveyance designs that would be critical to address when assessing an improved conveyance system.
- DWR submitted "An Initial Assessment of Dual Delta Water Conveyance", which gave a preliminary assessment of a dual conveyance strategy as part of ongoing efforts related to the Bay-Delta Conservation Plan development process, including preliminary design features, cost, and preliminary performance results of alternative conveyance options. The Task Force found that the assessment explained the merits of an isolated component, but fell short of addressing the long-term resilience and recoverability of the through-Delta component of the dual conveyance strategy.

Attachment B: Recommended elements for assessing conveyance facilities and related storage

1. **Directly address alternative choices and design configurations by how well they serve the co-equal goals of protecting the Delta ecosystem and providing water for Californians.** Include a clear description of near-term actions to improve ecosystem function and water system reliability of the existing through-Delta conveyance system.
2. **Incorporate ecosystem health and resilience.** Analyze a full range of through-Delta flows *and* isolated facility flows on in-Delta ecological processes and functions, and analyze how reduced pumping operations may reduce entrainment of certain fish species. The analyses should ensure that restoring ecological functions is a central component of the plan, and not treated merely as mitigation to offset continued water export functions – an approach which has failed to break through the political deadlock on water and the ecosystem for the past 40 years.
3. **Incorporate anticipated levels of usage of available ground and surface storage.** Include not only existing ground and surface water storage but also possible increases in ground and surface water storage. Incorporate timelines by which additional surface and ground water storage may become available for use into analyses. In addition, assess possible gains from changed operations of storage capacity (e.g., more effective flood plain protection and management allows effective increases in reservoir capacity).
4. **Face up to the question of anticipated future water diversion and exports from the Delta.** In order to make an intelligent decision on alternative water export facilities it is essential to state the expectations on water diversions and describe the decision processes and rules that would be used to determine allowable diversions under a range of hydrologic and climatic conditions. A greater emphasis on wet period diversion will require a more comprehensive set of regulatory requirements for the Delta and upstream tributaries than exists today, in order to ensure the achievement of our co-equal goals. We understand the political difficulty of this discussion. However, failure to face up to the question will once again lead to a divisive and bitter statewide battle about water and the Delta. Analyze the performance of all conveyance systems considered in terms of wet period diversion; that is, the ability to *divert, move and store* more water during wetter periods and reduce water diversions in drier periods in part to provide for Delta environmental protection and as a strategy to cope with reduced snowpack as a result of climate change. Quantify thresholds for water required in the Delta (in volume, timing, and quality at various locations) for effective functioning of the estuarine ecosystem under different conditions.
5. **Analyze implications for migratory fish species and upstream rivers.** Analyze the implications of conveyance and operational options, including a full range of diversion levels, on representative migratory fish species and upstream riverine habitat.
6. **Incorporate realistic estimates of reliable water transfers as part of the evaluation.** Reliable water transfers are a valued public policy goal and specific estimates of such transfers should be included in designing and assessing alternative conveyance systems.

7. **Identify and evaluate improvements to through-Delta conveyance for resiliency and recoverability in the event of catastrophic loss and incorporate effective improvements in analyses.** Do not merely assume the status quo of existing through-Delta conveyance is acceptable; improvements to the existing through-Delta system must occur to protect California's water and the ecosystem regardless of dual conveyance design details chosen. Near-term improvements on through-Delta conveyance could contribute to the two important goals of (1) increased conveyance capacity and (2) reducing risk of catastrophic failure, including the value of repairable through-Delta conveyance capacity. This is consistent with our Vision recommendations 7, 8, and 9.
8. **Incorporate a sea level rise projection of at least 55 inches (by 2100) in facility designs.** Additionally, clearly state and assess the possible implications of other dimensions of climate change, such as increased extreme storms, on any conveyance facility.
9. **All alternative facilities should be evaluated against a common level of seismic and flood durability.** This analysis should include not only effects on the facilities themselves as structures but the risks to other human uses of the Delta and the Delta ecosystem resulting from effects of earthquakes or floods on facilities.
10. **Incorporate water quality objectives in analyses.** Clearly evaluate the implications of alternative approaches to conveyance and to the proposed conservation program on water quality objectives for the Delta, and how these objectives will be affected by the various alternatives. These analyses should incorporate a full range of water quality issues, including salinity, temperature, dissolved oxygen, pesticides and toxics and turbidity.
11. **Ensure transparency and accountability in decisions.** Specify projected schedules for construction, the cost of the activities, and their funding sources. Include sufficient details to guarantee that ecosystem restoration and conservation measures will be fully and properly implemented. Devise assurances that the actions will be implemented, including, for example, directly incorporating actions into any and all state water contracts, and as conditions for receipt of bond funds, either for facility development or for ecosystem purposes. Concurrently, ensure that a system of adaptive management is implemented so that progress is monitored and decision makers can manage adaptively.
12. **Develop a baseline that reflects current conditions.** Analyses of alternative conveyance facilities and operations should be compared against a common baseline that reflects current operations and legal requirements.