



SEP 30 2009



The Honorable Dianne Feinstein
United State Senate
Washington, D.C. 20510

Dear Senator Feinstein:

Thank you for your letter of September 11, 2009, expressing an interest in having the Department of the Interior and the Department of Commerce contract with the National Academy of Sciences (NAS) to conduct an independent review of the two Bay Delta biological opinions issued by the U.S. Fish and Wildlife Service and National Marine Fisheries Service.

We appreciate your commitment to ensuring that difficult and important environmental decisions are backed by strong science. We share that commitment. Both the FWS and NMFS opinions had the benefit of independent scientific review. Nonetheless, given the unique importance of these matters, we do not object to having the science associated with Bay Delta fish protection activities presented to the National Academy of Sciences (NAS) for additional scientific review. We believe that there may be three specific areas in which NAS review could potentially be helpful.

First, State and Federal officials and a number of stakeholders are actively developing a "Bay Delta Conservation Plan" (BDCP) that is charting a long-term course of action aimed at enabling California to simultaneously achieve both an environmentally sustainable Bay Delta and a reliable water supply. The BDCP process is analyzing a large number of scientific issues, including the impact that a variety of stressors are having on the Bay Delta (e.g., invasive species, water quality, etc.) and aquatic and riparian habitat needs. We are committed to ensuring that the science behind the BDCP process is sound. As a result, we will be engaging with the State, the stakeholders, and other parties who are interested in the BDCP to evaluate how a NAS review might assist in this effort.

Second, with regard to the broader question of the scientific underpinnings of the biological opinions, we are confident that FWS and NMFS have identified "reasonable and prudent actions" (RPAs) that are responsive to the severe plight of the species in question and are scientifically sound. We recognize, however, that some of the RPAs have significant water supply impacts. Given this reality, and the fact that good science is always our guidepost, we have no objection to obtaining independent scientific input from the NAS regarding whether alternative and equally scientifically defensible RPAs could be available that have more limited water supply impacts. For example, FWS considered, but ultimately did not adopt as RPAs, Old and Middle River strategies based on use of a delta smelt "entrainment index," a delta smelt behavioral model, and turbidity-based factors. For the NMFS biological opinion, an engineering program was included as part of the RPAs. However, particular technologies that would be part of the engineering program, such as bubble curtains (non-physical barriers), could benefit from expert scientific review. If the NAS were to take on this task, it would be important that any

such review be undertaken on an expedited basis by an experienced, independent panel whose scientists are acquainted with the Bay Delta.

Third, in response to one of your suggestions, we would welcome a NAS science panel review that would respond to the specific issue of whether the FWS and NMFS biological opinions are incompatible with each other, for example focusing on questions such as spring flows in dry seasons and fall flows in wet seasons. While our regional teams are comfortable with the two opinions' compatibility, since questions have been raised, the NAS's views on that subject would help put those questions behind us. Given the need to move quickly on this subject, and the fact that we think the NAS's attention on the first and second points deserves priority, we would also like to potentially explore getting an independent scientific opinion on this point through the CalFed science panel. We would ask them to assign independent scientists who were not involved in the initial review of the biological opinions.

We are prepared to approach the NAS on these issues and will proceed to do so. If you have any questions about our views on these matters, please do not hesitate to contact us.

Sincerely,



Ken Salazar
Secretary of the Interior



Gary Locke
Secretary of Commerce