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January 25, 2010

The Honorable Dianne Feinstein
United States Senator
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Legislation to Restore Water Supplies

Dear Senator Feinstein:

Thank you for your January 21, 2010, letter responding to our request for the immediate introduction and passage of legislation to restore flexibility to operations of the Central Valley Project and California State Water Project. Your commitment to agricultural in the San Joaquin Valley is well known and appreciated greatly. Unfortunately, your response reflects some common misunderstandings about the operation of these water projects and the allocation of project water.

In your letter you state "[t]he snow pack indication at the end of this month will give us a good reading of water allocation levels." Although historically the snow pack was a good indicator of water allocation levels, in the present circumstances the condition of the snow pack has very little to do with the allocation of water to south-of-Delta CVP water service contractors. Rather, the critical questions are how much project water will the Bureau of Reclamation be able to capture when the Delta is in surplus conditions and how much project water will Reclamation be able to move from upstream storage facilities through the Delta. The State Water Project operated by the California Department of Water Resources faces this same problem.

Prior to the adoption of the most recent biological opinions, during the winter months Reclamation and the Department of Water Resources would take advantage of wet conditions by pumping water from the Delta when storm events produced runoff into the Delta and the Delta was in surplus conditions. The Projects would take advantage of these conditions even during periodic storms that occur in drought years. The Projects would divert water at their respective pumping plants for storage in San Luis Reservoir or other south-of-Delta storage

facilities. However, today, because of pumping restrictions imposed by the biological opinions neither Reclamation nor the DWR can anticipate capturing water during wet conditions, and the water that otherwise would have been diverted for subsequent use is permanently lost by the Projects.

As this letter is being written, because of a series of wet storms that have received national media attention, the Delta is in surplus conditions. If it were not for the most recent biological opinions, the Jones Pumping Plant would be operating at full capacity and the Banks Pumping Plant would be operating at 6,680 cubic feet per second, plus one third of the volume of flow on the San Joaquin River, measured at Vernalis. However, the two projects are losing approximately 10,000 acre-feet of water per day because the operations of the pumping plants are being constrained by the biological opinion issued by NOAA Fisheries. Within the next few days, we anticipate that additional restrictions on the operations of the pumping plants will be imposed under the biological opinion issued by the Fish & Wildlife Service, and the quantity of water lost by the Projects will increase to 18,000 acre-feet per day. What is ironic is that these additional restrictions will be imposed because of increased turbidity in the Delta resulting from runoff caused by the unusually wet conditions that we have experienced over the last ten days. **Essentially, the wetter weather means greater water loss for the projects.**

The restrictions on pumping prescribed by the biological opinions will be in effect through June 31, 2010. For this reason, Reclamation and DWR must forecast that pumping will be severely limited through that date. After July 1, the permitted capacity of the pumping plants will become available, and the Projects will move available water from upstream storage, through the Delta, for export at the pumping plants. However, for the CVP, nearly all of the available capacity at the Jones Pumping Plant will be dedicated to meeting Reclamation's obligation to the Exchange Contractors and to deliver Level 2 refuge supplies. Therefore, regardless of how wet it is in the Sacramento River watershed, there will be very little, if any, water available for allocation to south-of-Delta water service contractors, and we forecast that the allocation to these contractors will be zero to ten percent.

In your letter you refer to the fact that water in storage in San Luis Reservoir "is now nearly twice as full as it was this time last year." That observation is correct, but of the water in storage on the federal side of San Luis Reservoir, only 20 percent is Project water available for allocation in 2010. The remaining water, 450,000 acre-feet, is water that has been acquired and saved by water agencies like Del Puerto Water District and San Luis Water District in anticipation of a zero or low allocation in 2010. Had this saved water been used when it became available to the water agencies, it would not be in San Luis Reservoir, but under any circumstance, this water is not available to Reclamation for allocation in 2010.

We hope this description, which I encourage you to confirm with the operators of the CVP and SWP, demonstrates that because of restrictions imposed under the biological opinions, there simply is no flexibility remaining in operations of the Projects. Moreover, as pointed out in your letter, there is a lack of confidence that these restrictions are providing any benefit to the abundance of listed species. For this reason, the San Luis & Delta-Mendota Water Authority and the Kern County Water Agency maintain that Congress must act, and act now, if the agricultural communities and irrigated agriculture referenced in your letter are going to survive.

We do not mean to suggest that there should be no protection for listed species, but from our perspective protections under prior biological opinions are sufficient. Therefore, we urge you to introduce legislation that provides:

> Complying with the reasonable and prudent alternatives and the incidental take limits defined in the Biological Opinion released by the United States Fish and Wildlife Service dated February 15, 2005, and the Biological Opinion on the Long-Term Central Valley Project and State Water Project Operations Criteria and Plan released by the Department of Commerce on October 22, 2004, all requirements under the ESA of the Endangered Species Act (16 U.S.C. 1531 et seq.) are fully met for the coordinated operations of the federal Central Valley Project and the California State Water Project.

Without the adoption of such legislation, all scientific uncertainty concerning the efficacy of the additional constraints imposed by the most recent biological opinions is being resolved in favor of the listed species and to the detriment of the entire San Joaquin Valley and urban areas from San Jose to San Diego. This has resulted in catastrophic human and economic suffering. It is true that the adoption of this legislation would shift the risk of scientific uncertainty to an more equitable balance between the fish and other beneficial uses. We think this is consistent with the existing provisions of law that mandate decisions of the Fish & Wildlife Service and NOAA Fisheries under the Endangered Species Act be based on the "best scientific and commercial data available."

We look forward to working with you on this important issue.

Sincerely,

SAN LUIS & DELTA-MENDOTA WATER AUTHORITY

Daniel G. Nelson
Executive Director

KERN COUNTY WATER AGENCY

James M. Beck
General Manager

cc: California Legislative Delegation
The Honorable Arnold Schwarzenegger
The Honorable Ken Salazar
Mr. Lester Snow