



STATE OF CALIFORNIA  
OFFICE OF THE ATTORNEY GENERAL

BILL LOCKYER  
ATTORNEY GENERAL

September 27, 1999

The Honorable Bruce Babbitt  
Secretary of the Interior  
Department of the Interior  
1849 C Street N.W.  
Washington, D.C. 20240

RE: Restoring the North Fork of the American River

Dear Secretary Babbitt:

I am writing to advise you of the needless, continuing environmental damage and impairment to the natural resources of the North Fork of the American River, a watershed located in Placer and El Dorado counties, due to actions by the United States, and to request that you take steps to close the Auburn Dam bypass tunnel, to return flows to the currently dewatered channel of the North Fork, and to restore the channel to a free-flowing condition and to public recreational whitewater use.

Due to circumstances which have changed substantially since 1965, when the Auburn Dam was authorized by Congress as part of the Auburn-Folsom South unit of the Central Valley Project (79 Stat. 615, Public Law 89-161), the tunnel diversions are not currently required for any beneficial use of water. The river has been diverted for no present or foreseeable beneficial use, natural resource values have been severely impaired, and public use has been and is precluded as to over five miles of the river. In our view, maintaining this condition on the river constitutes a violation of the Central Valley Project Improvement Act ("CVPIA") and the Reclamation Act of 1902.

The Honorable Bruce Babbitt

September 27, 1999

Page 2

Since 1975, the Auburn Dam bypass tunnel has diverted flows and bypassed three-fourths of a mile of the North Fork, except during moderate and serious flood events. Also, because the tunnel poses a danger to public safety, public recreational navigation on the North Fork has been prohibited for at least four and one-half miles above the tunnel entrance. However, project construction was suspended in 1979 due to concerns over seismic safety, which have yet to be resolved. A 1986 flood event resulted in further damage to the river channel. The partial failure of an earthen coffer dam, which had been built in conjunction with the tunnel to dewater the dam construction zone, produced a high instantaneous flow into the dewatered stream reach that resulted in the discharged of considerable dam-derived sediment into the river canyon.

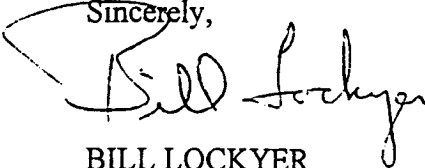
In 1996, the Bureau of Reclamation ("Bureau") proposed to install a non-permanent closure of the tunnel and to restore the river channel to a free-flowing condition. (Final Report, Preliminary Concept Plan Restoration and Management of the Auburn Dam Site, April 1996.) Unfortunately, the Bureau did not pursue that proposal. Recently, the Bureau and Placer County Water Agency ("PCWA") have proposed the construction of a water supply pump station near the diversion tunnel entrance. The preferred alternative does not include tunnel closure or river restoration, even though the Bureau could take such actions in manner that would be fully consistent with PCWA water supply needs and the Bureau's obligations to PCWA.

It is our view that under provisions of federal reclamation law and applicable state water law, the Department of the Interior and the Bureau are obligated to take action to halt the continuing impairment of natural resources occurring on the North Fork of the American River. We urge the United States to close the Auburn Dam bypass tunnel, restore flow to the dewatered channel of the North Fork of the American River, and maintain such conditions, at least until Congress has reauthorized the Auburn Dam and has provided firm financial commitments, through the appropriation process, for the construction of the dam or other related facility affecting this location. Such an action would restore three-quarters of a mile of the North Fork of the American River, would eliminate a dangerous boating hazard, and would return at least four and one-half miles of recreational whitewater to the American River watershed.

The Honorable Bruce Babbitt  
September 27, 1999  
Page 3

Closure of the tunnel and restoration of the stream are legal obligations of the federal government under federal and state law. Federal reclamation law, including the Central Valley Project Improvement Act, requires the United States to comply with state water law in the construction and operation of the project. The Auburn Dam is an authorized component of the Central Valley Project, which is a reclamation project. Article 10, Section 2 of the California Constitution prohibits unreasonable methods of diversion and the public trust doctrine similarly proscribes such diversions to the extent that they impair public trust values. The United States' diversion of water through the Auburn Dam bypass tunnel serves no present, beneficial purpose and, therefore, violates state law through its injury to recreational uses on the American River.

We request your earliest response to this continuing environmental problem and would welcome an opportunity to confer with you and your staff on how best to accomplish the needed restoration of the North Fork. We are considering, and we reserve the right to bring, an action in federal court against the United States alleging violations of the CVPIA and the Reclamation Act of 1902, as indicated above, and seeking declaratory and injunctive relief to correct them. It is urgent that the unnecessary degradation of precious natural resources on the North Fork of the American River be halted, and that the river be restored to a free-flowing condition and available for public recreational use.

Sincerely,  
  
BILL LOCKYER  
Attorney General

cc: Honorable John Leshy