

Congress of the United States
Washington, DC 20515

September 16, 2008

The Honorable Dirk Kempthorne
Secretary of the Interior
Department of the Interior
1849 C Street, N.W.
Washington, DC 20240

RE: Consultation on Operations of the Central Valley Project and California State Water Project

Dear Secretary Kempthorne:

In *Natural Resources Defense Council, et al. v. Kempthorne*, the United States District Court for the Eastern District of California found that the 2004 biological opinion for operations of the Central Valley Project ("CVP") and the California State Water Project ("SWP") was inadequate, and the District Court remanded the matter back to the Fish and Wildlife Service with direction that a new biological opinion be issued by September 15, 2008. In addition, the District Court ordered that, pending completion of the new biological opinion, the CVP and SWP operate under additional restrictions for the protection of the Delta smelt. These additional restrictions placed significant constraints on pumping from the Sacramento-San Joaquin Rivers Delta from December 26, 2007 through June 30, 2008. As a consequence of these additional restrictions, the CVP and SWP lost in excess of 650,000 acre-feet of water through foregone pumping.

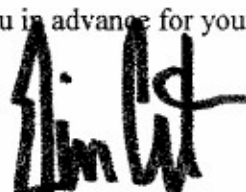
On August 29, 2008, the District Court granted a motion by the Fish and Wildlife Service to extend the date by which the new biological opinion must be completed to December 15, 2008. We are writing to express our strongest desire that this date not be extended further. Failure to complete the biological opinion by December 15, 2008, would likely result in an extension of the District Court's order on interim remedies into 2009. If the water supply impacts of operating under these additional restrictions were comparable to the water supply impacts in 2008, the consequences would be devastating to the economy of the State of California. Indeed, as a consequence of the 2008 water supply losses resulting from the District Court's order and the dry conditions that exist in the state, it is likely that large agricultural areas of the San Joaquin Valley and urban areas that receive water from the CVP and SWP will suffer significant water supply shortages regardless of hydrologic conditions in the upcoming water year.

In addition to completing the new biological opinion by the new date established by the District Court, it is our strongest desire that the Fish and Wildlife Service will critically analyze, using

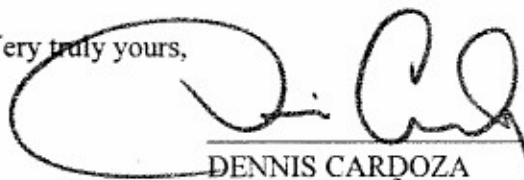
the best scientific and commercial data available, the efficacy of all existing and any new restrictions on project operation, including those ordered by the District Court. We are informed that preliminary data concerning the distribution of Delta smelt in 2008 indicate that the additional restrictions on CVP and SWP operations imposed by the District Court did not have the intended effect. From our perspective, it would be unacceptable for the Service to include in the new biological opinion reasonable and prudent alternatives or measures that restrict water supply without a rigorous scientific analysis concerning the need for those restrictions in order to avoid jeopardy to the species. Imposing restrictions based on a biologist's best professional judgment would not be consistent with the standard imposed by the Endangered Species Act.

Finally, it is our strongest desire that the Service begin to examine all of the factors that limit the abundance of the Delta smelt and other at risk species in the Delta. To date, the entire effort to recover these species has been limited to imposing restrictions on CVP and SWP operations. That effort has failed. Today, abundance indices for Delta smelt are at an all time lows, despite the dedication of millions of acre-feet to their protection. It is our view that the effort to recover Delta smelt has failed because the Service has ignored the numerous other factors that limit the abundance of this and other species. These other factors include the loss of habitat, the introduction of exotic species, including predator species like the striped bass, inadequate prey species or other sources of food, the entrainment of the species by unscreened water diverters, and the discharge of toxics into the Delta and streams tributary to the Delta. In addition, scientists at the National Marine Fisheries Service have attributed the marked decline in salmon along the Pacific Coast for the 2007-2008 spawning season to general ocean conditions. Until these other limiting factors are addressed, the abundance of the species will continue to decline. Moreover, there will be continuing pressure to place new restrictions on CVP and SWP operations, all to no avail.

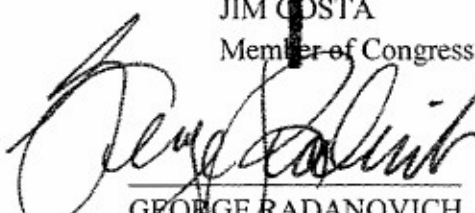
Thank you in advance for your timely attention to this critical matter.




JIM COSTA
Member of Congress

Very truly yours,


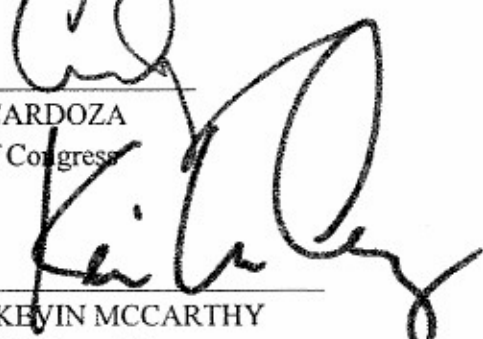
DENNIS CARDOZA
Member of Congress



GEORGE RADANOVICH
Member of Congress



DEVIN NUNES
Member of Congress



KEVIN MCCARTHY
Member of Congress

John T. Little

John Campbell

Mary Bond Mack

Dwight Drim

Jerry Lewis

Ken Albert

Don Rm

Ed Roze

Howard P. Buck

CC: The Honorable Oliver Wanger, U.S. District Court Judge
The parties to *Natural Resources Defense Council, et al. v. Kempthorne*