



98-290

To: Mike Kahoe
Lester Snow
From: Richard Golb
Subject: Accord Extension
October 7, 1998

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Recently, I promised to provide you with draft language that could be used to amend the 1994 Bay-Delta Accord (Accord), when it is extended later this year. As you are well aware, we believe the Accord is incomplete in that upstream water rights holders now have exposure to regulatory actions due to the state and federal Endangered Species Acts. Our intent is to fulfill the spirit of the Accord and provide regulatory certainty to water rights holders who have invested private, state and federal funds in restoration measures, such as fish screens and fish passage projects.

The subsequent draft statement, and specific amendments, will alleviate our exposure and certainly ensure our support for the Accord, and its extension. I'll be out of the office until October 19th, however, Stuart Somach (Stuart and I prepared this language) is available to discuss the issue, our language and our expectations in any Accord extension (his office telephone number is 446-7979). I realize there are other outstanding issues that may have to be addressed outside of the Accord. Stuart and I are certainly willing to explore that possibility, however, our present view is that upstream water rights holders have made a real commitment and investment in the Bay-Delta, and a long-term solution to its problems, and deserve the protection the Accord could provide them.

As part of the statement or announcement – include the following:

“Our intent here is to maintain the Accord, to the degree possible, as it is extended. In one area, however we have determined that clarification in intent is desirable in order to insure that Accord protections extend in a similar manner to each of stakeholder areas of concern. Accord assurances were designed to provide a level of certainty to those areas affected by the Bay-Delta and related actions. In this regard, emphasis was placed on protection of export interests who were then the subject of regulatory scrutiny. The CALFED policy of no redirected impacts appeared to provide assurances to other areas of the state. However, as programs and projects were developed many of them focused on the Sacramento River, its tributaries and Sacramento Valley Farmland. As a consequence, in order to proceed with these programs and projects and to facilitate the continued cooperation of those within Northern California a clarification of the Accord assurances, as it affects Northern California, is appropriate. Without this clarification, one cannot expect continued cooperation and indeed may experience hostility or resistance to needed CALFED initiatives. Accordingly, we adopt the following clarifications as part of the extension of the Accord:

1. **Under the heading "Endangered Species Act" add a new sub-paragraph "d.", as follows:**

The ESA assurance provided for in this section will apply with equal force to all actions taken by individuals and entities within the Sacramento Valley who have initiated or implemented fish and wildlife restoration measures. In this regard, individual and entity water rights holders within the Sacramento Valley or upstream of the Delta who have initiated or implemented appropriate mitigation programs or projects shall not be affected by restrictions imposed due to the listing of new aquatic species or modifications or new requirements in aquatic species related biological opinions.

2. **Under the new heading "Redirected Impacts" to be inserted after "Central Valley Project Credits" add the following:**

As a rule, the implementation of CALFED programs and projects should not redirect impacts upstream of the Delta. Where, however, projects or programs are implemented upstream of the Delta CALFED action must focus on solving known environmental problems, utilizing voluntary, collaborative measures, such as screening agricultural diversions. Pilot programs of limited scope must be utilized for restoration actions that provide uncertain benefits such as levee setbacks to create river meanders.

3. **Under the new sub- heading "Storage" to be inserted after the above, add the following:**

Storage reservoirs north of the Delta that primarily serve Northern Californian and environmental interests in which there is local control and ownership interests can play a valuable part in the CALFED process and are encouraged. Studies to facilitate these types of projects should proceed without precondition."

cc: Tom Clark
Dan Nelson
Jason Peltier
Tim Quinn

R/memo/accord2