



## Senator Feinstein Urges Appeal of Court Decision Affecting Endangered Salmon in the San Francisco Bay-Delta

December 16, 2004

**Washington, DC** – Senator Feinstein is urging Bush Administration officials to appeal a recent ruling by a U.S. Court of Federal Claims judge that could make it much harder for California to restore the San Francisco Bay-Delta or protect the endangered salmon stocks that swim through the Bay.

The ruling in the case of *Tulare Lake Basin Water Storage v. United States* requires the federal government to pay \$26 million to a California water district because a portion of the district's water rights was used to protect salmon under the Endangered Species Act.

This would establish a precedent that could require the public to pay tens of millions of dollars to water users every time even a small portion of their anticipated deliveries are needed to protect endangered salmon or other fish. With the federal government and the State of California facing continuing deficits, the government likely could not afford to provide the water the fish need.

Following is the letter sent by Senator Feinstein to Attorney General John Ashcroft, Secretary Donald Evans and Secretary Gale Norton:

Dear Attorney General Ashcroft, Secretary Evans and Secretary Norton:

Recent press reports indicate that your agencies are considering a possible settlement in favor of the plaintiffs in the pending *Tulare Lake* case cited above. I write to ask instead that you appeal the final judgment of the trial court in the case, and consider asking the United States Court of Appeals for the Federal Circuit to certify the case to the California Supreme Court on the basis that it raises important issues of California law that should be decided by the California court in the first instance.

If allowed to stand, the *Tulare Lake* decision could seriously harm California's historic water rights system and CALFED legislation signed by the President just this year to improve the State's water supply and restore its water quality and fisheries. The *Tulare Lake* decision could require compensation to parties contracting for water deliveries whenever a portion of the water is needed for Endangered Species Act purposes.

This precedent could make it impossible for the State and Federal agencies to protect and manage the San Francisco Bay-Delta, the heart of the State's water system, without vastly increased public expenditures. CALFED relies for its very foundation on the principle of regulated pumping from the Delta to provide water to urban and agricultural contractors while

protecting endangered fish. Pumping goes up when the water is available and impacts on water quality and fisheries are low, and pumping goes down when those conditions are not present.

The State and Federal agencies' ability to protect the Delta would be severely curtailed if they had to pay out financial compensation any time their adjustments in pumping levels reduced water deliveries. Moreover, not only would the environment be harmed, the agencies' future plans to increase water supplies for cities and farms would also be threatened.

I have attached letters from Chairman of the State Water Resources Control Board and California's Chief Deputy Attorney General for Legal Affairs, which provide legal analysis of the strong arguments favoring an appeal in this case.

Thank you for your prompt attention to this matter.

Sincerely,

Dianne Feinstein  
United States Senator

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