

Assembly Water, Parks and Wildlife Committee
Hearing on the Delta Protection Council and the Bay-Delta Conservation Plan
Testimony of Ann Hayden, Environmental Defense Fund
May 11, 2010

Thank you Chairman Huffman and members of the committee for the opportunity to testify on the Bay-Delta Conservation Plan. My name is Ann Hayden and I'm a Senior Water Resource Analyst with Environmental Defense Fund. For the past four years, I have participated on the Steering Committee for the BDCP. I've been asked to provide you today with our perspective on the five most critical issues that need to be resolved for the BDCP to move forward successfully.

To begin, EDF is committed to a successful outcome for the BDCP and we have dedicated significant resources towards this goal. We are at the table with the aim of developing a sustainable solution that helps both recover key species, many of which are on the verge of extinction, and improves the reliability of water supplies. That said, this is obviously no easy task given the complexity of the Delta, the extent of its degradation and the increasing demands on the system. Developing a comprehensive and scientifically credible plan requires serious time and commitment on the part of all involved. We hope that the BDCP can succeed, but we are increasingly concerned about the trajectory it is on and the temptation to take short-cuts to meet the expedited deadline.

The following are the top five issues—all of which we have raised continuously throughout the process-- that we believe must be resolved in order for the BDCP to succeed:

1) Development of Quantified Biological Objectives

This is undoubtedly one of the foundational pieces to a successful conservation plan and should have been completed early on in the process. Quantified objectives for aquatic and terrestrial species, and associated performance targets and metrics, are

fundamental to designing, evaluating and selecting the suite of conservation measures that will ultimately become the plan. They are necessary to measure how successful the plan's implementation is over time and to guide long-term adaptive management in the face of climate change, levee failure and other emerging threats to the Delta. Issuing a permit for a plan as ambitious as the BDCP in a system as complex as the Delta must depend primarily on the confidence that that plan is reasonably likely to achieve specific, measurable, and clear objectives for recovery and restoration of the Delta's covered species and ecosystems. The federal fishery agencies recently stated in writing this expectation and referenced the 5 Point Policy, which are the guiding principles for developing Habitat Conservation Plans.

Unfortunately, however, the BDCP still lacks a comprehensive set of quantified objectives, targets and metrics. To date we have reached agreement on an approach to developing such quantified objectives, known as the Logic Chain, but it will require time to complete. It is vital that sufficient time and resources are allocated to allow the full development of quantified objectives – and revision of the plan's conservation measures and other elements to ensure their attainment. This must be a priority and a prerequisite for assembling an administrative draft of the Conservation Strategy, and ultimately finalizing the BDCP.

2) Development of an Appropriate Project Purpose and Description for the BDCP

The NEPA/CEQA analysis is moving forward on an expedited basis prior to the development of a clear project description and a sufficiently broad project purpose statement. This is being driven by the current BDCP schedule. As a result, we are concerned that many promising strategies for reducing conflict between ecosystem and water supply objectives may be overlooked. Currently, the BDCP is only considering actions in the Delta to meet its species/ecosystem recovery and water supply reliability goals. However, many of these goals could be more cost effectively addressed through actions outside the Delta including water conservation and reservoir reoperation. EDF supports adjusting the schedule to allow these strategies

to be fully considered.

In addition, the Notice of Intent project purpose statement (February 13, 2009) establishes an inappropriate and unbalanced description of the BDCP's purpose. While clear regarding the direction for water supply objectives: "to restore and protect the ability of the SWP and CVP to deliver up to full contract amounts," – the purpose statement is very vague regarding ecosystem objectives. Such a bias towards increasing overall Delta diversions, potentially well beyond historic high levels of export, is in our view contrary to the Legislature's direction to reduce reliance on water exports from the Delta, to develop an NCCP for the Delta, and to consider a full range of operations.

The project purpose and description should be revised to properly describe the co-equal status of water supply and ecosystem objectives in accordance with state law, and should focus on increasing the reliability of export operations and decreasing the physical vulnerability of project operations to disruption. Furthermore, the Department of Water Resources and the Bureau of Reclamation should put significant resources into determining how the BDCP can help to reduce reliance on Delta exports, particularly in dry years, through changes in water management inside the legal Delta and beyond. Failure to revise and develop the project purpose and description before evaluating the impacts of the proposed project will likely waste time and tax and rate-payer money and result in a poor quality work product that is vulnerable to legal challenge.

3) Inclusion of Near-term Operations which are Sufficiently Protective

Proposed near-term operations remain a major outstanding issue in finalizing the project description for the BDCP biological effects analysis. We believe that operations as defined under the current Biological Opinions provide the most appropriate description for the immediate near term period. This is supported by the recent findings of the National Research Council Committee on Sustainable Water and Environmental

Management in the California Bay-Delta which concluded that the Reasonable and Prudent Alternatives to reduce exports and increase flows contained in the existing Biological Opinions are scientifically justified, and that there are no alternative short-term measures that would provide equal protection for listed species while reducing restrictions on water diversions. It is also justified by numerous court decisions.

It may be possible to broaden the definition of near-term operations to include other possibly beneficial actions, such as habitat restoration or approaches to deal with other stressors, but we believe that no changes in operations can occur until specific performance targets, including a positive biological response for species, are met. This again points to the need to develop quantitative biological objectives as soon as possible so that we know what outcomes the plan is seeking to achieve.

We recommend that near term operations assume implementation of the existing Biological Opinions, and that the near-term element of the biological effects analysis be focused on evaluating the effects on covered species of implementing these current protections in combination with other potentially beneficial additional actions.

4) Development of a BDCP Governance Structure that improves Environmental Assurances

The governance structure for the BDCP must include a mechanism to address and reduce conflicts between ecosystem processes and water extractions to the maximum extent possible, promote the full recovery of listed species (not just avoid jeopardy), ensure effective adaptive management, and include a real-time decision-making process that ensures that the fishery agencies will play an active role in operations to protect ecological resources as required by the legislation. On this later point, EDF supports optimizing flexibility in the system wherever possible. However, we will not support an approach to real-time operations that unduly ties the hands of the fisheries agencies by constraining their ability to take necessary actions to protect and recover species, as has been the case in the past. The federal fishery agencies submitted their recommendations

to improve real time decision making by enhancing the existing Water Operations Management Team process. We strongly support these recommendations.

5) Compliance with the State Legislature's Mandate for BDCP Guidance

With the passage of Delta legislation last fall, the California legislature established a number of requirements to guide and inform the development of the BDCP. These include a requirement for the State Water Resources Control Board to develop flow criteria to protect the Delta's public trust resources and the Department of Fish and Game to develop quantifiable biological objectives for the Delta. In addition, the legislation requires that the BDCP fully evaluate a range of alternative capacities for dual or isolated conveyance facilities.

We are concerned that the current schedule for the BDCP does not allow for necessary review and revision of the proposed conservation measures based on the SWRCB and DFG guidance. In addition, the current schedule may limit the ability of the agencies, and the public, to conduct a thorough evaluation of alternative conveyance capacities prior to the finishing the plan. To comply with the new state legislation, the final plan must reflect the new guidance and analysis, and provide adequate time in the BDCP schedule for doing so thoroughly and comprehensively.

One final note: We cannot overstate the need for the BDCP to fully reach out to Delta communities and address their issues in serious manner. The BDCP needs to set up a rigorous and transparent process to ensure that the concerns of Delta communities are not simply written off, but get the attention they deserve. Going forward, a successful BDCP must provide equal access to information and allow input from a broad range of parties all whom have a stake in how the Delta is managed because the Delta is a vital resource to all of the people of California and the nation.

Thank you for your time.