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June 7, 1996

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Hon. Dianne Feinstein
U.S. Senate
331 Hart Senate Office Building
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By: Federal Express

Dear Senator Feinstein:

David Orth, General Manager of the Westlands Water District, has extended the courtesy of giving me a copy of a letter he sent you on June 4. His letter responds to a letter I wrote to you on May 28, relating to agricultural drainage issues.

As our prior correspondence makes obvious, EDF and Westlands continue to have a significant disagreement on this matter. Fundamentally, EDF believes that potential changes in Westlands' obligation to repay the United States government for the costs of cleaning up Kesterson National Wildlife Refuge and of developing a plan to handle the drainage problems of the West Side of the San Joaquin Valley should be linked to other agreements regarding overall drainage management policy. Foremost among these other agreements was a decision not to pursue construction of the San Luis Drain to the Sacramento/San Joaquin Delta. Because Westlands is now undeniably pursuing the use of the extended San Luis Drain, we believe that the Drain issue should be resolved before an agreement is reached on repayment policy.

In an effort to further explain the historic basis for EDF's views on this issue, and in commentary on Mr. Orth's letter of June 4, I enclose several documents:

(1) The full letter of May 27, 1988 and accompanying policy statement, an excerpt from which was included in Mr. Orth's letter to you;

(2) A memorandum I sent to, among others, Mr. Orth's predecessor, Mr. Jerald Butchert, on July 27, 1991;

(3) A memorandum, dated August 8 1991, drafted by Mr. Carroll Hamon, who was then head on the State of California's efforts regarding agricultural drainage, enclosing both my memorandum of July 27, 1991, and a competing proposal drafted by Mr. Butchert on August 5, 1991; and

(4) A letter written by Mr. Kenneth Khachigian to the State Water Resources Control Board, dated March 19, 1996.

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A few contextual comments regarding these documents may be useful to you. The consensus letter and policy statement of May 27, 1988, reference, and in my judgment were predicated upon, the consensus-based activities of the San Joaquin Valley Drainage Program (SJVDP). The SJVDP, based in large measure on the unanimous recommendation of the same Advisory Committee as signed the May, 1988 Policy Statement, spent nearly \$50 million pursuing in-Valley solutions to the drainage problems of the West Side and explicitly chose not to study a San Luis Drain to the Delta.

The 1991 exchange of memoranda demonstrates that already five years ago significant differences had emerged as to how the May 1988 Policy Statement should be construed. As early as my July 1991 memorandum, I set forth the differences of opinion which divided interested parties on the questions surrounding repayment of costs incurred by the United States for Kesterson clean-up and drainage studies. I also pointed out that in the opinion of some of those interested parties linkage does exist between repayment issues and more general drainage policy. But Mr. Butchert disagreed with this view, as apparently Mr. Orth does now.

Mr. Khachigian's letter is self-explanatory. In that letter, he writes that his clients have allegedly suffered a half billion dollars in damages. Apart from the letter, it should be noted that he also appeared personally before the State Water Resources Control Board on April 4, 1996, to argue vigorously in support of the position he took in his letter. At least in recent months, he thus has been the "lead" attorney for the drainers who filed the litigation seeking an order for the Bureau of Reclamation to build the San Luis Drain.

Based on these documents, as well as on the arguments I made on EDF's behalf in my prior letter of May 28, EDF continues to urge that you not support legislation sponsored by the Westlands Water District and others to obtain favorable terms on their repayment obligations for Kesterson clean-up and SJVDP costs, until Congress has also deauthorized the San Luis Drain and determined who has financial responsibility for future in-Valley drainage solutions.

Several of us representing environmental points-of-view met this Wednesday for about two and a half hours with Mr. Orth and others representing West Side interests in an effort to close the gap between our respective positions. We made some progress, I believe, but are still very far from agreement. Please be assured, however, that EDF continues firmly to believe in the process, and in the results, of the SJVDP. We hope that Westlands and others too will soon concur that the most promising future for drainage policy in California

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lies in a consensus-based in-Valley solution approach, and not in inherently divisive and contentious efforts to export the Valley's drainage to the Bay/Delta, or for that matter to Monterey Bay, or to any other out-of-Valley location.

Sincerely,



Thomas J. Graff
Senior Attorney

TJG:vrp

Enclosures

cc: David Orth, Westlands Water District (w/enclosures)