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United States Senate
WASHINGTON, DC 20510-0504
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January 22, 2014

The Honorable Kevin McCarthy
2421 Rayburn House Office Building
Washington, D.C. 20515

The Honorable David Valadao
1004 Longworth House Office Building
Washington, D.C. 20515

The Honorable Devin Nunes
1013 Longworth House Office Building
Washington, D.C. 20515

Dear Congressmen McCarthy, Valadao, and Nunes:

I am writing in response to your January 17, 2014 letter, in which you asked about my solutions to the current drought in California, and requested a meeting to discuss potential legislative proposals.

California is in a crisis, and we must do all we can to help relieve the effects of these terrible conditions. To suggest that I have been silent or unclear about the need for legislative and administrative solutions to alleviate the lack of water in California is inaccurate and untrue. Throughout my career in Congress, and particularly over the past two years when water supplies have already been under stress, I have worked as hard as anyone to find practical solutions to California's water problems – solutions that can actually be implemented to deliver more water to those who need it. I will let the facts speak for themselves:

- **Energy and Water Development Appropriations** – For the past two fiscal years' Energy and Water Development Appropriations bills, I have fought to include non-controversial provisions that would improve the flexibility and reliability of California's water supply. The provisions enjoyed broad support, especially in the San Joaquin Valley. They are:

  Water Banking – A provision to make permanent Reclamation's authority to participate in non-Federal groundwater banking programs, which would

improve Reclamation's ability to store water supplies underground from the wet years in preparation for the dry years.

Water Transfers – A provision to make permanent Reclamation's authority to transfer irrigation waters among Central Valley Project contractors so there is more flexibility to move water to areas where it is needed. It will also direct Reclamation to complete programmatic environmental reviews authorized under current law to expedite such water transfers.

Storage Studies – A provision to expedite the completion and review of congressionally-authorized Central Valley Project water storage studies by allowing Reclamation to provide funds to local sponsors of the four CALFED storage projects if Reclamation determines that the action would advance the projects and would be in the best interest of the Federal government.

Furthermore, for Fiscal Year 2014, I championed a provision to reauthorize the CALFED Bay-Delta Restoration Program, which is a significant source of funding for Federal actions to improve California's water supply. The omnibus reauthorized the program through 2015, and included $37 million in funding.

Much to my surprise and disappointment, I received very little support from House Republicans to pass these provisions. In fact, when both the Fiscal Year 2013 and 2014 Energy and Water Development bills were conferenced, House Republicans opposed these common-sense measures.

The lack of support and cooperation from the House exacted a heavy price. The Administration originally proposed for CALFED to be reauthorized through Fiscal Year 2018, but it was ultimately reauthorized for only one year solely due to opposition from the House majority, thus putting a crucial California water program in jeopardy for future years when we need it the most.

- **Bureau of Reclamation Central Valley Project Water Plan** – In July and August 2013, with the participation and support of farmers and water districts in the Central Valley, I convened executive-level meetings with the Bureau of Reclamation, the U.S. Fish & Wildlife Service, the National Marine Fisheries Service, the California Department of Water Resources, and the California Department of Fish & Wildlife to press for administrative options that would deliver more water through the Central Valley Project (CVP) and State Water Project (SWP).

In response to these meetings and numerous follow-up discussions, the Bureau of Reclamation issued on November 4, 2013 a draft CVP water plan that outlined both short- and long-term actions to improve water supplies for California.

However, due to the extremely dry conditions, even the administrative options outlined in the water plan are not going to produce a substantial amount of water. Where Reclamation has been and continues to be most helpful is in working hard to facilitate water transfers among water districts.

- **The Endangered Species Act** – Many people have been calling for a waiver of the Endangered Species Act (ESA) as applied to the Central Valley Project. Let me be clear: I have explored the idea carefully and seriously, and have been cautioned by both State and Federal officials that such waivers would not only fail to solve the water crisis at hand, but could also exacerbate the situation.

  Waiving or modifying the ESA will not help California overcome the current drought because those proposals neglect some key facts about how our water projects operate. According to State and Federal officials:

  1) As long as conditions remain dry, there is very little gain to be made by relaxing ESA requirements. Given the extremely low amounts of water in the system, the CVP and SWP are focused on meeting minimum legal requirements for public health, public safety, and water quality.

  2) State Water Project contractors' water supplies could be adversely affected by an ESA waiver. While the CVP could pump more water without Federal restrictions, SWP contractors must still meet California Endangered Species Act (CESA) and State Water Resources Control Board (SWRCB) water quality requirements. Consequently, increased Federal pumping would only shift a disproportionate burden onto the SWP, likely resulting in decreased state pumping sufficient to satisfy CESA.

  3) Regulatory agencies would still be obligated to recover threatened and endangered species after the drought ends, and thus may have to implement even more restrictive measures post-drought to compensate for damage done to the species during the emergency.

  4) Litigation is likely, and could invite injunctions from the courts that would curtail pumping. Even if there is legislative language expressly

exempting certain actions from judicial review, plaintiffs could still file suit to seek to block the law's implementation.

5) Such waivers would undermine support for a broad range of water solutions, such as CALFED storage projects and the Bay-Delta Conservation Plan, and thus jeopardize our ability to fix the water situation in the long-term.

I have said repeatedly that I stand ready to collaborate with anyone in good faith to solve California's water problems. I am already in the process of preparing legislation to provide the maximum level of relief to drought-stricken California. When it is ready, I would be happy to meet and confer with you, along with Senator Boxer and Congressman Costa, so that we can have a discussion about practical and meaningful measures that could garner the support of our congressional colleagues and be enacted into law.

I mean this in all sincerity – I would like us all to move beyond partisan divisions, and work together to provide relief to those Californians suffering from this drought.

Sincerely,

Dianne Feinstein
United States Senator

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