

Testimony of Jonathan Rosenfield, Ph.D.
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to the Assembly Committee on Water, Parks and Wildlife
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Chairman Huffman and Members of the Water, Parks, and Wildlife Committee, thank you for the invitation to speak to you regarding the status of the Bay Delta Conservation Plan (BDCP). The Bay Institute has participated in the development of BDCP for four years, contributing technical understanding and analysis of the species, ecosystems, and water delivery system of the Central Valley. We have also designed and advocated use of planning and decision support-tools that can improve the quality and transparency of the final Plan as well as the adaptive management processes that are critical to the Plan's ultimate success.

Although we are disappointed with the Plan's inadequate progress to-date, we remain committed to the BDCP's dual goals of recovering our devastated Delta ecosystem while providing a more *reliable* water supply system than we currently have. From our point of view, an acceptable BDCP (one that would merit an endangered species take permit for the 50 year life of the Plan) would include:

- objectives for recovery of the imperiled covered species that are specific, measureable, time-bound, and based in the best available science;
- water reliability objectives that reduce dependence on the Delta's water resources;
- scientifically credible conservation measures that are prioritized both by their magnitude of positive effects to covered species and the likelihood that they will actually produce those benefits;
- initial operational parameters that provide better protection for covered species than is provided by current regulations (in order to attain the higher standard of recovery anticipated under the ESA's HCP provisions);
- an independent, data-driven adaptive management process with clear decision pathways that incorporate new data and a changing environmental baseline;
- a governance structure that ensures science-based, impartial adaptive management;
- explicit linkages between attainment of objectives and water supply assurances.

To date, the Plan is not adequately developed in any of these critical areas. In part, the lack of progress is due to the unwillingness of Plan proponents to analyze (much less, incorporate) the role that freshwater flows play in creating habitats for covered species and in alleviating many of the stressors that have been identified in this ecosystem. For example, there is no indication that BDCP will adequately consider, model, or incorporate recent findings from either the State Water Resources Control Board (SWRCB) or the Department of Fish and Game's (DFG) flow recommendations. The Bay Institute submitted to the SWRCB detailed analyses of the impacts of freshwater flow on public trust resources in the Delta and we support both the Board's conclusions and the DFG findings that current levels of freshwater flow into, through, and out of the Delta are insufficient to support California's public trust resources.

A second major impediment to progress has been the pressure to deliver results under a completely unrealistic timeline. The BDCP is an extremely ambitious project – it must meet a legal threshold for recovery of numerous covered species and natural communities over a 50 year permit period. No other HCP or NCCP has been implemented in an ecosystem as complex and legally challenging as the San Francisco Estuary’s Delta. Comparatively simple, small-scale terrestrial HCP’s often take 10 or more years to develop. Thus, it was always unrealistic to expect that the BDCP could be completed in just over 4 years. The drive to adhere to this extreme timeline, combined with the failure to incorporate the best available science, have contributed to BDCP’s failure to develop or analyze an adequate proposal.

Instead, the process has produced a series of “placeholder” documents that incorporate poorly designed and controversial plan elements that have not been sufficiently vetted and around which there is no consensus; these placeholders then serve as anchors that prevent the Plan from moving forward on a credible pathway of analysis, development, and negotiation. This week, the BDCP Steering Committee is preparing to issue a new placeholder document, alternatively referred to as a “status report” or a “draft Plan”. This document will not reflect a consensus view on BDCP’s status and will not include a credible analysis of the biological merits of the Plan. For example:

- After years of calling for an articulation of specific, measureable, achievable, relevant, and time-bound (SMART) biological objectives, BDCP only recently convened its first meeting of technical experts to develop these objectives. While this 1.5 day effort generated substantial progress towards defining specific biological objectives, much work remains to be done in this area. Unfortunately, these technical teams are not currently scheduled to reconvene and this effort may not be renewed until early 2011.
- There is still disagreement about the project purpose. We believe that the water supply goal of BDCP will be attained largely by increasing *reliability* for contractors – a new diversion facility is an incredibly valuable insurance policy against catastrophic failure of levees or export facilities in the Delta and the mounting effects of global warming. Water contractors and the Department of Water Resources routinely re-cast the water supply goal as increased diversions from the Delta – a position that is at odds with the State’s water supply policy.
- The BDCP conservation strategy represents a shopping list of measures that Plan proponents believe are adequate to contribute to recovery of all the covered species. These measures are largely premised on the unsupported notion that earth-moving habitat restoration projects can substitute for the flow of freshwater that defines habitat for most of the covered species. In early 2009, BDCP convened a large group of scientists to evaluate many of these conservation measures. These technical panels found that most of the proposed conservation measures had a low to medium probability of producing low or medium magnitude positive effects; many measures were projected to produce some level of negative (unintended) effect as well. This review process (known as the DRERIP review) was never completed and the results were not incorporated in subsequent planning documents, which retained the original list of conservation measures largely unmodified.

- The only set of operational parameters that have been evaluated to-date did not include several provisions of the smelt and salmon Biological Opinions that were designed to prevent jeopardy to those species. Not surprisingly, analysis of this operational range found impacts to some of the covered species that would cause jeopardy – in other words, using the best available science, the Plan could not be permitted with these operations. The impacts of an operational range proposed by the conservation community has not been modeled and, in fact, Plan proponents have objected to modeling of any set of operational rules that might result in water export rates lower than those allowed by the Biological Opinions.
- The Effects Analysis that reviewed the single set of operational parameters was so flawed that an intensive process to fix it was implemented almost immediately upon delivery of the incomplete draft analysis. That process generated hundreds of specific comments that revealed systemic problems with the analysis. Despite tremendous efforts by agency scientists to improve the analysis, there is no indication at this time that the necessary fixes have been implemented or that the fixes themselves are enough to correct the flawed premises of the analysis.
- Several scientific review panels have clearly stated that without a specific and independent adaptive management program, the BDCP could not succeed. Development of such a science-based structure will require work from both the technical end (to describe what kinds of data will be collected and reviewed as well as the time frame during which it should be evaluated) and from the policy end (to describe how the governance structure will incorporate technical recommendations derived from results in the field). This work has barely begun and though it may be described in the forthcoming status report, it is not yet complete enough to assess.
- There is still no consensus on the degree and method of linkage between attainment of biological objectives and water supply assurances. A strong linkage between biological results and water supply is essential in order for BDCP to contribute to recovery of our imperiled salmon, sturgeon, steelhead, and smelt species. The BDCP cannot simply foist all of the uncertainties in this process onto the ecosystem.

In the end, there must be a conservation plan for the Bay Delta; the threats to our ecosystem, the communities that rely on public trust fisheries, and our water supply system are simply too great to continue the status quo. Despite the frustrating pace of progress in the BDCP, there have been positive developments recently. We are hopeful that BDCP can quickly build on its recent effort to develop meaningful biological objectives. Increased federal engagement at the technical and policy level has improved the prospects for a Plan that focuses on water supply *reliability* rather than ever increasing diversions. We are eager to make more meaningful progress towards solving these issues with strong and creative leadership from the federal government and the new State Administration.

Again, I thank you for the opportunity to address this Committee. I will be happy to answer any questions you may have about the past development and future prospects for the BDCP or to provide any supporting documentation you may require.