



April 4, 2008

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Re: Drainage Working Group Discussion Draft

Dear Federico and Mike,

Thank you for the opportunity to comment on the Drainage Working Group Discussion Draft that you provided to us last Friday, dated March 27. The Environmental Defense Fund supports timely and effective resolution to the longstanding drainage problems on the west side of the San Joaquin Valley and appreciates the Bureau's efforts solve those problems.

The Discussion Draft, however, as explained below, contains several provisions having little to do with drainage that are problematic for us. Moreover, there are elements of the drainage proposal that we have discussed over the past six months that do not appear to be included in the legislation. The status of those elements in light of the proposed legislation is unclear to us.

Financial obligations

Very little discussion related to the key financial assumptions that appear to be driving the drainage proposal has taken place, at least in the dozen or so meetings and conference calls in which we have been involved and the proposed legislation does not illuminate this issue any further. Section 10 provides funding necessary to carry out the provisions of the Act but puts no limits on those funds nor does it describe how they will be used, and by whom.

We do understand that a federal court has ruled that the United States must assume its responsibility to implement a comprehensive drainage program and that Section 5 of the Discussion Draft includes provisions that would relieve the United States of any such responsibilities. We also understand that this element, which constitutes the core of the Discussion Draft, is attractive to Interior for a number of reasons. And we agree that it would likely be more efficient for water contractors to manage their own drainage.

However, because we do not fully understand the existing financial responsibilities it is as yet unclear to us if the proposal is in the best interest of United States' taxpayers. In the absence of this proposal, if the United States implements a drainage program and it is subsequently reimbursed by contractors, must there be an impact on taxpayers in the long-run? Is it possible

that interest rates for new drainage facilities could be assigned at market rates, rather than the below-market rates that have historically been assigned within irrigation rate-setting policy?

We feel we need more information about the proposal's financial implications before we can evaluate it.

Enforcement of drainage management responsibilities

In our review of the Discussion Draft, we did not see any language related to enforcement of drainage responsibilities that would be assigned to CVP contractors. Such language should be included, as should strong incentives for compliance.

Loss of CVPIA Section 3406(b)(2) flexibility to protect Delta fisheries

EDF does not support section 7(e) of the Draft which would for all time preclude use of any of the 800,000 acre-feet of dedicated yield established by the CVPIA from being used in the Delta. The Draft restricts limits on export pumping only to those needed to comply with water quality and ESA obligations, regardless of whether or not additional freshwater flows in the Delta are needed to accomplish any of the fish, wildlife or habitat measures contained in the Central Valley Project Improvement Act.

This is precisely the position taken by CVP water contractors in litigation involving the CVPIA, and it was rejected by the federal court. Reversing the District Court, the Ninth Circuit Court of Appeals held that meeting the CVP's water quality and ESA obligations was not the primary purpose of the 800,000 AF dedication. The primary purpose of the dedication is meeting the fish, wildlife and habitat restoration measures of the CVPIA itself including, but not limited to, the salmon doubling mandate. Thus, the Court held, Interior is required to "give effect to that hierarchy of purposes" and may not use (b)(2) water primarily to meet the obligations of these pre-existing statutes.

The current Discussion Draft runs directly afoul of the CVPIA and the Ninth Circuit's ruling by precluding use of any (b)(2) water in the Delta regardless of whether and when it is needed to meet the salmon doubling mandate and other CVPIA restoration mandates. Moreover, in light of the substantial collapse of the Delta's pelagic fisheries and the alarming low number of returning fall-run Chinook salmon in 2007, this is not the time to be limiting critical tools necessary to aid the establishment of sustainable fisheries. As you are aware, fifteen years after enactment we are still far short of achieving the salmon doubling mandate.

We appreciate that in recent years Interior has used the (b)(2) dedication in the Delta only sparingly. The priorities for use of (b)(2) supplies may well change due to changing conditions in the Central valley and Bay Delta watershed, including but not limited to the collapse of pelagic fisheries, diminished number of returning fall-run chinook salmon, and potential new conveyance in the Delta. We believe it would be unwise for Interior to forgo the flexibility to use (b)(2) supplies as may be best warranted in future years.

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We do have a meeting scheduled with the U.S. Fish and Wildlife Service in mid-May to discuss this matter further, and to evaluate it in the context of the proposed assignment of 100,000 acre-feet of Westlands contract to the Service. During this and other discussions, we will listen to other views of this proposal with an open mind, but our present view is that it would be imprudent to forgo any of the existing flexibility to apply (b)(2).

Tiered pricing for water supplies

We are opposed to the proposal in Section 6(f) of the Discussion Draft to waive the tiered rate provisions of Section 3405(d) of the CVPIA. We believe that the tiered rates provide effective incentives for improving water-use efficiency and should not be eliminated.

Contract period


Discussions related to the drainage settlement have included a proposal to provide Westlands with an unprecedented 60-year contract for over 1 million acre-feet of water. While we do not see this proposal in the Discussion Draft, we would like to be very clear that we believe it would be a mistake to commit so much water for such a long period. Due to expected population growth and the uncertainty of future hydrologic conditions, it may well be that in a few decades it is in California's broader interest to apply that supply to urban uses, environmental uses, or even agricultural uses in other areas.

Legally Required Acreage Limitations

Discussions related to the drainage settlement have also included a proposal to relieve Westlands of the acreage limitations of the Reclamation Reform Act that were intended for the benefit of small farms. EDF does not believe it is appropriate to exempt Westlands for a number of reasons, including that it would set a precedent and encourage other Reclamation contractors to expect similar treatment.

We look forward to working with all parties to develop an effective, efficient and fair drainage proposal.

Sincerely,



Laura Harnish
Regional Director

Cc: John Watts (office of Senator Feinstein)
Ben Miller (office of Congressman Miller)