

# EWC COALITION LETTER REGARDING THE BAY DELTA CONSERVATION PLAN MEMORANDUM OF AGREEMENT

November 16, 2011



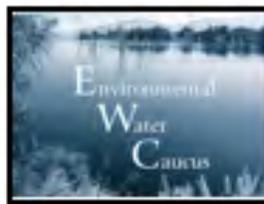
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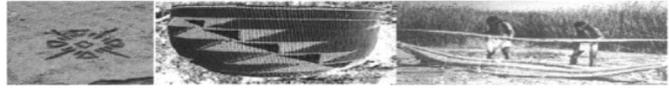


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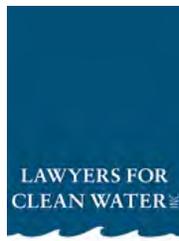


California Striped Bass Association

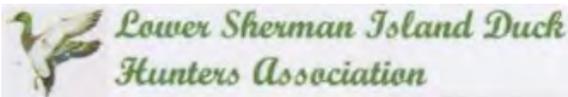
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PRESERVING SENSITIVE HABITAT IN SAN JOAQUIN COUNTY



Hon. Kenneth Salazar, Secretary  
Department of the Interior  
1849 C Street, N.W.  
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John Laird, Secretary  
California Resources Agency  
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November 16, 2011, via email to BDO@usbr.gov

Re: Notice Inviting Public Comment on BDCP MOA

Dear Secretary Salazar and Secretary Laird:

Our coalition of more than 240 environmental, environmental justice, recreational and commercial fishing organizations, outdoor businesses, and Native American Tribes writes to urge that you rescind the First Amendment to the Memorandum of Agreement (MOA) of the Bay Delta Conservation Plan (BDCP). The MOA was negotiated behind closed doors and only serves to reinforce the growing awareness that the BDCP is biased in favor of the export water contractor's agenda to increase exports from the Delta and its connected rivers, despite the documented negative impacts those exports have had on endangered fish species, Delta habitats, water quality and public trust values. Our concerns are similar to the October 24 letter you received from Congressmen Miller, Thompson, Matsui, McNerney, and Garamendi on the same subject.

We understand that MOAs are a regular aspect of the HCP and NCCP process. Nevertheless, this MOA makes unacceptable concessions to the exporters' substantive agenda to influence the analytic process, extends no surprises guarantees to contractors in clear conflict with current law, and elevates the contractors to the status of permit holders for public works projects owned and operated by state and federal agencies.

Among myriad flaws in this poorly conceived MOA, it:

- Memorializes the water exporters' unprecedented influence over the BDCP process, to the exclusion of the many other constituencies who have justified interests in the Bay Delta and its fisheries.
- Provides the exporters with unacceptable influence over the science and technical analyses fundamental to the HCP/NCCP process in a way that undermines the credibility and independence of the analytic process.
- Allows the contractors to be contract administrators of consultants who are performing the necessary and critical analyses of BDCP alternatives.
- Dictates an unrealistic schedule that will rush many of the important decisions on Delta conveyance and precludes a full analysis of the numerous other alternatives that are available to satisfy the environmental and water supply reliability goals of the BDCP.
- Characterizes long-term guarantees for the federal water contractors as an "essential element of success" for BDCP while failing to include equally, if not more essential, ecological performance goals necessary for the success of the BDCP.
- Gives the water contractors internal drafts of the planning phase documents, preliminary

engineering results, and the EIS/EIR for review and comment, and allows them an unacceptable role in responding to public comments in the NEPA/CEQA process.

- Allows export contractors to join the Bureau of Reclamation and California Department of Water Resources as both permittees and decision makers on water operations, restoration, and adaptive management actions under the plan. Putting exporters in the shoes of federal and state agencies for water projects that are owned, operated and primarily paid for by state and federal taxpayers creates multiple problems.

The cumulative effect of these provisions adds up to a “stacked” agreement that is written for the expressed benefit of the water exporters. An agreement this flawed and one-sided cannot serve as the basis for a successful BDCP and cannot begin to achieve the “coequal goals” and “reduced reliance on the Delta” in the Delta Plan, as the state legislature mandated.

We are deeply disappointed that the Obama and Brown Administrations have acquiesced to the export contractors’ efforts to twist what should have been a straightforward financing agreement for planning into a negotiation vehicle to successfully secure unprecedented influence over the HCP/NCCP process. Contrary to your misleading press release that claims, “The MOA would not alter any of the fundamental roles and responsibilities of Reclamation, other federal agencies, or DWR...,” it significantly tilts the field in favor of the contractors. Indeed, the MOA makes a mockery of the 2006 BDCP Planning Agreement signed in good faith by state and federal agencies, export contractors, and participating NGOs.

BDCP is an unprecedented experiment combining one of the largest multi-species Habitat Conservation Plans in history with a massive hydrologic modification to the largest estuary on the West Coast of the Americas. It is essential that this HCP/NCCP serve its fundamental purpose as a conservation plan for the critical fish and wildlife resources of the estuary, and not merely or primarily serve the interests of contractors who have made clear their intent to increase exports from an already severely degraded estuary.

To reiterate, we request that you rescind this biased and unjustified MOA and prepare a new agreement that fairly includes the interests of all parties, including NGO’s, Delta residents, farming and business organizations, environmental justice groups, recreational and commercial fishing organizations, and Native American Tribes. In the absence of such a fundamental rewrite, the undersigned organizations have little alternative but to oppose continuance of the BDCP process.



Co-Facilitator  
Environmental Water Caucus



Co-Facilitator  
Environmental Water Caucus

The following 242 organizations are signatories to this comment letter:

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