

Oct. 24, 2011

*Washington, DC* – Five Northern California Members of Congress are demanding answers on the current state of the Bay-Delta planning process and calling on the Interior Department today to rescind a “flawed” Memorandum of Agreement that was developed behind closed doors and that gives water export agencies south of the Delta and in Southern California unprecedented influence over an important public process concerning California’s precious fresh water supplies.

U.S. Reps. George Miller (CA-7), Mike Thompson (CA-1), Doris Matsui (CA-5), Jerry McNerney (CA-11) and John Garamendi (CA-10) wrote today to Interior Secretary Ken Salazar asking that the recent agreement between the Department and water agencies be rescinded and that the process be opened up to include other key stakeholders left out of the discussions, including Bay Area, Delta and coastal communities, farmers, businesses, and fishermen.

Excerpt: “Interior should immediately rescind this flawed MOA and work instead to establish a successful BDCP process that is transparent and based on parity, and that genuinely puts the restoration of the Bay-Delta and its fisheries, the needs of local communities, and the quality of local water resources on par with other water supply goals.”

The lawmakers recently held a [series of meetings](#) with Interior Department and California officials to express their concerns about the Memorandum of Agreement that the Department signed with water export agencies, an agreement that was developed and signed without input from Bay-Delta stakeholders. The Department had previously told the lawmakers to expect an answer to their inquiries early last week, but failed to meet that deadline. Today’s letter from the lawmakers requests a written response from Secretary Salazar by the beginning of next week.

Excerpt: “the BDCP planning process has failed to treat these affected groups in a fair and transparent manner, and we do not believe that the emerging plan is reflecting Bay-Delta constituencies’ concerns and interests.

The members wrote that the process as it currently stands has established an unrealistic timeline for the completion of the plan, and that it raises expectations of favorable outcomes for

the water agencies that signed it. These concerns — along with others that the lawmakers raised in their meetings — share several traits:

Excerpt: “They have the potential to harm the Bay-Delta, fishing communities, local farmers, and our constituents more broadly. They compromise Interior’s ability to exercise its mandates to restore the Bay-Delta ecosystem and California’s fisheries, and to consider the interests of all stakeholder groups. And they were developed in closed-door negotiations with the water export contractors that excluded all other interests.”

The full text of the letter is below. A pdf version can be found [here](#) .

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October 24, 2011

The Hon. Kenneth Salazar  
Secretary, Department of the Interior  
1849 C Street, N.W.  
Washington DC 20240

Dear Secretary Salazar:

We are writing to follow up our recent meetings with Interior officials and other participants in the Bay Delta Conservation Plan (BDCP) and to express our strong objections to the current direction of that plan.

The constituents we represent have a great deal at stake in the future of the BDCP process and ultimate plan. Delta, Bay Area and coastal communities, residents of the floodplain, farmers, businesses, fishermen, and the rest of our constituents could be profoundly affected by the BDCP. But to date, the BDCP planning process has failed to treat these affected groups in a fair and transparent manner, and we do not believe that the emerging plan is reflecting Bay-Delta constituencies’ concerns and interests.

Specifically, it does not appear that the federal government is taking seriously the goal of restoring endangered salmon or that it intends to operate the Central Valley Project to meet the statutory mandate to protect, restore, and enhance fish, wildlife, and associated habitats. Furthermore, we cannot accept proposals – including ones under consideration by the BDCP – that would harm Delta communities and the regional economy by eroding water quality for drinking and agriculture.

This is a critical moment, and we urge you to take concrete corrective actions now so that the BDCP process can succeed. Your Department recently signed a Memorandum of Agreement (MOA) with certain state and federal water export agencies that excluded other stakeholders. That agreement offers the signatories unprecedented influence over the process, and it raises expectations of favorable outcomes. While we appreciate your outreach to the Delta counties and to the environmental NGOs since the signing of the agreement, the existence of this unfair agreement continues to taint the process and must be withdrawn. At a minimum, we believe that Interior should retract its approval of the MOA and allow for a public comment period of 45 days.

The MOA creates a number of serious problems. For example, this agreement binds BDCP participants to an unrealistic timeline that has the serious potential to rush the many important decisions that have thus far been put off, avoid a full consideration of alternatives, and undermine the much-needed scientific analyses that remain to be done – analyses that many of the agreement's signatories have resisted.

In addition, the MOA describes long-term guarantees of certainty to federal water contractors as “an essential element of a successful BDCP.” This is an unreasonable standard to establish, especially as no equivalent assertions have been offered to any other BDCP participants. We are additionally concerned that establishing certainty for the contractors as an “essential element” of the BDCP is in conflict with the many other federal responsibilities in play in the BDCP, such as doubling the populations of salmon and other anadromous fish as required by law, providing necessary water for wildlife refuges, preserving water quality and availability for Delta agriculture, and meeting the needs of other water users.

The agreement further establishes an unequal process going forward: the MOA invites the water export contractors to collaborate with the federal agencies on the responses to public comments, allows the water export contractors early and exclusive access to draft consultant work product, and gives the water export contractors direct control over the consultants who are

writing the documents. California's Legislative Analyst's Office recently testified before the State Assembly about additional provisions of this document that "may be seen as favorable to the contractors," including the fact that a public NEPA document may not be issued without explicit authorization from the water export contractors. This raises very serious questions about whose process this is, ultimately; if the water export contractors' funding has given them control over the process, it would be to the detriment of the Bay-Delta and to the public interest.

The above concerns — along with the many others we have raised in our recent meetings — share several worrying traits. These are positions sought by the same handful of state and federal water contractors that have long dominated the BDCP process. They have the potential to harm the Bay-Delta, fishing communities, local farmers, and our constituents more broadly. They compromise Interior's ability to exercise its mandates to restore the Bay-Delta ecosystem and California's fisheries, and to consider the interests of all stakeholder groups. And they were developed in closed-door negotiations with the water export contractors that excluded all other interests.

Because we have not yet received a response to our request, we reiterate it here: Interior should immediately rescind this flawed MOA and work instead to establish a successful BDCP process that is transparent and based on parity, and that genuinely puts the restoration of the Bay-Delta and its fisheries, the needs of local communities, and the quality of local water resources on par with other water supply goals. That includes:

- Ensuring that all stakeholder involvement is fair, equal and transparent: all stakeholder groups should have equal access to BDCP draft documents and consultant products and equal ability to provide direction to BDCP consultants, and meetings involving the export contractors, state and federal agencies and the BDCP consultants should be open to all stakeholders.
  
- Establishing a realistic timeline that allows sufficient time to address the serious unanswered questions remaining before the BDCP, conduct the appropriate scientific reviews including of all alternatives, and comply with NEPA and other relevant statutes.
  
- Genuinely committing to the co-equal goals: any "certainty" under consideration for the water export contractors must be matched by equal, specific, and certain commitments to restoring the Bay-Delta to health as required by state and federal law.
  
- Maintaining state and federal agencies' ability to implement other statutory mandates including, but not limited to, the CVPIA's anadromous fish restoration program (including B2

water, the Restoration Fund, and other activities), the refuge water supply program, Trinity River restoration, and the requirement that beneficiaries must pay for the mitigation of any project.

- Ensuring that any final BDCP preserves water quality and water availability for farmers, families, and businesses in the Bay-Delta area, and preserves flood protection for communities in the region.

We are disappointed that we find ourselves in the present situation, and that the interests of our constituents are still facing these hurdles at this stage of the BDCP process. The public interest and the stewardship of the Department require that transparency and equal participation must be reestablished for all stakeholders in the BDCP as soon as possible. To that end, we reiterate our request for corrective action as to this MOA, and as you consider the Department's next steps regarding the BDCP, we seek your commitment that you provide us with advance notice when making determinations that would affect our constituents.

For all of the reasons detailed above, we request a written response to this request by October 31.

Sincerely,