

**Audubon * Audubon California * Defenders of Wildlife * Earthjustice *
Endangered Species Coalition * Environmental Defense Fund *
League of Conservation Voters * Natural Resources Defense Council *
Pacific Coast Federation of Fishermen's Associations * Sierra Club California *
The Nature Conservancy, California Chapter**

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

The Honorable Barbara Boxer
United States Senate
Washington, DC 20510

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

The Honorable Jeff Merkley
United States Senate
Washington, DC 20510

RE: Comments on California Emergency Drought Relief Act of 2014 (S. 2016)

March 3, 2014

Dear Senators Feinstein, Boxer, Wyden, and Merkley:

On behalf of our millions of members and supporters nationwide, we thank you for your leadership in introducing legislation to help individuals and communities in California, Oregon, and other parts of the West deal with current historic drought conditions. Although your bill as introduced raises some significant environmental concerns, we believe those problems can be remedied (as explained below) and look forward to working with you to achieve a revised bill that we can all strongly support.

We appreciate the stated goal of your legislation ("California Emergency Drought Relief Act of 2014" (S. 2016)) to expedite drought relief actions that are consistent with state and federal environmental laws, and to bring people together to address this crisis rather than divide us. We must certainly come together to help water-strapped cities, farming communities, and our natural environment during these very challenging times. We support the bill's provision of \$300 million in emergency drought relief funding, to help different sectors cope with current dry conditions and better prepare for future droughts.

We also applaud the intent of S. 2016 to provide drought relief without waiving any existing federal or state law. However, there are two provisions in the bill that appear inconsistent with this intent. These two sections threaten to override existing legal requirements protecting Chinook salmon, the health of California's Bay-Delta ecosystem, and the thousands of fishing jobs in California and Oregon that depend on salmon from the Bay-Delta. Drought, not protections for our environment, is the cause of low water allocations across the state and we strongly urge you to clarify these provisions before this legislation advances. We also appreciate

the effort in S. 2016 to assist our Central Valley refuges, but believe additional clarifications are needed to avoid unintended adverse impacts from the bill as written.

Our specific concerns include:

- **Section 103(b)(4)** would lock in a 1:1 ratio of inflow to exports, affecting the amount of the San Joaquin River's flow that can be diverted by massive pumps in April and May, when salmon and steelhead are migrating down the river to the ocean. In a critically dry year like this one, existing protections allow the pumps to divert all of the water flowing down the San Joaquin River (a 1:1 ratio of inflow to exports). However, the ratio increases to better protect migrating salmon from being pulled into the pumps as hydrology improves; for example, the ratio is 2:1 in a "dry" year as opposed to a "critically dry" year. As written, this high 1:1 export ratio – very harmful to salmonids – could continue despite a significant increase in precipitation, either this year or in future years while the Governor's drought declaration is in effect. This provision could be easily fixed by allowing the ratio to change depending on real-time water availability.
- **Section 103(b)(3)(B)** regulates the flow rate at which Old and Middle Rivers, two channels of the San Joaquin River that feed the Bay-Delta, can be made to flow in the reverse direction from which they would otherwise flow by the operation of the federal and state pumps that export water south. Those pumps redirect the flow of the Delta and pull millions of salmon and other fish to their death each year. This section restricts reverse flows to levels prescribed in the Endangered Species Act biological opinion ("BiOp") for delta smelt without mentioning the stricter limits on reverse flows at certain times prescribed by the BiOp for salmon and other native Bay-Delta species. As currently drafted, this section could be read as requiring only the weaker reverse flow limits in the delta smelt BiOp. This section should be clarified to state that federal agencies should comply with all Old and Middle River flow requirements, including those prescribed in the BiOp protecting salmon in the Bay-Delta ecosystem.

Flow protections for native fish in the Bay-Delta estuary protect thousands of fishing jobs and communities in California and also protect water quality for Delta farmers. Editorials in major California newspapers including *The Sacramento Bee* and *San Jose Mercury News* have recommended clarifying these provisions to ensure they do not undermine critical environmental protections.¹ President Obama likewise indicated that the concerns over these sections should be addressed before the bill moves.

¹ *Editorial: Feinstein-Boxer Bill is a Good Start in Addressing the Drought*, THE SACRAMENTO BEE, Feb. 13, 2014, <http://www.sacbee.com/2014/02/13/6152918/editorial-feinstein-boxer-bill.html> ("the bill [has] provisions that concern Northern California House members and that Feinstein and Boxer should work on"); *see also Mercury News Editorial: No Easy Answers for Solving State's Water Shortage Problem*, SAN JOSE MERCURY NEWS, Feb. 13, 2014, http://www.mercurynews.com/portal/opinion/ci_25135622/mercury-news-editorial-no-easy-answers-solving-states?_loopback=1 ("environmentalists are rightly calling for clarification of a key provision that seems to mandate pumping extra water from the Delta to send it south").

With respect to refuges, we appreciate the various efforts to provide assistance to the refuges in S. 2016 but request two clarifying amendments to avoid unintended consequences from the existing language. First, because the current bill merges discussions of groundwater and new water purchases into one single sentence, it could be read to modify earlier law to the detriment of refuges even though that was not intended. An easy remedy is to separate out the two approaches, as we suggest below. Second, because refuge managers must always verify that groundwater is of suitable water quality before using it on refuge habitat, we want to ensure that a similar protection is included in S. 2016 and recommend adding a few words to clarify that. Accordingly, our recommended revised language would be:

(9) to the maximum extent possible based on the availability of water and without causing land subsidence—

(A) meet the contract water supply needs of Central Valley Project refuges through the improvement or installation of wells to use groundwater resources of suitable water quality, which activities may be accomplished by using funding made available under section 104 or the Water Assistance Program or the WaterSMART program of the Department of the Interior; and

(B) make a quantity of Central Valley Project surface water obtained from the measures implemented under subparagraph (A) available to Central Valley Project contractors;

(C) to assist in meeting the incremental Level 4 needs of CVP Refuges, purchase water from willing sellers using funding made available under section 104 or the Water Assistance Program or the WaterSMART program of the Department of the Interior;

Again, we thank you for your leadership and look forward to working with you to address these concerns and to help advance funding and solutions to the historic drought facing California and other western states.

Sincerely,

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