

**Testimony of Cynthia L. Koehler  
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before  
Assembly Committee on Water, Parks and Wildlife  
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**Oversight Hearing on the  
Bay Delta Conservation Plan: Status and Update**

Chairman Huffman and Members of the Committee, on behalf of the Environmental Defense Fund (EDF) and our thousands of California members, thank you for this opportunity to speak with you today about the Bay Delta Conservation Plan (BDCP) and the outlook for the future. As you know, EDF has been a member of the BDCP Steering Committee, and my colleague Ann Hayden has been an active participant in the BDCP process, for the last five years. Attached to this testimony is a recent Opinion Editorial piece that Ms. Hayden and I wrote for the San Francisco Chronicle that very briefly outlines EDF's view about BDCP and the direction it can take most productively going forward.

As indicated in the Opinion Editorial, EDF remains firmly committed to the BDCP process and believes that, notwithstanding important unresolved issues, it is only through this type of open, public and thorough planning effort that California will successfully restore the most important estuary on the west coast while also providing steady and sustainable supplies of water to our farms and cities. We are encouraged that even in the face of disagreements among stakeholders about how best to proceed, there is nevertheless a strong consensus that ecosystem restoration of the San Francisco Bay-Delta is a vital priority for California on par with providing reliable water supply.

My testimony today will focus on key issues that are not yet resolved that present important opportunities going forward to bring the BDCP to a successful resolution, as well as the issue of how to integrate the requirements of last year's Delta water reform package enacted by the Legislature. These issues were outlined in a group NGO letter sent to Secretary Snow earlier this month, also attached for your convenience.

- 1. Best Available Science.** There is consensus that the Habitat Conservation Plan/Natural Communities Conservation Plan (HCP/NCCP) must be supported by credible, independently verified, scientific analysis. However, concerns persist that the proposals

for near- and long-term water project operations in the BDCP are not supported by the best available science. We believe that such analysis will have the beneficial impact of narrowing differences and leading to workable solutions. The reviews conducted by the State Board and the National Academy of Sciences should be given considerable deference going forward. In particular, the State Board has recently found that while many factors are at play in the decline of the Estuary and its public trust resources, recovery will not be possible without increased freshwater flows to some extent.

- 2. NCCPA/ESA Obligations.** California's Natural Communities Conservation Planning Act requires that plans prepared under this statute must provide for the recovery of listed species. So far, the analysis evaluating the possible biological effects of water project operations does not meet this standard. There is even concern that the analysis may not meet the substantially lesser standard of "avoiding jeopardy" under the federal Endangered Species Act, and indeed proposed operations could lead to the extinction of certain species, such as Delta smelt.
- 3. Need for Quantified Biological Goals and Objectives.** For the BDCP to be successful in restoring Bay-Delta health and long-term sustainability, it is essential that it contains, and be guided by, quantified and measurable biological goals and objectives. These are necessary so that it is clear what the Plan is seeking to achieve and so that progress towards these outcomes, or lack thereof, can be measured. We are pleased that some work is now proceeding along these lines; however much work remains to develop sufficient and necessary detail.
- 4. Analytical Foundation and Consideration of Alternatives.** There has been controversy regarding the BDCP "Effects Analysis," the effort to analyze the biological impacts of proposed operational regimes for the state and federal water projects. That analysis is currently flawed for a number of reasons. First, the analysis does not take into account specific biologic recovery targets so likely impacts are not being fully captured. As described above, specific targets have not even been set as yet.

Second, the Effects Analysis has not taken into account the State Board flow recommendations or other scenarios likely to result in substantially improved flows for the ecosystem. It was our understanding that the Effects Analysis would evaluate the full adaptive management range of operations proposed in the BDCP, including more environmentally protective operations. To date however, there has not been a comprehensive analysis of the range of operations. As stated in the attached NGO letter, in order to result in a Plan capable of meeting the legal requirements for ESA permits, the BDCP will require a more credible analytical foundation.

We believe it will become clear that the adaptive management range currently under consideration is too narrow and should be broadened in order to best meet the co-equal goals for the proposed 50-year life of the permit. Science, monitoring and adaptive management will help determine the appropriate operating criteria as the BDCP is implemented.

- 5. Parity of Environmental and Water Supply Assurances.** In conformance not only with the BDCP itself, but also the November 2009 Delta legislative package, it will be important that transition documents for the incoming State Administration recognize the need for parity of assurances among the co-equal goals of a restored ecosystem and improved water supply reliability. To date, considerable effort has focused on establishing a “robust” set of water supply assurances for the state and federal water projects. The process is at a substantially more preliminary phase in setting forth parallel mechanisms to ensure that BDCP’s ecosystem restoration goals and objectives (once established) are actually achieved. Thus, a significant unresolved issue in the BDCP process is the connection between meeting the BDCP’s biological goals and objectives and the assurances provided to the permittees. There should be a clear linkage between achieving the biological goals of the HCP/NCCP, and the water project operations that are the subject of the ESA take permit expected to be issued pursuant to the HCP/NCCP.
- 6. Balanced Governance.** The final BDCP will be enormously complex with thousands of moving parts. EDF concurs that a “governance” structure for the BDCP will be essential for smooth and effective implementation that includes accountability. A key unresolved issue is the extent to which this governance structure should delegate core ecosystem restoration authority, including adaptive management, science, monitoring, annual operations planning, as well as related budgeting and staffing, to the water user community, and the extent to which the fisheries and natural resource agencies are relegated to a primarily oversight role, capable of asserting their authority only after problems arise.
- 7. Economics and Financing.** As discussed in the attached NGO letter, financing will be key to the success of the BDCP in the long run. Going forward, it will be constructive to turn more attention to ensuring that the permitted project is cost-effective given the ability of beneficiaries to pay in light of the potential benefits to be received. It will also be crucial to assure that long-term financing is guaranteed for the implementation of the habitat conservation components of the project. We recognize that new infrastructure may be a viable option for California if both environmentally beneficial and economically rational.

**8. Integration of State Policy to Reduce Dependence on the Delta.** A key aspect of last year's Delta package was the directive to reduce reliance on the Delta for our state's water supply. BDCP has not yet fully taken advantage of the opportunities that this legislative direction provides to incorporate water supply alternatives into the planning scenarios, in particular cost-effective options for conservation, recycling and water transfers.

We have developed a compendium of our correspondence with BDCP over the years of our involvement regarding these and related issues that require resolution. We would be happy to provide that compendium to the Committee. Given its length, I have attached only the index to this testimony.

Thank you again for the opportunity to testify here today. I am happy to answer any questions that you may have and to continue to work for the success of this very important program.