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December 14, 2010

The Honorable Ken Salazar
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

RE: Bay-Delta Conservation Plan

Dear Secretary Salazar:

Contra Costa County appreciates the Department of Interior's actions to date regarding the Bay Delta Conservation Plan (BDCP). First, by recently declining to offer assurances when there is no guarantee that fish populations will recover, and before all the scientific data are developed and environmental documents are completed. Second, the U.S. Fish and Wildlife Services' actions under the Endangered Species Act in proposing operational criteria that offer the best hope for recovery of the at-risk fish species. The current draft BDCP proposed project will not lead to recovery of these species.

We disagree with the characterization of the status of the BDCP and the role of the Department of Interior in Westlands Water District's November 22, 2010 letter to Deputy Secretary David Hayes. Contra Costa County believes:

1. A process which improves water supply reliability and restores the ecosystem (and fishery) is needed and must succeed: the status quo is unacceptable to everyone.
2. The BDCP development process is currently dysfunctional and must be changed; it must include local participation and encompass broader goals, among other things.
3. Flows in the Delta must, at the very least, be increased in order to restore and sustain the Delta ecosystem.
4. The co-equal goals cannot be met under current BDCP scenarios. It is not clear given Westlands' recent actions, that Westlands, and perhaps others, truly support co-equal goals. A process that will achieve the co-equal goals is fundamental to a sustainable solution for the Bay-Delta.

Westlands' letter appears to be a misdirected response to the growing consensus that flows cannot continue to be reduced by increasing diversions from the Delta.

We do not believe the co-equal goals can be met with reduced flow, particularly without looking at the larger picture, for example, by considering new storage and potential habitat and flow improvements in the upstream tributaries.

Contra Costa County borders onto Northern San Francisco Bay and the Sacramento-San Joaquin Delta. The residents of Contra Costa County rely on the Delta for their municipal and industrial water supply, for fishing and other forms of recreation, for work and as a place to live. The County has a strong interest in protecting Delta water quality, restoring the Delta to a sustainable ecosystem, and preserving the values of the Delta as a place to live, work and recreate.

The Sacramento-San Joaquin Delta ecosystem has undergone significant degradation over the last 160 years or more and is now at the point where native fisheries, once thriving, are now on the point of extinction. The December 1994 “Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government” (also referred to as the Bay-Delta Accord) was an important step toward restoring the Delta ecosystem. This negotiated agreement was the result of participation by major water users and environmental groups, not just the state and federal regulatory agencies. A new estuarine habitat (X2) standard was developed as well as new limits on export diversions from the Delta. Unfortunately, the actions in the Bay-Delta Accord proved to be insufficient and in the early 2000s, the pelagic organisms underwent a serious decline, followed by serious decreases in the populations of Chinook salmon and steelhead. Since the 1994 Accord, exports have continued to increase and there has been a significant shift in the timing of diversions from the spring to the fall, hastening species decline. Because of the precipitous decline in threatened and endangered species, any water supply guarantees or assurances that were understood or implied in 1994 can no longer be considered valid.

Since 1994, the CALFED Bay-Delta Program, and now the Delta Stewardship Council and BDCP have devoted considerable time and resources in scientific research into the causes of the fish decline and development of actions to reverse the decline. The BDCP process has produced some useful ideas for setting biological goals and objectives: however, the relationships between flows, habitat and species abundance, and governance, after 4 years, \$150 million and 122 Steering Committee meetings, has resulted in a flawed and incomplete working draft.

The water contractors, as Potentially Regulated Entities (PREs), have spent considerable funds on developing a proposed project that many of the BDCP Steering Committee members and federal regulatory agencies have determined may harm rather than benefit the very fish species it is supposed to protect. Additional work is needed to modify and reanalyze the proposed conveyance facilities, habitat restoration areas, and operational criteria. That will require additional funding and time, and a complete change in the way the BDCP is being developed.

Much of the fault for the inadequacy of the current working draft of the BDCP lies with the PREs themselves and their unrealistic expectations.

1. The PREs argue that the BDCP isolated 15,000 cubic feet per second facility will benefit fish by reducing exports from the south Delta, despite arguing strenuously in court and other venues that their south Delta exports are not causing fish to decline.
2. Moving the diversion facilities to the north Delta directly along the migratory pathway for the winter- run salmon and other anadromous fish is also a major cause for concern.
3. To avoid additional permitting delays, the PREs decided up front not to include increased storage (necessary to reduce exports in drier periods) or flow, operations and habitat modifications in tributaries upstream of the Delta.
4. To avoid having to increase Delta flows (by reducing export diversions), the PREs offered to develop new, and necessary, habitat areas in the Delta. However, increased flows are still needed to provide the necessary connectivity and transport of fish species to and from the habitat areas and to allow diversity in the distribution of fish throughout the Delta.
5. Although the new habitat is intended by the PREs to offset their existing and future increased diversions, they argue that the cost of this new habitat should be a public expense.
6. Although a Steering Committee was established to guide development of the BDCP, much of the information developed by the consultants, and the feedback from technical reviewers, was withheld from the Steering Committee members. The comments by many of the Steering Committee members at meetings, and their written comments, were largely ignored and not incorporated into the BDCP.
7. The environmental group representatives (and federal agencies) on the Steering Committee argued from early on that there needed to be well defined biological goals and objectives before the effects of the proposed project could be analyzed. This task still has not been completed.
8. Only one “proposed project” has been fully analyzed – the promised range of alternatives and subsequent iterations never happened. The recommendations for increased Delta flows by the State Water Resources Control Board and California Department of Fish and Game have not only been ignored, but the proposed project significantly reduces flows in the fall (leading federal biologists to find the project will harm fish).
9. The BDCP management and consultants have refused to share the full Effects Analysis and the comments of reviewers with the Steering Committee or the public, or even the National Research Council scientific panel that has been asked to review the scientific underpinnings of the BDCP. Without an open and transparent process involving all stakeholders, the BDCP is heading for failure.

10. The PREs have developed the attitude that because they have already spent so much time and money on analyzing this flawed initial alternative no more work is necessary.

A process with a more open and cooperative approach, a wider project area, and broader goals and objectives could succeed. Local county and municipal agencies have not been included in the BDCP process, leaving a large and critical component out of these deliberations to date. All parties at the table must understand the need for compromise or the status quo will prevail. Critical to success is the acknowledgement by all parties that there must be an increase in Delta flows if the Delta ecosystem is to be healthy and resilient. During drier periods, when flows are already low, it is unrealistic to expect that exports can be increased without further degrading (rather than restoring) the Delta ecosystem.

We commend the Department of Interior and the other federal agencies for bringing much-needed scientific expertise and a broader, independent perspective to an exceedingly complex task – a task that will require significant continued federal commitment if it is to succeed. As a local agency with jurisdiction over a large portion of the Delta, we look forward to discussions related to what the broader perspective should include and to working with you more closely as the BDCP (or other refined process) evolves that would further the co-equal goals established in state statute.

Sincerely,



MARY NEJEDLY PIEPHO
County Supervisor, District III

cc: The Honorable David Hayes
The Honorable David Nawi
The Honorable Dianne Feinstein
The Honorable George Miller
The Honorable John Garamendi
The Honorable Jerry McNerney
USFWS Regional Director Ren Lohofener
USBR Regional Director Donald Glaser
NMFS Regional Administrator Rodney McLinnis
The Honorable Jerry Brown
The Honorable Lester Snow