



May 6, 2020

Assemblymember Vince Fong
34th Assembly District

Senator Melissa Hurtado
14th Senate District

Senator Shannon Grove
16th Senate District

Assemblymember Jordan Cunningham
35th Assembly District

Assemblymember James Gallagher
3rd Assembly District

Assemblymember Jim Patterson
23rd Assembly District

Assemblymember Devon Mathis
26th Assembly District

Dear Minority Leader Grove, Senators, and Assemblymembers,

We write in response to your letter to Governor Newsom dated April 3, 2020. First, thank you for taking time to share your perspective and concerns regarding California water operations during this extraordinary time. We appreciate your patience regarding this response given the COVID-19 crisis and hope that your families and employees remain safe and healthy as our state and federal governments collaborate to respond to this unprecedented challenge.

We agree with you on the importance of operating our water infrastructure in California to provide reliable water supplies to our communities and economy while protecting the environment. Achieving this balance is a complex, ongoing process that requires both engagement across our state agencies and cooperation from the federal government. We are focused on operating state water infrastructure to capture and convey water supplies in a manner that complies with California's Endangered Species Act (CESA) and other state and federal laws and regulations, which requires thoughtful operational rules and adequate environmental protections. Our iconic salmon are highly imperiled and facing extinction. These species, along with Delta and longfin smelt have recently been surveyed at the lowest population levels ever recorded.

Unfortunately, the Biological Opinions (Opinions) issued by the federal fisheries agencies and adopted by the Bureau of Reclamation (Bureau) in February, have put several endangered species in the Delta watershed at immediate risk of extinction. In fact, actions already taken by the Bureau under the new Opinions caused such alarming impacts to longfin smelt populations in April that we filed a motion to enjoin the Bureau's operations in May in order to stop the harm from continuing.

We recognize that the state and federal projects need to coordinate closely given their joint responsibilities for water supply delivery and environmental protection. Historically, California relied on the federal process to protect endangered species. This option was effectively eliminated by the President's 2018 memorandum that both shaped and accelerated the updating of earlier biological opinions. In recognition of this extraordinary situation, state agencies pursued a separate state permit for the first time to ensure that the Department of Water Resources (DWR) water operations can comply with state law. Following the finalization of the Trump Administration's Opinions on February 20, 2020, the Department of Fish and Wildlife (DFW) issued a new state permit for the long-term operations of the State Water Project (SWP) under CESA.

This permit, which was issued on March 31, 2020, enables DWR to continue to provide reliable water to 27 million Californians and our agricultural economy while protecting four species of fish at risk of extinction. The permit carefully analyzed operations of our state water infrastructure, drawing on a decade of science to develop a permit that strengthens safeguards for fish while improving real-time management of state water operations. It contains a robust set of protective measures, and makes several improvements to waterways, including a new barrier in the south Delta to improve survival of migrating juvenile salmon and better use of salinity gates in the Suisun Marsh to expand the habitat for Delta Smelt. Lastly, the permit includes new funding for a comprehensive adaptive management program that includes updated modeling, monitoring, and analyses to inform real-time operations. This operational flexibility in the state permit will facilitate more exports during large storm events and hydrology wet years while protecting endangered species.

The state permit includes important safeguards for endangered species that are not specifically protected by the federal Biological Opinions. This distinction is increasingly critical as negative effects already are being observed by operations under the new Opinions, especially for longfin smelt. The federal and state water projects have a long history of shared responsibilities for meeting environmental needs. The State Water Project cannot be forced to absorb the burden of environmental compliance that belongs to others.

This new approach strengthens water security for Californians by ensuring the continued lawful operation of the SWP for the next 10 years, regardless of federal actions. The regulatory certainty provided by this permit will support continued smart water management, including groundwater recharge, expanded water recycling, and modernized Delta conveyance – all of which are critical to supporting our capacity to prepare for dry years like this one.

We remain committed to working with federal agencies to navigate and resolve differences between the federal and state permits to ensure necessary protections for endangered fish. We also remain equally committed to pursuing voluntary agreements as a pathway to create a comprehensive solution. We continue to pursue these agreements and have included flexibility in the state permit to sync with this effort, but we need the federal government to work towards meaningful compromises to be successful.

We look forward to continuing our efforts to align and advance both federal and state priorities, in order to establish clear rules that protect endangered species, provide regulatory certainty, and meet the water supply needs of California's diverse communities.

Sincerely,



Wade Crowfoot
Secretary for Natural Resources



Jared Blumenfeld
Secretary for Environmental Protection