

July 20, 2012

California Congressional Members  
U.S. House of Representatives  
Washington, DC 20015

Dear California Congressional Members:

Thank you for your letter regarding the studies being conducted by Dr. David Sunding regarding the benefits of the Bay Delta Conservation Plan (BDCP). Before going into the specific questions you have raised, it is important to step back and look at the overall emerging picture of BDCP, its costs and its benefits.

There is general agreement that BDCP offers sizeable benefits in terms of protection of public water supplies from seismic events, improved water quality and improved/protected water supply. There are differing perspectives as to whether BDCP offers a net benefit to California by creating a far more stable regulatory environment in the Delta and whether there is a broad public benefit by a historic restoration effort never before attempted in the estuary. We are very encouraged by the findings of Dr. Sunding that a long-term process to stabilize the regulatory environment has tremendous value, as does habitat restoration. Had these benefits been included in Dr. Jeffery Michael's analysis, he would have come to the opposite conclusion.

This result should not be surprising since Dr. Michael conducted no independent analysis of the subjects described in Dr. Sunding's study. Rather, Dr. Michael's report relies on a selection of findings from Dr. Sunding's research. The major difference between Dr. Michael's report and Dr. Sunding's is that Dr. Michael leaves out any benefits from regulatory certainty even though, as explained below, such benefits are fundamental to Habitat Conservation Plans and Section 10 of the Endangered Species Act. Dr. Michael also ignores the substantial public benefits of restoring habitat in the Delta.

I would like to respond directly to each of the questions you raised.

First, you suggest that BDCP would result in "massive increases in water exports". From 2000-2007 exports to state and federal water contractors averaged nearly 6 million acre feet per year. BDCP does not contemplate exports ever exceeding that amount, unless the populations of listed species of fish made a substantial recovery. For that reason, no increases in exports over historic levels are likely for the foreseeable future.

Second, you suggest that BDCP will result in "regulatory assurances that would shift the mitigation burden to other water rights holders." We have consistently stated that nothing in the BDCP Plan or regulatory assurances will result in negative impacts on water rights holders. Nothing in the BDCP permits would transfer any obligations to other water rights holders. Nor would BDCP in any way reduce the power of the State Water Resources Control Board or USEPA to equitably distribute the obligation to protect water quality and aquatic life among all water rights holders.

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With respect to Dr. Sunding's work to date, let me correct several misconceptions. Dr. Sunding has not completed his work. The presentation he made to the BDCP public meeting on June 20 (and which is published on the BDCP website) only presented the methodology he is using to determine BDCP benefits. He gave two examples of the use of this methodology, but neither has been incorporated into BDCP. He will complete his study when BDCP determines which scenarios to consider as part of the "decision tree" methodology. These scenarios will consider a variety of rules for water project operations that, together with the other BDCP conservation measures, might be necessary to achieve the BDCP biological goals and objectives, with concomitant water supply outcomes.

Your suggestion that no regulatory assurances should be provided by BDCP is in stark contrast to the regulatory framework of both Section 10 of the Endangered Species Act, and the California Natural Community Conservation Planning Act. Regulatory assurances are integral to the success of both laws, as they are key to encouraging applicants to make substantial investments in the protection and recovery of listed species and other species of concern.

BDCP incorporates the concept of decision trees, in which a variety of alternative scenarios will be contemplated, as described above. The range of scenarios will help form the basis for the regulatory assurances contemplated under state and federal endangered species regulation.

Here are answers to the specific questions you raised:

- Why did Dr. Sunding's analysis not include a range of diversions from 4.5 -5.5 MAF? Why did it not include the 4.3-4.4 MAF level of exports that the state and federal fisheries agencies have identified as possibly scientifically justified? Can you please provide an analysis based on lower export levels?

There is a fundamental misunderstanding of Dr. Sunding's work to date. Dr. Sunding did not include any range of diversions at all. There can be no analysis of the range until it is developed, which will take at least a month.

- Why are assurance benefits included in Dr. Sunding's analysis, if, as we understand, regulatory assurances are not now being contemplated?

See above discussion of regulatory assurances. Dr. Sunding's draft work describes the economic benefit of reliable water supplies that would result from a stable regulatory environment for water project operations. A successful BDCP program that results in the recovery of covered species and reduces or eliminates future Endangered Species Act actions that further restrict water supplies can provide this same economic benefit.

- If you are contemplating assurances, how would they affect other water rights holders? How would such assurances be consistent with an adaptive management approach?

Providing assurances through BDCP will not affect any other water rights holders. The obligations of all water rights holders, including the state and federal water projects, are determined by the State Water Resources Control Board, and they are not bound by any regulatory assurances provided by BDCP.

Adaptive management is carried out within an adaptive range, which will either be determined by the scenarios described above, or which may include a broader range.

- Why did Dr. Sunding's analysis fail to include a full analysis of costs, particularly costs to Delta and northern California counties?

Dr. Sunding was not asked to provide that analysis. He may be asked to do so in the future. In addition to the costs to Delta and Northern California counties, such a study would also consider the benefits of BDCP to those counties resulting from, for example, construction of an isolated conveyance facility. Further, such a study would assess the indirect economic benefits to rural and urban areas across the State as a result of more stable project water supplies.

- Why did Dr. Sunding's analysis not include less costly options, such as a single 3,000 cfs intake coupled with a single tunnel that could be operated at a level that fish agencies have indicated could be permitted? Can you please provide an analysis based on lower intake capacities?

Dr. Sunding's analysis will not consider physical facilities. It will only consider specific water supply scenarios, which are based on biological outcomes.

- Why did Dr. Sunding's analysis fail to consider water sources such as conservation and water recycling as alternatives to a large facility? These are proven water sources, and several Southern California water agencies are planning to use these sources to enable them to reduce their reliance on Delta water, pursuant to State law.

Water conservation and wastewater recycling are indeed proven water sources. But no one suggests that they can replace the Delta water supply, especially for agricultural water users in the Central Valley. Similarly, no reasonable person suggests that BDCP will solve all of the state's water supply problems.

Professor Sunding's study considered reasonable projections of water demand based on water conservation and recycling in considering the benefits of BDCP. For example, his urban demand analysis incorporates an assumption of over 1 million acre-feet of conservation by 2035. Accommodating future population growth and planned increases in economic activity will require investments in a range of water supply options. Dr. Sunding's analysis shows that BDCP is economically justified as a component of such a diversified and balanced strategy.

- Is the State planning on engaging in a thorough, peer reviewed cost-benefit analysis? If so, when can we expect that report? If not, why?

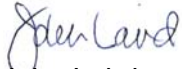
Your suggestion is that the value of endangered species should be weighed against the cost of protecting them. Opponents of the endangered species acts have suggested that investment in protecting these species is too high. BDCP is an effort to protect these species, and not simply a water supply project. We reject the idea that the value of these species to society should be given a monetary value. We endorse the intent of Congress and the Legislature that these species should be preserved as transcendent examples of our natural heritage.

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BDCP includes a user pay concept which is enshrined in state law. Each water agency which will receive water through the construction of any new facilities will have to weigh the costs of that water compared to their own perception of benefits. Each water user will have to determine whether BDCP is a good investment for their water users.

Sincerely,

A handwritten signature in blue ink that reads "John Laird". The signature is written in a cursive style with a large initial "J".

John Laird

Secretary for California Natural Resources

THIS LETTER WAS SENT TO:

The Honorable John Garamendi  
Member of Congress

The Honorable George Miller  
Member of Congress

The Honorable Jerry McNerney  
Member of Congress

The Honorable Mike Thompson  
Member of Congress

The Honorable Doris O. Matsui  
Member of Congress

The Honorable Lynn Woolsey  
Member of Congress

The Honorable Pete Stark  
Member of Congress

The Honorable Barbara Lee  
Member of Congress

The Honorable Sam Farr  
Member of Congress

The Honorable Jackie Speier  
Member of Congress

The Honorable Anna Eshoo  
Member of Congress

Cc: The Honorable Nancy Sutley, Chair, Council on Environmental Quality  
Dr. Jerry Meral, Deputy Secretary, California Natural Resources Agency