

Congress of the United States
Washington, DC 20515

December 5, 2011

The Honorable Ken Salazar
Secretary
U.S. Department of the Interior
1849 C Street NW
Washington, D.C. 20240

Dear Secretary Salazar:

We are deeply concerned that your Department has overseen and continues to implement the development of an unlawful biological opinion and unlawful reasonable and prudent alternative for delta smelt in the Sacramento-San Joaquin Delta that restricts the water supply to millions of Californians. We object to your Department's anemic attempts to balance the needs of California's farms, families and businesses and the environment, but we must object even more forcefully to your Department's willingness to impose water restrictions that continue a pattern of regulation that has shown no demonstrable benefit to that species.

Recently, when the State of California and Central Valley Project (CVP) and California State Water Project (SWP) contractors challenged the legality of the delta smelt biological opinion, the United States District Court of the Eastern District of California (the Court) found that U.S. Fish and Wildlife Service (FWS) and the U.S. Bureau of Reclamation (BoR) violated both the Endangered Species Act and the National Environmental Policy Act, and that decisions being made by FWS were not grounded in the best available science.

During the course of those proceedings, the Court held that the FWS ignored the best available science, acted in a manner that was unconscionable, and acted in a manner that was arbitrary and capricious. Most shocking was the Court's recent admonition of two federal agency scientists, one from FWS and one from BoR, who, according to the Court's findings, sought to deliberately mislead the Court on the impacts to the delta smelt due to the operation of the CVP and SWP pumps and who were discredited by the Court as untrustworthy witnesses—one even being labeled a “zealot” by the court. The Court found that not only was their testimony contradictory and inconsistent, but the Court issued a rare finding of agency bad faith.

As elected officials of the American people, we take with utmost seriousness the trust the public places in us to work and represent them in good faith, and make sound decisions. That said, it appears that FWS and BoR officials, entrusted to execute the laws Congress enacts in an impartial manner and apply the best available science when making their decisions, have acted in an unlawful and dishonest manner at the expense of our constituents by denying them the water they contract for, pay for, and so desperately need.

We hoped that the recent judicial findings and past decisions striking down the delta smelt biological opinion would have been a wake-up call to the Department. That does not

appear to be the case. We are appalled by an Interior Department official's recent comment that the Department stands behind the work of these discredited Federal officials, and shocked that the FWS would give an award to the agency scientist for her work on the delta smelt biological opinion after the Court called her a "zealot" and made a finding that "she has not been honest with this Court." The Court's comments cannot be ignored, and actions taken by your Department are a slap in the face to Central Valley and California farmers and the millions of hardworking Americans who are being left high and dry by actions Federal officials are taking regarding the delta smelt.

Based on the Court's order, FWS and BoR are required to issue a new delta smelt biological opinion. It is imperative that the new delta smelt biological opinion be clearly grounded in the best available science, not just the best science the federal agencies have to offer. Credibility of a new delta smelt biological opinion rests on a credible process, and again using the same compromised scientists and their teams to develop this opinion runs counter to a fair and impartial implementation of ESA.

You have an opportunity to restore the damaged credibility of the Department of the Interior, FWS, and BoR. Strengthening the re-consultation process through new and impartial scientists and improving the scientific expertise involved (including supplementing it with expertise developed outside of Federal agency service) is an important first step to ensure the new delta smelt biological opinion is based on the best available science. Our constituents, the American people, the relevant congressional committees of jurisdiction, and we as elected representatives in California would expect nothing less.

We look forward to your prompt response.

Sincerely,



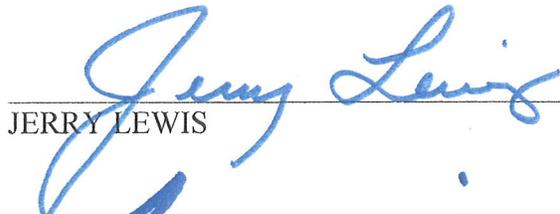
KEVIN McCARTHY



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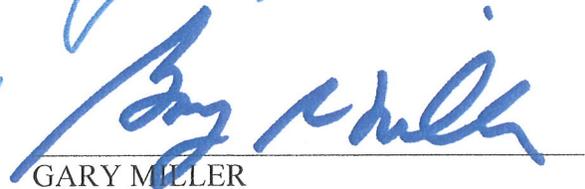
DANA ROHRABACHER



JERRY LEWIS



KEN CALVERT



GARY MILLER

cc: The Honorable Michael Connor
Commissioner
U.S. Bureau of Reclamation

The Honorable Daniel Ashe
Director
U.S. Fish and Wildlife Service

The Honorable Doc Hastings
Chairman
House Committee on Natural Resources

The Honorable Darrell Issa
Chairman
House Committee on Oversight and Government Reform