

Congress of the United States
Washington, DC 20510

March 1, 2011

The Honorable Gary Locke
Secretary of Commerce
1401 Constitution Avenue, NW
Washington, D.C. 20230

RE: Implementation of June 4, 2009, Biological Opinion for Operations of the Central Valley Project and California State Water Project

Dear Secretary Locke:

We are writing once again to request that you exercise your authority under the Endangered Species Act to modify restrictions placed on operations of the Central Valley Project and the California State Water Project by the biological opinion for the operations of those Projects issued by the National Marine Fisheries Service and dated June 4, 2009.

California has received a lot of rain thus far this season. Indeed, levels of precipitation, run-off, and snow-pack are well above average for nearly every region of the state. However, water allocations for south-of-CVP water service contractors are at only 50%, and according to the water supply forecast released on February 18, 2011, that 50% allocation is not likely to increase even if the remainder of this water year is average. That is because from April 1 – May 31, the State and Federal pumps will have to reduce levels of pumping to comply with Reasonable and Prudent Action IV.2.1 under the June 4, 2009, biological opinion. That is double the length of time required for reduced pumping by the state water rights decision. The same Action requires limiting exports of water based on the downstream flows in the San Joaquin River at Vernalis.

There is substantial doubt about the scientific basis for the restrictions on water exports imposed by Action VI.2.1. As we pointed out in our April 26, 2010, letter the National Academy of Sciences concluded in its report “Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California’s Bay Delta” the “effectiveness of reducing exports to improve steelhead smolt survival is less certain,” and that there is a “weak influence of exports in all survival relationships.” Moreover, since the National Academy of Sciences report, the United States District Court for the Eastern District of California issued its opinion *The Consolidated Salmonid Cases* on motions for preliminary injunction filed by the plaintiff water districts and the State of California. In that opinion the District Court found “[t]here is little to no justification in the record for the exact flow ratios chosen for RPA Action IV.2.1.” (713 F.Supp.2d 1116, 1135 (N.D. Cal. 2010).) The District Court went on to hold that “the record does not support a finding that the specific Vernalis flow to export ratios imposed by Action IV.2.1 . . . are necessary to avoid jeopardy and/or adverse modification to any of the Listed Species.” (*Id.* at 1137.)

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In light of the National Academy of Sciences' report and the District Court's decision regarding the June 4, 2009, biological opinion, we request that you act quickly to revisit Action IV.2.1 before it is implemented on April 1. The water supply impact of this particular Action is dramatic, while the benefits to the listed species are far from certain. We would welcome the opportunity to meet with you to discuss this and other interim actions that may bolster this year's water supply.

Thank you for your urgent attention to this matter. We look forward to your response.

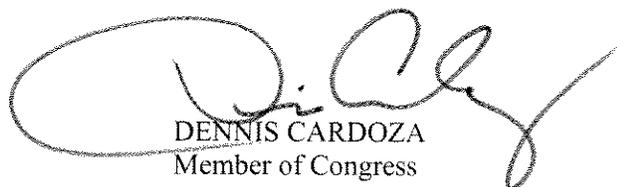
Sincerely,



DIANNE FEINSTEIN
United States Senator



JIM COSTA
Member of Congress



DENNIS CARDOZA
Member of Congress