

From: <senator@feinstein.senate.gov>
Subject: U.S. Senator Dianne Feinstein responding to your message
Date: July 1, 2013 8:49:02 AM PDT
To: <helpsaverivers@richard.weiss.name>

Dear Mr. Weiss:

Thank you for writing to express your opposition to legislation introduced by Representative Tom McClintock (R-CA) to remove protections from parts of the Lower Merced River. I appreciate the time you took to write and welcome the opportunity to respond.

On March 4, 2013, Representative McClintock introduced legislation (H.R. 934) to remove Wild and Scenic Rivers Act protections from certain sections of the Lower Merced River. This legislation would adjust the Merced Wild and Scenic River boundary to conform to the Federal Energy Regulatory Commission (FERC) operational boundary and allow the Merced Irrigation District to seek FERC permission to increase seasonal storage at Lake McClure. [HR 869, introduced by Rep. Jeff Denham in the previous Congress, included restrictions on the time of use of the expanded reservoir; HR 934 and the measure passed by the House of Representatives in the previous Congress do not.] The Committee on Natural Resources passed H.R. 934 on April 24, 2013 and reported the bill to the House for consideration by the full membership.

While I strongly support efforts to increase water storage in the Central Valley, additional storage at Lake McClure represents just one of those options. One of the factors that may influence whether additional storage at this facility is possible is the likely inundation of critical habitat for a state-listed species, the California tiger salamander. [Actually, it's the limestone salamander, a Merced River canyon endemic. This terrestrial salamander is a state fully protected species, as well as a threatened species under the California Endangered Species Act (CESA). It is not a listed species under the Federal Endangered Species Act, although there are U.S. Bureau of Land Management Limestone Salamander "Areas of Critical Environmental Concern" adjacent to the existing reservoir.] However, the California Department of Fish and Wildlife has yet to determine whether or not the project is likely to result in the incidental take of the salamander, which is prohibited under state law. [Since the Merced Irrigation District does not have an application to expand its reservoir before FERC or state officials, nor has it provided a project description to the Department of Fish & Wildlife, the California Department of Fish & Wildlife has been reluctant to offer a "determination" for the District. In response to a Congressional inquiry, the Department has said "given the known locations of limestone salamanders around the existing reservoir and immediately upstream of the reservoir, that some level of impact to this species from the dam raising likely." The life history of limestone salamanders makes it likely that potentially aestivating adults along a rising reservoir would be drowned (and certainly their eggs) by an expanded rising reservoir. In addition, an expanded reservoir "bathtub ring" would degrade their existing habitat. Therefore, an attempt to expand the reservoir is likely to run afoul of both state statutes.] Consequently, it is unclear whether the project could move forward even if H.R. 934 were enacted. [True. The project would likely be illegal under CESA and the Fully Protected Species statutes (although FERC may move to override state law), and the reservoir expansion as presently conceived would be unlikely to win approval from FERC and state dam-safety officials.]

The House of Representatives has not yet voted on this bill and it has not been introduced in the Senate. Please know that I will keep your views in mind should this or similar legislation come before the full Senate.

Again, thank you for writing. Should you have additional comments or questions, please do not hesitate to contact my Washington, D.C. office at (202) 224-3841.

Sincerely yours,

Dianne Feinstein
United States Senator

[FOR commentary highlighted]