May 6, 2020

The Honorable Dianne Feinstein  The Honorable Jim Costa
United States Senate  United States House of Representatives
Washington, DC  20510  Washington, DC  20515

The Honorable John Garamendi  The Honorable Josh Harder
United States House of Representatives  United States House of Representatives
Washington, DC  20515  Washington, DC  20515

The Honorable T.J. Cox
United States House of Representatives
Washington, DC  20515

Dear Senator Feinstein, Representative Costa, Representative Garamendi, Representative Harder and Representative Cox:

We write in response to your letter to Governor Newsom dated April 15, 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,

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Wade Crowfoot     Jared Blumenfeld
Secretary for Natural Resources   Secretary for Environmental Protection