Congress of the United States
Washington, DC 20515

December 9, 2013

The Honorable Edmund G. Brown
Governor
State of California
c/o State Capitol, Suite 1173
Sacramento, California 95814

Dear Governor Brown:

We are writing to urge you to take immediate action to address California's dire water supply conditions by declaring a state drought emergency.

As you are aware, on November 20, 2013, the California Department of Water Resources announced the historically lowest initial allocation for the State Water Project (SWP) contractors of 5 percent for water year 2014. The United States Bureau of Reclamation has acknowledged that without significant precipitation, there may be a 0 percent initial allocation for Central Valley Project (CVP) South of Delta (SOD) contractors.

While it is early in the 2014 water year and therefore projections on allocations are conservative, what is clear is that we have had two years of dry conditions that have depleted our reservoirs and reduced carryover storage to historically low levels not seen since 1977. Without this carryover storage, the flexibility built into the system to respond to hydrologic conditions and regulatory constraints is critically diminished, with severe impacts to many Californians. This is going to be a very challenging water year for California and a potentially catastrophic year for the Central Valley in particular.

On March 30, 2011, after a wet year, you rescinded Executive Order S-06-08, issued by Governor Schwarzenegger on June 4, 2008 and ended the State of Emergency called on June 12, 2008 and February 27, 2009. This drought declaration and State of Emergency was issued by Governor Schwarzenegger in the second year of dry conditions and with the state facing severe hardship as a result of the ongoing drought. After two years of dry conditions, we are faced with these challenges once again.

Given these facts, we believe it would be prudent to declare a state drought emergency now and to request a broad federal disaster declaration from the President as soon as possible. This declaration will provide a number of additional state and federal authorities for addressing the ongoing drought conditions as described in the enclosed memo, including, but not limited to activating the State Emergency Plan and permitting relaxation and suspensions of some state statutes or regulations. Additional activities specifically authorized in the 2009 proclamation included promoting water conservation, implementing expedited water transfer procedures, and providing status reports on the state's water conditions. If issued, a Presidential declaration will provide authorities related to disaster assistance through federal agencies, opportunities for

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expedited water transfers, assistance with infrastructure improvements and additional flexibilities in regulatory decision-making. This declaration would send a strong signal that state and federal agencies must provide maximum discretion in decisions that could have an impact on water supplies.

Both you and your administration have shown great leadership in bringing parties together to solve the complex water challenges that have plagued California for decades. From the efforts with the Bay Delta Conservation Plan to the Statewide Water Action Plan, it is clear that you and your agencies understand the critical nature that secure and reliable water supplies provide to California. In light of the continued challenges facing us, we request that as these plans continue to move forward, that the agencies responsible for their development analyze every opportunity to develop additional water supplies through enhanced and integrated operational criteria, water transfers, sound science and appropriate regulatory relief. Additionally, we request that the California Drought Contingency Plan be updated to include new options and technologies to address ongoing drought conditions and that the State Water Action Plan have a greater emphasis on this year's immediate needs. Every drop of water is important in conditions like these.

Thank you for your continued efforts to work with us on solving California's water challenges. We look forward to your timely response to our request.

Sincerely,

DIANNE FEINSTEIN

JIM COSTA

This memorandum identifies and briefly summarizes federal and state authorities that are potentially applicable to drought emergencies.

Federal Authorities

- **Flood Control Act of 1944 (33 U.S.C. § 708)**: Army Corps of Engineers. (1) Temporary water withdrawal, for a fee, from Corps facilities during drought for municipal and industrial purposes. Administration policy limits application to governor-declared drought emergencies and to 99 acre-feet. (2) Contracts for temporary sale of surplus water for municipal and industrial use from Corps reservoirs at fee determined by secretary of Army.
- **Disaster Relief Act of 1974 (33 U.S.C. § 701n)**: Army Corps of Engineers. Construction of wells for and transport of water to drought-distressed farmers, ranchers, and political subdivisions. Non-transport costs are nonfederal.
- **Water Resources Development Act of 1986 (43 U.S.C. § 390)**: Army Corps of Engineers. Interim use for irrigation of un-contracted water designated for municipal and industrial use at Corps reservoirs for a fee.
- **Reclamation States Emergency Drought Relief Act of 1991 (43 U.S.C. § 2201 et seq.)**: Bureau of Reclamation. (1) Loans with interest to water users for construction of temporary facilities and temporary wells, conservation activities, and acquisition of water to mitigate droughts. (2) Authorizes BOR to facilitate water purchases and transfers through nonfinancial assistance, and to provide financial assistance for contingency plans. (3) Authorizes BOR purchases of water from project contractors and sold under temporary contracts at full cost recovery. (4) Authorizes BOR's participation in state water banks. (4) Temporary procurement (≤2 years) or BOR project and non-project water for managing fish and wildlife impacts due to drought or the operation of a BOR project during drought conditions.
- **Act of June 26, 1948 (43 U.S.C. § 502, P.L. 95-18)**: Bureau of Reclamation. Emergency fund established to assure continuous operation of Reclamation facilities. Also other site or drought specific authority.
- **Presidential Disaster Declaration (42 U.S.C. § 5121 et seq.)**: Requested by Governor through the FEMA regional office.
- **FEMA Disaster Assistance (42 U.S.C. § 5121 et seq.)**: FEMA assistance programs are activated only by Presidential Disaster Declaration. FEMA does not help small businesses or commercial farms, but its range of program can be helpful for personal and family damages. For example, farmers and ranchers may qualify for Disaster Unemployment Assistance, a FEMA-funded program that provides assistance to individuals not covered by standard unemployment assistance.
- **Noninsured Assistance Payments (7 U.S.C. § 1501 et seq., 7 U.S.C. § 1509)**: USDA Farm Service Agency. Provides direct payments to crop producers who experience a significant crop loss, but are not eligible for federal crop insurance.
- **Emergency Farm Loans (7 U.S.C. § 1961 et seq.)**: USDA Farm Services Agency. Low-interest government loans to producers suffering from production and physical losses located in or adjacent to county declared a disaster by President or USDA Secretary[1]
- **Emergency Conservation Program (16 U.S.C. § 2201-2205)**: USDA Farm Services Agency. Emergency funding and technical assistance to producers to rehabilitate farmland

[1] A Presidential or USDA Secretarial declaration that a county is a disaster is a precursor for several forms of federal aid described in this document.

damaged by natural disasters, including implementing emergency water conservation measures in response to severe droughts.

- **Emergency Forest Restoration Program (16 U.S.C. § 2206)**: USDA Farm Services Agency. Payments to eligible owners of nonindustrial private forest land in order to carry out emergency measures to restore land damaged by natural disaster, including drought.
- **Supplemental Revenue Assistance Payments Program (7 CFR Part 760, 2008 Farm Bill)**: USDA. Covers crop revenue losses for counties declared disaster areas by USDA Secretary or in cases where overall production loss exceeds 50 percent.
- **Livestock Forage Disaster Program (7 U.S.C. § 1531)**: USDA Farm Service Agency. Financial assistance for grazing losses due to drought or fire between 1-1-08 and 10-1-11.
- **Livestock Indemnity Program**: Payments for livestock deaths related to severe weather between 1-1-08 and 10-1-11.
- **Tree Assistance Program (7 U.S.C. § 1531)**: USDA Farm Services Agency. Financial assistance to qualifying growers to replant / rehab trees, bushes, and vines damaged by natural disasters between 1-1-08 and 10-1-11.

State Authorities

- **Governor Executive Orders**: past orders by governor have expedited grant programs, facilities water transfers, direct CALFIRE to mobilize additional firefighting resources, order temporary supplemental assistance, suspend waiting period for unemployment insurance, etc.
- **Governor Proclamations**: drought proclamations, states of emergency (e.g. for water shortage); can suspend certain requirements (e.g. Water Code section 13247, CEQA (Pub. Resources Code §§ 21080, 14 CCR 15269)). Proclamation activates the State Emergency Plan and invokes the California Disaster and Civil Defense Master Mutual Aid Agreement facilitating the provision of mutual aid from other cities and counties and state agency assistance, permits suspension of state statutes or regulations, allows for state reimbursement of city and county response costs associated with the emergency, and allows property tax relief for damaged private property.
- **California Disaster Assistance Act (Gov. Code, § 8680 et seq.)**: Governor's Office of Emergency Services (Cal OES). State financial assistance for recovery efforts to counties, cities, special districts after Director's Concurrence or a Governor's Proclamation by Cal OES.
- **California Emergency Services Act (Gov. Code, § 8550 et seq.)**: Establishes how conditions of emergency are declared and describes the authorities of public agencies to prepare for and respond to emergencies. Establishes how state and local conditions of emergency are declared and describes authorities of public agencies to prepare for and respond to emergencies.
- **California Drought Contingency Plan**: Developed in response to recent droughts. Aims to improve agency coordination, enhance monitoring and early warning capabilities, water shortage impact assessments, and preparedness, response, and recovery programs.