

**DEPARTMENT OF WATER RESOURCES**

1416 NINTH STREET, P.O. BOX 942836  
SACRAMENTO, CA 94236-0001  
(916) 653-5791



May 15, 2009

Honorable Dianne Feinstein  
United States Senator  
331 Hart Senate Office Building  
Washington DC 20510-5054

Dear Senator Feinstein:

This letter is a follow up to our meeting of April 6, 2009 with representatives of Westlands Water District as well as a response to your April 16, 2009 letter. I appreciate your continued engagement and leadership on water issues in California and in particular your support for our current efforts to provide near-term relief to those affected by water shortages due to drought and regulatory reductions in supply. As you noted, the state is working diligently to see that all viable options are reviewed and that creative approaches to getting water to those who need it are developed, evaluated and implemented as appropriate.

The state and local agencies have taken a number of actions in response to drought conditions including but certainly not limited to: the creation of a drought water bank and facilitation of other dry year transfers, expedited and prioritized financial assistance through the Department of Water Resources' (DWR) Integrated Regional Water Management program, expanded groundwater monitoring and data collection, financial assistance for urban water user efficiency and planning for a 20 percent reduction in urban per capita water use by 2020, and upgrades to the California Irrigation Management Information System to provide information to farms that maximizes irrigation efficiency.

As you aware, conditions have improved since our meeting but continue to be dry. The State Water Project allocation now currently stands at 30 percent and will likely be increased this month. Precipitation for 2009 is nearing average levels, however, after two dry years, major reservoir levels still remain low and a parched watershed will impact runoff levels which determine water supply.

Despite recent improvements in conditions, the system continues to become less reliable with each passing day. Climate change, at-risk species, seismic risk and multiple ecosystem stressors mean that certainty in water supplies continues trending downward. Additionally, heavy reliance on groundwater pumping this summer is likely to significantly draw down aquifer levels which will increase the vulnerability in future dry years of areas dependent on those supplies. Until we address the underlying issues plaguing California's water supply system we will see dry conditions continuing to have disproportionate impacts such as we are experiencing in the current year. Consecutive dry years only exacerbate already unstable economic and environmental conditions.

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I have included responses to the specific issues raised in your April 16, 2009 letter:

### **Joint Point and Consolidated Place of Use Authorities**

The Central Valley Project and the State Water Project historically have shared Sacramento-San Joaquin Delta export pumping facilities to assist with project deliveries and to aid each project during times of facility outages, referred to as Joint Point of Diversion (JPOD). Though some question our authority to use JPOD, DWR is confident that we currently have the authority to utilize this tool this summer if necessary.

In our meeting we discussed the application for Consolidated Place of Use. Both the DWR and the U.S. Bureau of Reclamation (Bureau) have submitted a petition to combine their places of use south of the Delta for a two year period to help facilitate water exchanges between their respective contractors in response to the drought. A hearing of the State Water Resources Control Board (SWRCB) was held in late April and a decision from the SWRCB is expected at their May 19, 2009 meeting.

### **Increased Pumping in Late Summer**

In the fall of 2008, DWR requested an extension from the U.S. Army Corp of Engineers (Corps) of the ability to pump water 500 cubic feet per second (cfs) above the 6680 cfs limit during the summer of 2009. This request is currently being processed by the Corps. On May 4, 2009 I sent a letter to the California Department of Fish and Game (DFG) asking for their assistance in expediting the extension of permits. The Bureau sent a similar letter to the National Marine Fisheries Service and to the U.S. Fish and Wildlife Service. If the permit extension is approved, this increased diversion over a period of three months could yield up to 90,000 acre-feet (AF) in additional supply.

### **Status of Dry Year Transfers and the Drought Water Bank**

The bulk of water usually made available for water transfers in California comes from the Sacramento Valley, and largely from rice farmers with senior water rights. Due to exceptionally high rice commodity prices many farmers have chosen to farm rice this year rather than sell their water. Furthermore, restrictions in place on Delta pumping for May and June impact our ability to move some transfer water across the Delta. However, to date, DWR has received commitments for approximately 80,000 AF of water from willing sellers in the Sacramento Valley to Drought Water Bank participants in areas south and west of the Delta. In addition, DWR and other parties entered into an agreement with the Yuba County Water Agency (YCWA) in 2007 that allows long term water transfers. This year, pursuant to this agreement, YCWA will provide 150,000 AF to users south and west of the Delta. Also, other private water transfers are taking place, some of which require state facilitation. The total so far from all these sources amounts to approximately 400,000 AF. A table is attached detailing pending transfers. Final amounts are subject to evaluation and validation (***2009 Water Transfers***).

### **Wildlife Refuge Water Supply Transfers**

Since our April 6 meeting, the Bureau has increased the Central Valley Project south of Delta agricultural water service contract allocation to 10 percent. Based on recent rains there is a strong chance that this could be further increased. While still historically low, water transfers will help supplement supplies this year, as will groundwater pumping. Attached is a table detailing the water supply outlook for each region of the San Joaquin Valley (***San Joaquin Valley 2009 Water Supplies***). This data was compiled by DWR with information gathered from each individual agency.

Regarding your request about the potential for refuge-to-agricultural water transfers, I consulted with DFG Director Don Koch. According to Mr. Koch, in the case of this year, a 100 percent allocation for "Level 2" supplies for refuges that you reference in your letter actually represents only a portion of total dedicated refuge supplies. In fact, state, federal and private refuges currently have 75 percent of what is considered an average supply. Furthermore, these allocation amounts are contractually obligated and are especially critical for refuges and the species they support in dry years. Given the current San Joaquin Valley supply availabilities detailed in the aforementioned table, the transfer of refuge water is not warranted or advisable. However, I believe that all of the San Joaquin Valley water users should collaborate on water management strategies in case 2010 continues the dry trend.

### **Flexibility in U.S. Fish and Wildlife Service's Delta Smelt Biological Opinion**

Finding flexibility in a biological opinion (BO) is a challenge for the agencies charged with its implementation. On May 7, 2009 I sent a letter to the U.S. Fish and Wildlife Service requesting that they initiate reconsultation on the Delta smelt BO. A copy of this letter is attached (***Letter to Ren Lohofener dated May 7, 2009***). My goal is that reinitiation will allow the opportunity for state and federal agencies to refine some of the BO's Reasonable and Prudent Alternatives in a way that better protects Delta smelt while acknowledging any impacts to salmon and reducing the impacts to water supplies where possible.

Honorable Dianne Feinstein

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While I join you in your concern for the impacts of water shortages this year and feel strongly about the need to prepare for the likelihood of a dry 2010, I believe many have lost sight of the plain fact that we are in a hydrologic drought, and as such water supplies are simply limited for all users. This cycle of water boom and bust in California is not new, but it has intensified as court decisions and regulatory protections govern the operation of the state and federal pumps. Climate change poses an additional threat. This is why it is critical that we move forward with the long-term fix. Restoring the Delta ecosystem, improving Delta conveyance, adding storage, and aggressively improving water use efficiency are all necessary pieces of a comprehensive strategy that will help protect our environment and our economy from the highs and lows of California's ever-changing hydrograph.

Your support in our planning for the long-term is essential.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester A. Snow", with a long horizontal line extending to the right.

Lester A. Snow  
Director

Attachments

## 2009 Water Transfers

DROUGHT WATER BANK		
		<u>AMOUNT</u> (Acre Feet)
<b>EXISTING POOLS (Through Delta)</b>		
Pool 1 - Feather River Idling		12,598
Pool 2 - Advance Groundwater		2,993
Pool 3 - Sacramento River Idling		7,637
Pool 4 - Groundwater Substitution		35,581
Pool 5 - Groundwater Substitution		22,466
<b>TOTAL ESTIMATED WATER BANK</b>		<b>81,275</b>
<b>OTHER POTENTIAL THROUGH DELTA TRANSFERS</b>		
<u>SELLER</u>	<u>BUYER</u>	<u>SELLER AMOUNT</u> (Acre Feet)
Agencies Upstream of Delta	Agencies Downstream of Delta	250,500
<b>NORTH OF DELTA to NORTH OF DELTA TRANSFERS</b>		
<u>SELLER</u>	<u>BUYER</u>	<u>SELLER AMOUNT</u> (Acre Feet)
CVP Sacramento Valley Contractors	Tehama-Colusa Canal Authority	80,640
<b>POTENTIAL TRANSFER AMOUNT*</b>		<b>412,415</b>

\*amounts projected and subject to change

**San Joaquin Valley 2009 Water Supplies**  
As of 5-13-09

*Working Draft*

	San Luis Delta Mendota*	Westland's Water District	Friant Water Users Authority	Kern County Water Agency	Modesto Irrigation District	San Joaquin River Exchange Contractors	SJV Refuges
Carryover Water	96	236	50	120	0	0	0
Surface Water	125 (CVP only)	125	870 (Friant Supplies Only)	568	170	840	250 Level 2
Groundwater	147	200	0	1,200	30	0	unknown
Additional 2009 Groundwater	0	260+ (last year 460TAF total, expect to exceed last year in 2009)	0	1,000	0	0	0
Transfers/ Exchanges	80	172	0	10	unknown	0	30 Level 4
<b>Total</b>	448	993 (86%)	920 (74%)	2,898 (85%)	200 (89%)	840 (100%)	280 (75%)
<b>Average Annual Use</b>	unknown	1,154	1,250	3,400	255 (175 ag, 80 urban from website)	840	371
<b>Fallowing</b>							
<b>Maximum Irrigated Acres</b>	315,000	569,000	920,000	995,000	58,650	240,000	136,000 (total SJV refuge acres)
<b>Normal Fallowing</b> (assumes 10% unless otherwise specified)	39,000	78,000	92,000	100,000	5,900	24,000	NA
<b>2009 Fallowing</b>	65,000 (21%)	225,000 (40%)	0 (Reduced double cropping)	220,000 (22%)	unknown	unknown	NA

\* Ag Service Contractors only, excluding Westland's Water District

**The information contained in this table was obtained from multiple sources and is subject to change. This information should be used only as an estimate.**

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(916) 653-5791



May 7, 2009

Mr. Ren Lohofener  
US Fish & Wildlife Service  
2800 Cottage Way, #W2606  
Sacramento, CA 95815

Dear Mr. Lohofener:

By this letter, the California Department of Water Resources (Department) formally requests that the U.S. Fish and Wildlife Service (Service) reinstate consultation with the U.S. Bureau of Reclamation (Bureau) on the December 15, 2008 Delta smelt biological opinion (BO) for the coordinated operations of the State Water Project (SWP) and Central Valley Project (CVP). It is our intent in asking for reconsultation at this time that the Service and the Bureau will now be better able to integrate protections for multiple species in other pending BOs, as well as long-term protections currently being developed through the Bay Delta Conservation Plan (BDCP) process. There is new information that shows there are better ways to protect Delta smelt that also better protect water supply. The current BO contains conditions which have a high degree of scientific uncertainty for the level of protection they provide, but these conditions have significant water supply impacts for California.

The Department has demonstrated a long history and continuing commitment to finding effective and efficient strategies to protect at-risk species in a manner that protects the Sacramento-San Joaquin Delta (Delta) ecosystem and ensures a reliable water supply for California. Beginning with the Department's joint sponsorship and funding of the Interagency Ecological Studies Program (IEP), the Department has been an active participant in and sponsor of multi-agency processes to understand and address the environmental problems of the estuary. These include the Water Operations Management Team (WOMT) and the BDCP. In June 2007 the Department proactively curtailed Delta exports in an effort to protect Delta smelt. Also, the Department worked closely with the Bureau and the Service to jointly develop protective measures for Delta smelt that were adopted by the federal court in its interim remedy order in 2007.

The Department has never questioned whether the adverse impacts of SWP operations on the estuary should be fully addressed. But it is in best interest of both the ecosystem and the Department that the SWP's role be fully understood and accurately characterized. In this regard, the impact of the SWP as one factor influencing the Delta cannot be assessed without assessing the relative impact of the other stressors: radical changes in species composition and food chain relationships, urban wastewater discharges, pesticide discharges and harvest practices. The risk in not understanding

the combined impacts of these stressors results in the SWP bearing a disproportionate regulatory burden through water supply impacts, and, more importantly, failing to address the other stressors affecting the Delta ecosystem.

It is therefore our intent in seeking reconsultation to incorporate new scientific information about the species and stressors to the ecosystem and to better integrate protections for multiple species with water operations for the interim period until the more comprehensive and long-term BDCP is in place. The goal of the BDCP is to allow for recovery of key species by creating improved habitat and water quality. Accordingly, the final BDCP will allow water project operations to continue in a way that ensures optimal compatibility with recovery of multiple fish species.

While it is customary that the federal action agency request reconsultation, the Service is authorized, and has the responsibility, to reinstate consultation on its own initiative where a triggering event has occurred. In the alternative, the Department also requests that the Service initiate reconsultation based upon the Department's status in the consultation process and its close connection with the Bureau for the purposes of SWP and CVP operations, including compliance with federal law. For purposes of consultations under the Endangered Species Act (ESA), the operations of the SWP and CVP are intentionally and inextricably connected, as exemplified by the various mandates of Section 8 of the Reclamation Act of 1902, the San Luis Act (integrating SWP and CVP operations), Public Law 99-546 (authorizing the Coordinated Operating Agreement), and the joint state-federal actions under the CVP Improvement Act of 1992 and the CALFED process (including the 2000 Record of Decision and agreements entered into in connection therewith). Like the joint and several responsibility imposed upon the Department and the Bureau by the State Water Resources Control Board (SWRCB) to meet Delta protective water quality objectives, ESA protection of Delta species under the BO is impossible without the participation and cooperation of the Department. Because of this unique relationship between the Department, the Bureau, and the Service, which has been created and controlled by federal law, it is appropriate and necessary for the Service to grant the Department's reconsultation request.

The Service should reinstate reconsultation because "new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered." 50 CFR § 402.16(b). Further, failure to coordinate the Reasonable and Prudent Alternative (RPA) components in the Delta smelt BO with the protective requirements of winter-and spring-run Chinook salmon (and steelhead and green sturgeon) will result in impacts to a listed species that were not adequately considered prior to the issuance of the BO, which impacts come within the spirit and policy of the reconsultation regulations. 50 CFR § 402.16(d). While the Department addresses certain specific RPA components in this letter, the Department desires to address with FWS all relevant aspects of the Delta smelt BO that may warrant reconsultation.



RPA component 3, and specifically, the "Fall Measure X2 Provision," significantly limits SWP operations and the Department's ability to store water in Oroville Dam, which is critical to the Department's ability to provide sufficient water supplies. This RPA and the limitations it imposes are not scientifically justified or necessary. In particular, the propriety of the Fall Measure X2 Provision should be reevaluated in light of the recent Liberty Island research, which revealed the existence of a Delta smelt population that is separate from the population addressed in the BO and which is unaffected by SWP and CVP operations. This population suggests that Delta smelt are less susceptible to a catastrophic event than previously thought and that increasing Delta smelt habitat south of Collinsville through the Fall Measure X2 Provision is not necessary, as contemplated in the BO. The Department also believes that the Service should consider the information contained in the October 20, 2008 letter from the State Water Contractors and the San Luis Mendota Water Authority regarding the X2 relationship and the use of X2 as a protective parameter.

Moreover, reconsultation on RPA component 3 is warranted to evaluate unconsidered negative effects on spring-run Chinook salmon and green sturgeon. These negative effects will be seen in the reduction of the cold water reservoir pools that the Department can maintain in the Oroville Reservoir, which will in turn reduce the Department's ability to enhance spring-run Chinook salmon and green sturgeon survival with cold water releases. Negative impacts may also result from unintended regulatory conflicts that will occur if the instant BO is not better coordinated with the BO addressing winter and spring-run Chinook salmon, steelhead and green sturgeon, which is due to be issued by the National Marine Fisheries Services (NMFS) in June 2009, and the NMFS BO on the FERC Relicensing of the Oroville Facilities P-2100. The protective measures in the Delta smelt BO and the pending BOs may be most effective and better reconciled with a reconsultation focused on a unified protective construct, or at least an analysis of the negatively synergistic effects of the various BOs.

The flow restrictions of negative 1,250 to 2,000 imposed under RPA components 1 and 2 are more conservative than necessary and not biologically warranted for the protection of Delta smelt, even if they could be statistically justified. The Department's analysis establishes that flow restrictions of negative 3,500 to 5,000 adequately protect Delta smelt from the risk of entrainment and are sufficient to meet ESA's protective mandate. Moreover, as noted, recent research conducted at Liberty Island has shown the existence of a resident Delta smelt population that is outside of the zone of influence of the SWP and CVP. The negative 1,250 to 2,000 flow restrictions imposed under the BO should be reevaluated in light of this new and unaffected Delta smelt population, which demonstrates a wider Delta smelt distribution than previously considered.

Mr. Lohofener  
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The Department is fully committed to protecting the Delta smelt, but based on its biological analysis, the RPAs lack strong conclusive scientific support and unnecessarily create significant adverse impacts on the State's water supply and economy. We strongly believe that consultation should be reinitiated to address the concerns raised in this letter. We look forward to your response to this request, as well as to working closely with the Service, the Bureau and NMFS on this urgent matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester Snow", with a long horizontal flourish extending to the right.

Lester Snow  
Director

cc: Donald R. Glaser, Regional Director  
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