

United States Senate

WASHINGTON, DC 20510-0564

August 13, 1997

The Honorable John Garamendi
Deputy Secretary
Department of the Interior
1849 C St., NW
Washington, DC 20240

Dear John:

I am writing to you to express my concern over what appears to be a growing controversy regarding the implementation of the Bay/Delta Accord, and particularly the interrelationship between the Accord and the Central Valley Project Improvement Act (CVPIA). In this letter I would like to provide my understanding of this issue in the hope that doing so will assist in resolving this dispute.

As you know, I was involved in helping to create what became known as CAL-FED. At the beginning of this process in the summer of 1993, I asked President Clinton to designate Interior Secretary Babbitt as the point man for coordinating the federal government's efforts to implement the CVPIA, the Clean Water Act, and the Endangered Species Act in the Bay/Delta estuary. I subsequently wrote to Secretary Babbitt to make suggestions regarding the goals that these negotiations should try to achieve.

In my letter, I emphasized the importance of using water allocated for environmental purposes as efficiently as possible. Toward this goal, I expressed the hope that water provided under Section 3406(b)(2) of the CVPIA could also be used wherever possible to satisfy requirements applied under the Clean Water Act and the Endangered Species Act. It is my understanding that the Bay/Delta Accord achieved such joint use of this "b-2" water, with about 40%-50% of the "b-2" water serving the purposes of all three laws.

The reason I emphasized the importance of this goal was the need to address another goal in the negotiations toward the Accord, to achieve as much certainty as possible regarding annual water deliveries by the Central Valley Project to urban and agricultural water districts. As you are well aware, one area served by the CVP is most vulnerable to fluctuations in deliveries caused by allocation of water for environmental purposes, the west side of the San Joaquin Valley. It is also my understanding, both from the Bureau of Reclamation and from farmers on the west side, that the Accord should result in their obtaining only 85% of normal supplies, but that this figure could be achieved on a fairly regular basis over time.

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The Honorable John Garamendi
August 13, 1997
Page Two

As you are keenly aware, the goal for certainty of water supply by farmers on the west side of the San Joaquin Valley has not been achieved. Each year, it would seem, the figure is changed frequently by the Bureau of Reclamation as the water year proceeds. Obviously, these fluctuations are occurring primarily because of different hydrologic conditions each year, in some cases changing dramatically from month to month as has been the case in 1997. Certainty is nevertheless a reasonable goal, and it surely should not be jeopardized by what appear to be actions involving bureaucratic discretion.

To my dismay, I have had conversations with environmentalists on the one hand, and with agricultural and urban water districts on the other, that have presented me with diametrically opposed interpretations of the Bay/Delta Accord's provisions regarding "b-2" water. There are some environmentalists who argue that the Accord does not even include "b-2" water, and there are agricultural and urban interests who argue that the Accord places an absolute ceiling on "b-2" water. Again, as I expressed above, I believe the Accord achieves the goal of using about half of the "b-2" water to also satisfy all Clean Water Act and Endangered Species Act requirements, leaving the remaining half exclusively for the other purposes of the CVPIA.

The question then arises, however, as to how the use of the remaining "b-2" water is to be determined. My understanding of the CVPIA is that a primary purpose is to double the population of anadromous fish in the estuary, and that this is to be done in accordance with the adoption of an Anadromous Fish Restoration Plan to establish a scientific basis for the effort

The dispute I referred to at the start of this letter regards whether and where and for what purpose "b-2" water can be used over and above that specified in the Accord. I have been told by agricultural and urban interests that the U.S. Fish & Wildlife Service is proposing to take nine new actions during the next water year that will consume additional "b-2" water, actions that go beyond those already implemented since the CVPIA was passed. They even assert that the amount of water being sought could exceed the 800,000 acre feet provided for in the CVPIA.

If these allegations are true, it would seem to me that USF&W is violating the spirit of the Bay/Delta Accord. I realize there are differing legal interpretations of the Accord, but it seems clear to me that most of the signers of that document believed that it offered several assurances that intended to restrain the exercise of any bureaucratic discretion that would increase the allocation of water for environmental purposes during the life of the Accord. These included a statement that the Accord was deemed sufficient for providing habitat protection for endangered species listed at the time of its signing, and that any additional water needs identified subsequent to its signing would be met by the purchase of water from willing sellers.

As you know, the Accord provides for a range of water amounts to be allocated for the restoration of the Delta, ranging from 400,000 acre feet in a wet year, to 1.1 million acre feet in a

The Honorable John Garamendi
August 13, 1997
Page Three

very dry year. The CVP is to provide a proportional share, that would not exceed a maximum of 400,000 acre feet. The question, then, is under what conditions can USF&W choose to allocate the balance of the 800,000 acre feet of "b-2" water? It occurs to me, based on my conversations with many of the parties to the Accord, that there was a very clear impression that the balance of the "b-2" water available under the CVPIA, water that was not already being used for fish restoration, would be allocated based on adoption of an Anadromous Fish Restoration Plan. Yet that Plan is only now being released in draft form, at a time when USF&W is already proposing plans for use of the additional "b-2" water starting early next year.

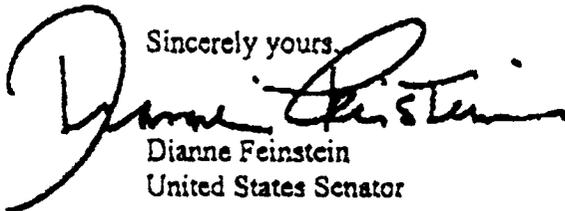
There is one final issue that underlies this argument, and that is the distinction made in the CVPIA between "b-2" water and water that achieves environmental purposes and can then be reused for urban or agricultural purposes. Some environmentalists argue that any environmental water--such as a pulse flow upstream from the Delta--that is reused must by definition be considered as "reoperational" water. Conversely, some agricultural and urban interests would argue that all reoperational water should also be considered as "b-2" water. As arcane as this dispute sounds, it essentially could mean that either there is no such thing as "b-2" water, or that all "b-2" water must never be used for any purpose except improving the environment.

Again, my understanding of this issue is that the Secretary of the Interior or his designee can determine that "b-2" water can be reused for urban or agricultural purposes, after it has served its environmental function.

Where does all of this end up? I believe that it is very important for USF&W to be as circumspect as possible in allocating additional "b-2" water absent having a sound scientific basis for doing so, as would be provided by an approved Anadromous Fish Restoration Plan. To do otherwise, it appears to me, violates the spirit of the Bay/Delta Accord. Certainty of water supplies, within the vagaries of different hydrologic conditions, is a reasonable expectation on the part of urban and agricultural water districts.

Obviously, this issue will not be resolved for some time. But now, before a Fish Restoration Plan is in place, and at a time when the Accord will need to be renewed for at least another year, it is imperative that needlessly disruptive disputes be avoided. I would appreciate hearing your views of this situation, and as always, I stand ready to help in any way that I can.

Sincerely yours,



Dianne Feinstein
United States Senator