

**The Bay Institute of San Francisco  
California League of Conservation Voters  
California Sportfishing Protection Alliance  
Clean Water Action  
Environmental Defense Fund  
Friends of the River  
League of Women Voters of California  
Natural Heritage Institute  
Natural Resources Defense Council  
Pacific Coast Federation of Fishermen's Associations  
Santa Clara Valley Audubon Society  
Save San Francisco Bay Association  
United Anglers of California**

**August 27, 1997**

**Douglas Wheeler, Secretary  
California Resources Agency  
Co-Chair, CALFED Policy Group**

**Robert Perciasepe, Assistant Administrator for Water  
U.S. Environmental Protection Agency  
Co-Chair, CALFED Policy Group**

**RE: BAY-DELTA ACCORD EXTENSION**

**Dear Mr. Wheeler and Mr. Perciasepe,**

**It is our understanding that the state and federal governments are presently engaged in discussions regarding a one-year extension of the December 15, 1994 Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government (Bay-Delta Accord). There has been a great deal of confusion and misrepresentation regarding, first, which provisions of the Accord are subject to extension (since, as you know, water quality standards and operational constraints were subsequently codified in state and federal rulemaking, and do not expire on December 15, 1997) and, second, the implications of the Accord for the use of the 800,000 acre-feet of environmental water mandated by the Central Valley Project Improvement Act (CVPIA).**

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As signatories to and/or supporters of the Bay-Delta Accord, we continue to support implementation of the Accord ~~as it is written~~. However, recent attempts to misrepresent the terms of the Accord in an effort to limit other fish protection measures in the Delta prompt us to request that the state and federal governments reaffirm their commitment to the Accord as it is written, prior to any extension of those of its formal terms that expire on December 15, 1997, primarily the ESA flexibility and institutional agreements provisions.

Specifically, we ask the state and federal governments to reaffirm in writing prior to any extension of the Accord the following:

- That the no net loss provision of the Accord applies only to compliance with the take provisions of the federal Endangered Species Act (ESA) (Accord, p. 3, ESA flexibility, section 1), to additional listings under the federal ESA (p. 5, section 2.b), and to the execution of voluntary actions recommended by the CALFED Operations Group (Attachment A). Compliance with existing statutory or regulatory requirements (such as provisions of the CVPIA) does not constitute a voluntary action, and therefore is not subject to the no net loss provision.
- That the exercise of operational flexibility to achieve no net loss under the ESA flexibility provisions of the Accord (p. 3, ESA flexibility, section 1) applies only to adjustment of export limits, and may not be applied to other operational constraints, including water quality standards. Operations to exercise flexibility and achieve no net loss that involve relaxation of constraints other than export limits are not authorized by the Accord.
- That, other than crediting all Central Valley Project water used to implement Bay-Delta standards against the CVP's obligation under Section 3406(b)2 of the CVPIA, the Accord places no constraints on use of the 800,000 acre-feet of environmental water.

In addition, we request that the state and federal governments address in writing the following issues regarding continued implementation of the Accord:

- The CVP crediting provision of the Accord (p. 6, section 3) presumes an equitable apportionment of responsibility for meeting Bay-Delta standards between the CVP and the State Water Project. The state and federal governments should clarify the terms of that apportionment prior to any extension of the Accord.
- The Accord contains a narrative criterion for doubling of chinook salmon production on the Sacramento and San Joaquin Rivers, subsequently adopted

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by the State Water Resources Control Board (SWRCB) in its 1995 Bay-Delta Water Quality Control Plan. We are not aware of any efforts by the State of California through the SWRCB water rights proceedings or otherwise to implement this component of the final Plan. The state should clarify how it intends to implement this component of the final Plan, including long-term cooperation with implementation of the doubling provisions of the CVPIA, prior to any extension of the Accord.

- Since the signing of the Accord, the State of California has conferred candidate species status (for listing under the California ESA) on the Sacramento River spring-run chinook salmon. Federal and state water project operations have been identified among other factors as contributing to the serious decline in spring-run populations. The state and federal governments should clarify how extension of the Accord would be integrated with the state's obligation to protect this species during the candidacy period.

There is now substantial dispute over the fundamental meaning of certain terms and provisions in the Accord. For this reason, it is our belief that extension of the Accord without the written reaffirmation of its meaning by the state and federal governments would be a mistake. It is also our belief that the state and federal governments should clarify their positions on the additional issues we have raised. Until such reaffirmation and clarification have occurred, the state and federal governments should not extend the Accord.

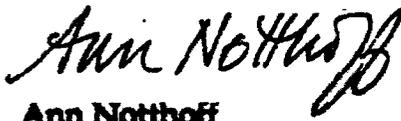
We would be happy to meet with you and your staffs to discuss this most serious issue.

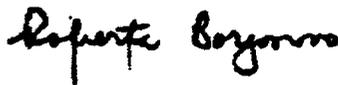
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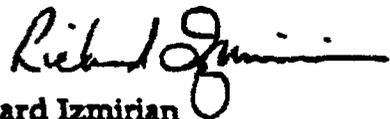
Sincerely,

  
Gary Bobker  
The Bay Institute of San Francisco

  
Gregory A. Thomas  
Natural Heritage Institute

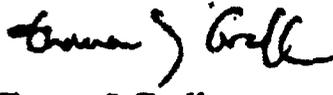
  
Ann Notthoff  
Natural Resources Defense Council

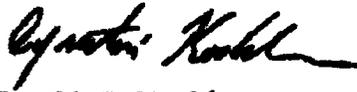
  
Roberta Borgonovo  
League of Women Voters  
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Richard Izmirian  
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Alliance

  
Marguerite Young  
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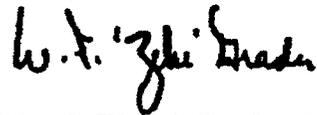
  
Jean Auer

  
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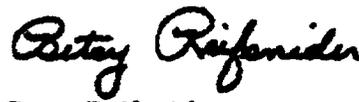
  
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