

H.R. 24, THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

LEGISLATIVE HEARING

BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
OF THE
COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES
ONE HUNDRED TENTH CONGRESS
FIRST SESSION

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LEGISLATIVE HEARING ON H.R. 24, "THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT"

Thursday, March 1, 2007
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Washington, D.C.

The Subcommittee met, pursuant to call, at 10:05 a.m. in Room 1334, Longworth House Office Building, Hon. Grace F. Napolitano [Chairwoman of the Subcommittee] presiding.

Present: Representatives Napolitano, McMorris Rodgers, Costa, Radanovich, Udall, Nunes, Cardoza and Calvert.

STATEMENT OF THE HON. GRACE F. NAPOLITANO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mrs. NAPOLITANO. Thank you, ladies and gentlemen, and good morning. This meeting of the Subcommittee on Water and Power will come to order. I want to gavel somebody with this.

The purpose of this Subcommittee hearing is to hold a discussion on H.R. 24, the San Joaquin River Restoration Settlement Act. But before we begin the hearing, I would like to take a prerogative to mention that this is the first Subcommittee hearing in the 110th Congress of which it is my privilege to serve as the Chairwoman, and give a warm welcome to my Ranking Member to the Subcommittee, Congresswoman Cathy McMorris Rodgers of Stevens County, Washington. We look forward to working together.

Before I begin, it is my understanding that we have Devin Nunes from California who wishes to videotape portions of this hearing. Normally we only allow registered newscasts, news media. We just heard of the request. And I have talked to Mr. Nunes, who is not a member of this committee, and I would like to know if any of the Members object to having portions of this hearing recorded. I would like to have everybody know that this is not a credentialed media rep, and if there are any objections, I would like to hear them. If not, we will approve his being able to record. No objections.

[Laughter.]

Mrs. NAPOLITANO. I would like to remind all Members that any request to do any taping, any video recording, must be made

through the Committee Press Office well in advance, at least 48 hours prior to the hearing. So with that, we will move on.

I am pleased to welcome several of our colleagues to the Subcommittee. Cathy, you will do your presentations. And I would like to begin by asking unanimous consent that Congressmen Radanovich, Cardoza, and Nunes be allowed to sit in the Subcommittee hearing to participate in these hearings.

Mr. NUNES. I object.

Mr. COSTA. Thank you, we can leave now.

Mrs. NAPOLITANO. Hearing one objection, it is ordered.

[Laughter.]

Mr. COSTA. Madame Chairman, can we request that Portuguese be removed from the room?

[Laughter.]

Mrs. NAPOLITANO. Do you see how it is going to happen in this Subcommittee? Withdrawn. And you understand that we have great relationships on both sides, so that we can work together. We have worked together in the past, and we look forward to a lot of this mirth and sharing, and hope it translates into support for where we need it. Thank you, gentlemen.

Allow me to now briefly introduce our Democratic Members on the Subcommittee. First of all, to my left is Jim Costa of Fresno, California. And Jim and I go back many years in the California State Legislature. His knowledge of water issues is very comprehensive and very well known, and this is his second term on the Water and Power Subcommittee. Welcome, Jim.

Next we have Congressman Mark Udall of Boulder County, Colorado. I was just in his backyard. Now in his fifth term in the House, and whose special interest is the management of the Colorado River Basin and the law of the river. We are pleased to welcome Mark, who is especially distinguished on the Democratic side of the Subcommittee because he is the only non-Californian. Two Coloradans, OK, but on the Democratic side.

Next is Congressman Joe Baca from, they say Rialto, Joe. It is San Bernardino, isn't it? San Bernardino County. We welcome him back to the Subcommittee. He is now Chairman of the Congressional Hispanic Caucus; also the Chair of the House Subcommittee on Department Operations, Oversight, Nutrition, and Forestry of the full Agriculture Committee. And I know as a good friend, and especially concerned over the cleanup efforts and protecting groundwater supplies from perchloric contamination. Again, this will be one of the priorities of the Subcommittee.

Next we have Dennis Cardoza, also from California, an old friend from the days of, well, what can I say, Dennis? State Legislature. A gentleman who has distinguished himself in a state office, and has great concern for not only the farmers, but for the whole State of California. And welcome, Dennis.

Cathy?

Mrs. MCMORRIS RODGERS. Thank you, Madame Chairman. It is indeed an honor to serve as the Ranking Republican on this Subcommittee, and I look forward to working with you, Madame Chairman, on a variety of issues that will come before this Subcommittee.

I would like to introduce the colleagues on the Republican side of the Subcommittee. First, Congressman Ken Calvert, no stranger to this committee. Ken is from Corona, California; represents the 44th Congressional District; was the illustrious leader of this Subcommittee for four years. He also serves on the Armed Services and Science Committees.

Should I introduce those that aren't here? Yes? Congressman Dean Heller from Carson City, Nevada, represents the state's Second Congressional District in Nevada. He has the distinguished honor of serving for three terms as Nevada's Secretary of State. He serves on the Small Business Committee, as well.

Congressman Doug Lamborn represents Colorado's Fifth District, and is from Colorado Springs. He served in the Colorado Senate for 11 years. He also serves on the Veterans Affairs Committee, and is on leave from the Armed Services Committee.

In addition, we would like to welcome to this hearing former Subcommittee Chairman George Radanovich—good morning, glad you are here—and former committee Member Devin Nunes. We are privileged to serve with these fine individuals. Each of our states has our own pressing water and power issues, and we look forward to providing our specific expertise to this Subcommittee.

Mrs. NAPOLITANO. Thank you, Mrs. Rodgers. I did not introduce two people who are not here: George Miller, current Chairperson of the Committee on Education and Labor. He was a previous Chair not only of this Subcommittee, but was also previous Chair of the full Committee on Natural Resources. And his special interest is protecting water quality in the Sacramento and San Joaquin Delta, which serves as a source of drinking water for his district. And of course, we drink the water from that area, too.

So we welcome George, as well as Hilda Solis from El Monte, California, who serves as a Vice Chair of the Energy and Commerce Committee, Environment and Hazardous Materials Committee, a subcommittee dedicated to the cause of environmental justice, and is a strong advocate of groundwater remediation.

As we begin the work of the Subcommittee for the 110th Congress, may I assure each and every one of you that I will do my best in the Subcommittee to treat it with fairness and respect for each and every Member. I have an open-door policy, and all of you, Republican or Democrat, are welcome to contact me or my Staff Director, Steve Lanich, to my left, at any time. We will, I am sure, have partisan differences, but I assure you that the work of the Subcommittee will be handled on a non-partisan basis, as it has been for many years. And I intend to continue that work to help solve water problems in the West. We can accomplish much, but only if we set aside our partisan differences.

Now I will move on to the subject of today's hearing. H.R. 24 was introduced on January 4 by Congressman George Radanovich, of which I am an original co-sponsor. I have supported the legislation; I intend to continue to support and see its enactment. Other co-sponsors include Jim Costa, George Miller, Dennis Cardoza, and Joe Baca.

The Subcommittee on Water and Power held an oversight hearing of the San Joaquin Restoration, San Joaquin River Restoration Settlement, on September 21, 2006. And at that time, no

legislation had been introduced to implement the settlement. The recording of that hearing has been printed, and is available as Serial Number 109-63. The legislation we will consider today was prepared last September as a consensus document following a series of meetings of the affected parties, with not only Senator Diane Feinstein, but Representatives Costa, Cardoza, Pombo, Radanovich, and Nunes.

The parties agreed to a number of provisions intended to protect the identified third parties from unintended consequences that might result as the legislation and the actual restoration projects were implemented over the next 18 years or so. I do congratulate the settling parties, the third parties, and the participants from this House, and most of all California Senator Diane Feinstein, for all their hard work to reach the agreement on the many complex issues presented by the settlement.

I welcome our witnesses today, and I appreciate your cooperation in helping us compile a complete and accurate defensible record of consideration of H.R. 24. I would like to note that two of our witnesses today, Mr. Candee and Mr. Ishida, have submitted extra written material to the statements they will make. These materials are quite lengthy, and for that reason they have not been copied, nor included in the folders placed in front of each Member. The documents are available electronically, and all of these materials will be entered into the record. If anyone needs to refer to them, please request a copy, and we will be happy to provide it.

I am now pleased to yield to my friend from Spokane, Ranking Minority Member of our Subcommittee, Congresswoman Cathy McMorris Rodgers, for any statements or comments she may make.

[The prepared statement of Mrs. Napolitano follows:]

**Statement of The Honorable Grace F. Napolitano,
Chairwoman, Subcommittee on Water and Power**

H.R. 24 was introduced on January 4, 2007 by Congressman George Radanovich. I am an original co-sponsor of the bill. I support this legislation and I will work hard for its enactment. Other co-sponsors include Congressmen Jim Costa, George Miller, Dennis Cardoza, and Joe Baca.

The Subcommittee on Water and Power held an oversight hearing on the San Joaquin River Restoration Settlement on September 21, 2006. At that time no legislation had been introduced to implement the settlement. The record of that hearing has been printed and is available as Serial Number 109-63.

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I welcome our witnesses today, and I appreciate your cooperation in helping us compile a complete and defensible record of our consideration of H.R. 24. I want to note that two of our witnesses today, Mr. Candee and Mr. Ishida, have submitted written material in addition to the statements they will make. These materials are quite lengthy, and for that reason they have not been copied and included in the folders placed in front of each Member. If anyone needs to refer to the materials, I have them here with me. We will be happy to print copies for any of the Members who need a copy. The documents are also available electronically. All of these materials will be entered into the record.

**STATEMENT OF THE HON. CATHY McMORRIS RODGERS, A
REPRESENTATIVE IN CONGRESS FROM THE STATE OF
CALIFORNIA**

Mrs. McMORRIS RODGERS. Again, thank you, Madame Chairman. As we all know, many of the issues before this Subcommittee cross party lines. Some matters enjoy bipartisan support, others enjoy bipartisan opposition.

The Subcommittee, however, has a history of rolling up its sleeves and getting things done together. We have many important issues to tackle over the next two years. The stakes are high, and we owe it to the citizens of this country to do the very best.

I am encouraged, thus far. The distinguished Chairwoman showed real leadership when she invited the Members of their Subcommittee and their staff over for a wonderful breakfast two weeks ago. I really enjoyed it. She is a great cook, and that action says a lot. So I look forward to working with you, Madame Chair, and all of our colleagues, on what I hope to be a very inclusive and promising two years.

Now let me turn to the legislation. The San Joaquin River Restoration Settlement Act, offered by our distinguished Former Chair, George Radanovich, is a symbol of what people can accomplish when they sit down and negotiate in good faith. The battle over the San Joaquin River's future has raged for 18 long years, with little progress. Little has been done for the farmer or the fish. But this bill attempts to reverse that and take action out of our Federal courthouse.

As some of you may know, the Pacific Northwest has its own endangered salmon problems. Salmon restoration is consumed by endless litigation. A Federal judge is dictating how we use the water, and some environmental extremists want to tear down dams and undermine the promise of renewable and inexpensive hydropower that FDR and LBJ gave to our region.

Over \$800 million in Federal money has been spent each year to restore salmon populations. Three out of every 10 dollars in our electricity bills go toward salmon. In one instance, rate payers spent over \$3 million per fish, due to a judge's action to mandate unnecessary spills.

Let us be clear. All of us in the region are environmentalists. Everyone wants to see salmon survive and succeed. But the most well-intentioned people argue over how we measure progress and define success when it comes to recovering our salmon.

With the salmon money meter still running, we are trying, but not even close, to answering these questions. I am sure all of you here today want to see salmon and river restoration succeed on the San Joaquin. I hope that you have thought very seriously about how success will be defined, what benchmarks you will need to accomplish this goal, and how you will mitigate the impacts on people and other endangered fish.

When this settlement can be reopened in 20 years and after all this money is spent, I really hope that we have made tangible progress on helping humans and fish. The last thing we want is the California version of salmon wars on our doorsteps.

I again want to commend the sponsors of this bill and the parties here today for attempting to resolve these delicate matters. I look

forward to today's testimony, and focusing on the next steps of the legislative process.

[The prepared statement of Mrs. McMorris Rodgers follows:]

**Statement of The Honorable Cathy McMorris Rodgers,
Ranking Republican, Subcommittee on Water and Power**

It is indeed an honor to serve as the Ranking Republican on this Subcommittee and a pleasure to serve with some of the best and brightest this Congress has to offer.

As we all know, many of the issues before this Subcommittee cross party lines. Some matters enjoy bipartisan support. Others enjoy bipartisan opposition. This subcommittee has a history of rolling up its sleeves and getting things done together.

We have many important issues to tackle over the next two years. The stakes are high and we owe it to our constituents to do the very best.

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I again want to commend the sponsors of this bill and the parties here today for attempting to resolve these delicate matters. I look forward to today's testimony and focusing on the next steps of the legislative process.

Mrs. NAPOLITANO. Thank you, Mrs. McMorris Rodgers. At this point I will recognize Members who wish to make brief statements. Any Member who decides to be heard will be heard, and of course additional material may be submitted for the record. We do have a full schedule, so I am asking that we try to keep that to a minimum so that we can then hear from the panels.

I will enforce the five-minute rule with our timer. Ladies and gentlemen, it is right before you. As my former Chair Radanovich used to say, green means go, yellow means speed up, red means stop. So I am borrowing that from you, George.

I now recognize Congressman Costa for any statement he may have.

**STATEMENT OF THE HON. JIM COSTA, A REPRESENTATIVE IN
CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. COSTA. Thank you very much, Madame Chairperson. And I, too, want to commend you and congratulate you on this chairmanship. I know you are going to do a very able job, and I look forward to working with all the Members on the Subcommittee. So thank you for your efforts to start this off in the proper fashion.

The hearing we are holding today, this morning, is, as been mentioned, part of a long effort that many of us have been involved with as it relates to not just water policy in California, but specifically in the San Joaquin Valley.

As was noted, the lawsuit has extended for now over 18 years. And as any out-of-court settlement, there is always aspects of a settlement that you like better than others. I think this is no exception for me.

Nonetheless, what is important here is that we, after 18 years, have been able to find a way for parties to come together and try to solve problems. And I think it is in that spirit that we should look at the enabling legislation this morning.

The fact is that the San Joaquin Valley, the eight-county region, is the fastest-growing region in California, for a lot of reasons, in terms of population growth, in terms of people settling there, in terms of cost of living. It also is the richest agricultural region in the entire United States, and, for that matter, the world. And so there are a lot of conflicting issues that relate to this water resolution and this settlement.

It is also an area which has been ground zero on many of the contentious water fights in California for decades, and everyone here is well aware of that.

The fact is that to the degree that we can solve a problem and take it off the table, it allows us to progress and to make efforts to the long-term water needs of California, and to the Valley. To that end, we are trying to put together a regional water plan for the eight counties to look at our water supply needs over the next 30 years, to look at our water quality issues that we have to face. I know that the Chairman is very focused on, to deal with environment restoration issues that we need to focus on to continue to accommodate the growth, and to be good stewards of the environment.

And finally, as was with this last spring, California has either too much or too little. And last spring we had too much water, and we had flooding. And we have concerns about not just levees in the Delta, but levees in the San Joaquin Valley, as well. So all of those four water-related issues are key, and part and parcel of this settlement agreement that we talk about this morning.

I will look forward to the testimony and to the questions that I have, and to the responses as we work on this enabling legislation. I noted in the discussions we had last September that all the parties came together; that the Members who represent those areas, as you noted, including Senator Feinstein, worked very hard to try to see if we could put together this enabling legislation.

And it is in that spirit that I approach the hearing here this morning, realizing that, like anything else, there is always room for improvement. Nonetheless, I am hopeful that we will be able to

move forward in a collegiate and bipartisan fashion to solve this matter. And I want to thank you, Madame Chairperson, again for your hard work and your focus in this area.

Mrs. NAPOLITANO. Thank you. Mrs. McMorris Rodgers.

Mrs. McMORRIS RODGERS. And now I turn to Mr. Radanovich.

STATEMENT OF THE HON. GEORGE RADANOVICH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. RADANOVICH. I would love to make an opening statement.

Mrs. NAPOLITANO. Very good.

Mr. RADANOVICH. Thank you. It is great to be back here. Chairwoman Napolitano, congratulations. It is great to have a fellow Californian as Chairman of this Subcommittee, and Mrs. McMorris Rodgers, having you as Ranking Member is a good thing. So I am glad to be here. I miss this committee. I am pretending I am still on the committee, by the way, so I will be showing up I think regularly.

But I did want to read a statement into the record regarding this, because I think it is important for the San Joaquin Valley. And I am so thankful that you are conducting this hearing as one of the final steps in putting to rest an 18-year battle over the San Joaquin River.

I am eager to work with this committee to see it come to its rightful conclusion. For 18 years a legal battle to restore salmon fishing in the San Joaquin River has been waged in the courts. Hard-working families who depend on the San Joaquin River and the Friant Dam at Millerton Lake have been living with the uncertainty of their water source.

In the meantime, many of us were aware that waiting for a judicial decision could be costly to all parties, without necessarily providing an amicable solution, and could linger for years while being appealed to the Supreme Court.

For these reasons, Senator Diane Feinstein and I join together to urge the parties to take their fight out of the courtroom and back to the negotiating table. The Friant Water Users Authority, the NRDC, and the U.S. Government and third parties began negotiation in good faith, and hammered out what we have before us here today.

The San Joaquin River Settlement would implement the terms of the settlement, which strives to bring life to a dormant river, while securing reliable water for fertile valley farmlands which depend on the river for sustainability.

Now that much of the hard work has been done in California, it is up to Congress to bring the settlement across the finish line and provide necessary funding. The San Joaquin River Restoration Settlement is the result of a collaborative effort between all parties involved. By working in good faith together, we have developed legislation to enact this historic settlement and put an end to a long episode of California water wars.

After last year's hearing on the San Joaquin River Settlement, third-party concerns of the unintended consequences of the settlement were addressed in the legislation, and in a memorandum of understanding. As we have worked through the issues that arise

during this process, let us also keep in mind that this will be a continual process.

I recognize that some of my colleagues have concerns with the settlement, and every effort has, and will continue to be, made to prevent those concerns from being realized.

I look forward to hearing more from witnesses today about mitigating water losses and addressing this matter. I commend the Friant Water Users Authority for developing the potential water management programs and projects to recapture, recirculate, and reuse water. There are also new opportunities separate from this legislation being developed as we speak, like the San Luis Drainage Proposal, which may provide more options to help mitigate water losses to the Friant water users, and I look forward to exploring those opportunities.

I commend those who worked really very hard on this effort, and I want to thank all the co-sponsors for their support of this bill. Diligent efforts on behalf of by Kole Upton, Chairman of the Friant Water Users Authority; Dan Dooley, a Friant water attorney; and Hal Candee with the NRDC; and others from the state and Federal governments helped achieve this settlement.

Now Congress has the opportunity to enact this critical legislation, and I say let us make it happen.

Thank you very much for the time, and for conducting this hearing.

[The prepared statement of Mr. Radanovich follows:]

Statement of The Honorable George Radanovich, a Representative in Congress from the State of California

Thank you, Chairwoman Napolitano, for holding this hearing on this bipartisan bill H.R. 24, the San Joaquin River Restoration Settlement Act. This hearing is one of the final steps in putting to rest an 18 year battle over the San Joaquin River. I am eager to work with this Committee to see it come to its rightful conclusion.

For 18 years a legal battle to restore a salmon fishery on the San Joaquin River has been waged in the courts. Hard working farm families who depend on the San Joaquin River and the Friant Dam at Millerton Lake have been living with the uncertainty of their water source. In the mean time, many of us were aware that waiting for a judicial decision could be costly to all parties, without necessarily providing an amicable solution, and could linger for years while being appealed to the Supreme Court.

For these reasons Senator Dianne Feinstein and I joined together to urge the parties to take their fight out of the courtroom and back to the negotiating table. The Friant Water Users Authority, NRDC, and the U.S. government and third parties began negotiation in good faith and hammered out what we have before us today. The San Joaquin River Settlement Act would implement the terms of the settlement, which strives to bring life to a dormant river, while securing reliable water for fertile Valley farmlands which depend on the river for sustainability.

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As we have worked through issues that arise during this process let us also keep in mind that this will be a continual process. I recognize some of my colleagues have concerns with the settlement, and every effort has and will continue to be made, to prevent those concerns from being realized. I look forward to hearing more from the witnesses today about mitigating water losses and addressing this matter. I commend the Friant Water Users Authority for developing the potential water

management programs and projects to recapture, recirculate, and re-use water. There are also new opportunities, separate from this legislation, being developed as we speak, like the San Luis drainage proposal, which may provide more options to help mitigate water losses to the Friant Water Users, I look forward to exploring those opportunities."

I commend those who worked so hard on this effort and I thank all the cosponsors for their support of this bill. Diligent efforts by Kole Upton, Chairman of the Friant Water Users Authority, Dan Dooley, a Friant Attorney, Hal Candee, with NRDC, and others from the state and federal governments helped achieve the settlement. Now Congress has the opportunity to enact this critical legislation. Let's make it happen.

Mrs. NAPOLITANO. Thank you, Congressman. Congressman Udall.

**STATEMENT OF THE HON. MARK UDALL, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF COLORADO**

Mr. UDALL. Thank you, Madame Chairman. I will be very brief. I want to acknowledge your kind remarks about my service on the Resources Committee, and just mention to the committee Members that are here that I have a bill pending that hopefully will be considered by the Subcommittee, dealing with the Platte River. And the good news is that river flows to the east. At this point, California has no stake in the water in that river.

[Laughter.]

Mrs. NAPOLITANO. I will keep that in mind, sir.

Mr. UDALL. Although the States of Wyoming and Nebraska are also affected by the Platte River.

Thank you, Madame Chair.

Mrs. NAPOLITANO. Thank you, sir. Mrs. McMorris Rodgers.

Mrs. McMORRIS RODGERS. Thank you, but not Washington State, eh?

Representative Nunes.

**STATEMENT OF THE HON. DEVIN NUNES, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF CALIFORNIA**

Mr. NUNES. Thank you, Mrs. McMorris Rodgers, and congratulations, Mrs. Napolitano, on your Chairmanship. I know you have been to my district numerous times, and I thank you for that. I remember when I was first elected, you actually came out to my district and attended a field hearing in my district. So thank you for that. So I know you are well aware of these issues, and I am happy that you are the Chairwoman, especially being a Californian.

I have a statement here that I am going to read part of, and I will probably submit it for the record. But I want to be extremely clear that I have always supported restoring the San Joaquin River, despite the fact that I ask tough questions about this settlement.

I remain committed to the restoration of the river; in fact, folks in this room today may not remember, but I campaigned on this issue. I pledged in my first run for office to restore the river and bring water certainty to my constituents. And I have never stopped working on this issue.

Indeed, it is a noble goal to bring back the mystic salmon population that have been reported to be abundant in the river over 70 years ago. Unfortunately, no one in this room can say with any

level of certainty that the legislation before us today would accomplish this goal.

I expect to hear a lot of words like we expect, we hope, and it is our goal; but what I do not expect to hear is that there will be 100,000 fish in 20 years, or that Friant will be able to recover all its lost water.

Why is that? Because we simply do not know. No feasibility study has been done on what would be the largest and most expensive river project the West has ever seen.

While I give the settling parties an A for their hard work in negotiating the detailed specifics of restoring the river, I give them an F in their attempts to provide any level of certainty of recovering lost water. We will hear about goals; but without concrete legislative language, goals can be forgotten or even ignored, as we have seen in the past.

The parties to the settlement have come to Congress and asked us to trust them, and have told us they have the best interests in the Valley in mind. Again, while their thoughts may be genuine, trust and faith do not hold any weight in the court of law or in the court of public opinion. If it is not codified in law, then it doesn't exist.

Today I expect to hear that third parties have been consulted, and that their impacts have been addressed. While this is partially true, other third parties, like cities and counties in my district, were not consulted, nor were they invited to the negotiating table. They have serious concerns about the impacts on groundwater, and have already had a tough time meeting EPA standards for water quality. Any loss of surface water will only result in increased reliance on groundwater. This situation will diminish water quality even further.

In fact, I have received resolutions from every city council in Tulare County, and both the Tulare County and Kern County Board of Supervisors, all which clearly express concern about the settlement and the need to have concrete mitigation plans to recover water.

We are at a crossroads, and the economic and social future of my constituents is at stake. We must have mitigation for the groundwater impacts, and we must have a safety net for my constituents in case the settling parties fail to live up to their grand promises.

Again, thank you, Mrs. Napolitano, for the opportunity to serve just one day on your committee, and I hope that you will invite me back.

Mrs. NAPOLITANO. Thank you. The Committee will if you behave.
[Laughter.]

Mrs. NAPOLITANO. Hey, I am very up front, my friend.
[Laughter.]

Mrs. NAPOLITANO. Mr. Cardoza, Congressman Cardoza.

STATEMENT OF THE HON. DENNIS CARDOZA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CARDOZA. Madame Chair, thank you very much. I congratulate you on your chairmanship, and I assume the same admonition that you gave to Mr. Nunes applies to me, as well. I will take it in that spirit.

Although I miss serving on this committee, I know that we will continue to work closely with you and your staff that work on this proposal. And I truly appreciate the invitation to be here today and participate.

Last fall, after 18 years of litigation, the Friant Water Users Authority and the U.S. Bureau of Reclamation Natural Resources Defense Council reached a settlement agreement to restore the San Joaquin River. Although this historic agreement resolved the lengthy and costly litigation issues that created the atmosphere of uncertainty for the Friant Authority and for the growers that rely upon Friant for their water supply, I voice my concerns that this agreement would place burdens on landowners, water and flood control districts, not a party to this agreement.

After weeks of intense, and sometimes around-the-clock, negotiations with representatives of all parties and my colleagues, I am pleased to represent that we were able to come to an agreement on language that would allow the settlement to go forward, while at the same time protect the water rights and property rights of those not a party to this litigation, with certainly the caveat of the questions that Mr. Nunes has raised.

H.R. 24, the San Joaquin River Restoration Settlement Act, embodies this agreement. This legislation not only sets out a course for the implementation of this historic agreement, but it also resolves issues that are critical to my constituents in California's 18th District. Without the protections contained in this legislation, the settlement could result in significant costs, in the hundreds of millions of dollars, for downstream landowners and flood control operations; and also would have the untold impacts on the water delivery system throughout California. This legislation ensures that the release of restoration flows down the San Joaquin River will not transfer impacts to my constituents downstream.

Further, it requires that the settlement go forward with a phased-in approach requiring the Bureau to conduct a feasibility study on the issues of cost, impact, and mitigation of various options to release the restoration flows.

I am pleased that the Bureau and many third parties recently entered into a memorandum of understanding to establish a process and structure for third parties to coordinate with the Bureau on a list of issues of joint concern. Under the MOU, the Bureau has committed to working together and coordinating with third parties in planning and designing and implementation of this settlement.

It is my understanding that the MOU has been finalized. And with permission, Madame Chair, I would like to submit a copy of the MOU into the record today.

Mrs. NAPOLITANO. Without objection.

[NOTE: The Memorandum of Understanding submitted for the record by The Honorable Dennis Cardoza, has been retained in the Committee's official files.]

Mr. CARDOZA. Last, I would like to stress that the settlement agreement's two goals of restoration and water management are equal goals. In order for this settlement to be successful, it is critical to have the continued support of the Friant water users. Meeting the water management goals of the settlement with the Bureau developing an effective recirculation plan with excess pumping

capacity and recovered water account to mitigate a substantial portion of the water losses to the Friant district is the best path forward toward a success. Successful implementation also dictates that funding is provided to meet both of these goals.

I remain committed to continuing to work with my Valley Congressional colleagues—with Senator Feinstein and yourself, Madame Chair; with all the third parties—to ensure that this legislation and the settlement agreement are implemented consistent with these goals.

I thank you again, Madame Chair, for the opportunity.

Mrs. NAPOLITANO. Thank you. Mrs. Rodgers.

Mrs. McMORRIS RODGERS. Thank you. Mr. Calvert.

Mr. CALVERT. Thank you. I just want to congratulate Grace F. Napolitano for becoming Chairman of the committee. I served with her for four years as the Chairman, and she is going to make a fine Chairman.

Mrs. NAPOLITANO. Thank you.

Mr. CALVERT. I congratulate you, and congratulations to Mrs. McMorris Rodgers. And I look forward to working with you. And may you have fun working these water battles.

[Laughter.]

Mr. CALVERT. I miss the good old days of the west side, and the east side, and the quantification agreement, and the Colorado River.

Our friends from Colorado left. I just want them to know I just flew over Colorado the other day. The mountains were glistening with snow, and it is wonderful to look at our water when it is white. But they left.

So thank you, and I look forward to working with you.

Mrs. NAPOLITANO. Thank you, Ken. It is a pleasure having you. And we did have a very, very fruitful four years; we worked well together, as I did with George Radanovich. But thank you for including me in many of the things that you did, because I learned considerably. So we hope to be able to put that to good use. Thank you, gentlemen.

With that, thank you, and we will proceed with the witnesses. Sorry it took so long, but these are things that we need to get out in the open so you understand how it works.

We will have the testimony on H.R. 24, the San Joaquin River Restoration Settlement Act. Our first panel includes representatives from the settling parties, the California Department of Water Resources, the California State Assembly, and of course we have Mr. Dan Dooley representing the Friant Water Users Authority. Mr. Hamilton Candee representing the Natural Resources Defense Council, and Mr. Jason Peltier from the Department of the Interior, along with Ms. Nancy Saracino from the California Department of Water Resources. And of course, Hon. Lois Wolk from the California State Assembly. Welcome to all of you, and we are looking forward to a very, very fruitful hearing.

The Subcommittee will continue to utilize the same procedure used in the last Congress, and that is to allow all witnesses on the panel to present their testimony before we ask questions. In other words, we will finish listening to them, and then we will ask the questions.

Your prepared statements, ladies and gentlemen, will be entered into the record, and all witnesses are asked to limit their remarks to five minutes. Don't forget my talk up here.

If you wish to speak on salient points, since your testimony is going to be in the record, please do so. We would rather hear your personal passion on this.

We will begin with Mr. Dan Dooley. Your prepared statement, again, is in the record. Proceed for five minutes, sir.

STATEMENT OF DANIEL M. DOOLEY, COUNSEL TO MEMBERS OF THE FRIANT WATER USERS AUTHORITY, DOOLEY HERR & PELTZER, LLP

Mr. DOOLEY. Thank you, Madame Chair, and congratulations to you on assuming the chair of the committee. It is a pleasure to be here.

I am Dan Dooley. I am a partner of Dooley Herr & Peltzer, a water law firm in Visalia and Sacramento. I am also a partner in a farming operation with a former Member of this Subcommittee. We farm in the area that is affected by this.

I was one of the principal negotiators of the settlement, along with Kole Upton, who is the Chairman of the Friant Water Users Authority. And I have with me——

Mrs. NAPOLITANO. Move your mike up sir, please.

Mr. DOOLEY. Sorry.

Mrs. NAPOLITANO. A little further, a little further, just a little bit more. There you go.

Mr. DOOLEY. Also with me today is Ron Jacobsma, who is the Consulting General Manager of the Friant Water Users Authority, in case you ask questions that I am not capable of answering.

I do want to thank the committee for calling an early hearing on H.R. 24. It is very important that this bill move forward quickly, and we appreciate your support and interest in doing that. I also want to thank Mr. Radanovich and Senator Feinstein for giving the settling parties a strong push to enter into settlement discussions.

I am not going to spend much time talking about the terms of the settlement. We have briefed many of you in the past about that, and it is included in our prepared statements.

I do want to talk a little bit about why the settling parties, or why Friant entered into this settlement. And quite candidly, it was not for the altruistic reason of restoring the San Joaquin River.

We were facing, we were playing Russian roulette with a judge who had a six-shooter fully loaded at our head, and the alternative of going to litigation and trial on this matter was very disturbing to us. We expected that we would lose far more water than is included in the settlement. We would have far less certainty than we have been able to provide in the settlement, and we would have no opportunity through a judgment in the court to pursue any water management policies that are embodied in the settlement.

We knew this, because in August of 2004, the judge ruled that the Bureau of Reclamation had violated a state law statute that required the release of water from the dam for maintenance and restoration of a fishery; and that we had a Valentine's Day, 2006, trial date scheduled to determine how much water was required to achieve that objective.

We had no expectation that we would prevail on appeal, because the Ninth Circuit Court of Appeals had, in a prior appeal ruling, ruled that 5937, which is a state law provision, applied to Friant Dam; and therefore, we knew that the results were not going to be good if we went to trial.

So we embarked on the settlement process, trying to achieve certainty, both as to water supply and cost, and trying to include in the settlement some provisions that would enable us the opportunity to recapture some of the lost water supplies that would be provided for restoration of the river.

And that was in lieu of the absolute havoc that we expected would have resulted from a judgment issued by the Court, which would have been subject to annual review by the judge, so that he could adjust the amount of water that would be required to be released for the fishery, and we would have absolutely no certainty from year to year as to how much water would be provided.

So the settlement, while it does require water to be released from Friant Dam, and that water is water that has previously been provided to farmers in the San Joaquin Valley, it also preserves the vast majority of the water supplies of the Friant Project for their historic use. That was our objective to enter into this settlement agreement. We were making a business judgment, quite candidly, that this settlement is far superior to the alternative of going to trial.

Now, I know, as you mentioned, Madame Chair, that since the oversight hearing in September, a lot of progress has been made with respect to addressing third-party interests. And those protections have been embodied into the legislation. And I think that is very helpful.

The Friant Water Users Authority has also spent considerable time developing a water management plan. And this has been provided to the committee. And I would request it be included in the record. It demonstrates—

Mrs. NAPOLITANO. Without objection, it is so ordered.

[NOTE: The water management plan “San Joaquin River Restoration Program: Water Management Goal...” submitted for the record by Mr. Dooley has been retained in the Committee’s official files.]

Mr. DOOLEY. Thank you. It demonstrates a number of projects that, both from a recirculation point of view and from individual district points of view, that the members of the Friant Authority intend to undertake to mitigate the water supply impacts. And I think it is the first comprehensive effort to look at some of the activities that can be undertaken to address some of the concerns that Mr. Nunes and others have raised about potential water supply impact.

With that said, I think we believe that this is a worthwhile settlement. We believe it is far superior to the alternative. We believe that if this legislation doesn’t pass, we are back in the soup in the litigation again, and facing the alternative of a much more havoc-wreaking alternative. And so we encourage you to move this bill quickly, and we thank you for your support.

[The prepared statement of Mr. Dooley follows:]

Statement of Daniel M. Dooley, Dooley Herr & Peltzer, LLP¹

CHAIR NAPOLITANO, AND MEMBERS OF THE SUBCOMMITTEE:

It is an honor and privilege to appear before this Committee, and to ask your support for legislation implementing a historic agreement that resolves a long-standing conflict on the San Joaquin River. I am Daniel M. Dooley, a partner in Dooley Herr & Peltzer, LLP. I serve as general counsel for many of the irrigation and water districts that compose the Friant Water Users Authority. Along with Kole Upton, Chairman of the Friant Water Users Authority, I was a principal negotiator of this historic Settlement of the 18 year old lawsuit known as NRDC, et al. v. Rodgers, et al. Mr. Ron Jacobsma, Consulting General Manager of the Friant Water Authority, is with me today, and will be available to respond to any questions you may have regarding implementation of the Settlement.

On September 13, 2006, the Friant Water Users Authority, Natural Resources Defense Council and U.S. Department of the Interior cooperatively reached what can only be termed a historic moment. As representatives of Friant, the NRDC and its coalition, and the federal government gathered at the federal courthouse in Sacramento, documents were being electronically filed within the U.S. District Court of Judge Lawrence K. Karlton to settle the San Joaquin River litigation that has been so contentious, and which has placed such a dark cloud over Friant's future, for the past 18 years.

My testimony today will focus on this Settlement and why it is good for society as a whole and all the parties. I will discuss how this carefully crafted Settlement provides a process to restore a river in a manner that maintains a vibrant economy and society and how it offers protection, in so many ways, for third parties who are downstream stakeholders.

Most importantly, I will assert to you that this extraordinary Settlement offers a positive and productive path forward into a future in which all of us can use our resources and talents in a cooperative effort rather than one that is wastefully devoted to continued bickering and fighting. This Settlement may not be perfect, but it is by far the most practical option for each of the parties, and particularly for the members of the Friant Water Users Authority and the water users they serve.

I commend the legislators and policy makers—Federal, State, and Local—who have done so much to reach this remarkable point in time. In particular, Mr. Chairman, the settling parties and the people and organizations we represent are grateful for the leading roles that the former Chair, Mr. Radanovich and Senator Feinstein willingly took to bring us back to the negotiating table and bridge our differences in a way that has made it possible for all of us to embrace this Settlement and its provisions.

As you may know, the Friant Water Users Authority consists of 22 member agencies that receive water from the Friant Division of the Central Valley Project. The Friant service area consists of approximately 15,000 mostly small family farms on nearly one million acres of the most productive farmland in the nation along the southern San Joaquin Valley's East Side. The Friant Division sustains underground water supplies relied upon by residents, businesses and industries in the cities within the Friant service area and delivers surface water to cities and towns that include Fresno, Friant, Orange Cove, Lindsay, Strathmore and Terra Bella.

The Friant interests were motivated to find a way to settle the NRDC's lawsuit over the San Joaquin River because of our determination to preserve the valley's way of life. Friant Dam and water delivered through the Madera and Friant-Kern canals has always provided a great deal of opportunity. For the past 18 years, the water supply of water from Friant has been under a dark cloud. We have had every reason to believe that those who farm and the communities that exist because of Friant could end up losing all or a major portion of their water through a judge's decision in the NRDC case or because of some other challenge.

Such a possibility was and is unacceptable. Farmers cannot farm without an adequate and affordable water supply. Further, farmers must have some certainty before committing to plant a crop. As this case began down a fast track toward trial to determine how much water was required to restore the River, we were provided

¹ DOOLEY HERR & PELTZER, LLP represent the Fresno Irrigation District, Lewis Creek Water District, Lower Tule River Irrigation District, Porterville Irrigation District, Saucelito Irrigation District, Stone Corral Irrigation District, Tea Pot Dome Water District, and Tulare Irrigation District, all of whom are long-term Friant Division Central Valley Project water contractors. Additionally, Dooley Herr & Peltzer, LLP represent the Hill's Valley Irrigation District, Pixley Irrigation District, and the Tri-Valley Water District, all of which are long-term Cross Valley Canal Central Valley Project water contractors.

with an opportunity to sit down and try again to reach a mutually agreeable settlement.

BACKGROUND

It goes without saying that this case has been seemingly endless, frequently frustrating, incredibly challenging, internally complicated, often controversial and always expensive.

It began in 1988 just as the U.S. Bureau of Reclamation was beginning to renew Friant's long-term 40-year contracts. NRDC and its coalition of environmental and fishing interests challenged the government's decision to renew Friant water service contracts without an Environmental Impact Statement. Of course, it didn't stay that simple. NRDC's complaint was amended seven times over the next 15 years to include other claims. One of those was a claim under the Endangered Species Act, and still another that contended the operation of Friant Dam was in violation of California Fish and Game Code Section 5937, which requires dam operators to release sufficient water to keep fish in good condition below the dam. Most of the earlier claims are no longer relevant. But the river flow issue—the most crucial of all to Friant users—came to be the litigation's focus over the past several years, especially during an earlier four-year settlement effort that was unfortunately not successful.

The case reached a crucial turning point in August 2004 when the judge ruled Section 5937 imposes a continuing duty to release sufficient water from Friant Dam into the San Joaquin River to restore former historic salmon runs and fishery conditions. It assigned liability to the Bureau of Reclamation. The court did not determine how much water would be needed to satisfy the state law but set the case for a trial that was to have started in February 2006 to determine the “remedies”—the amount of the releases. In 2005, the parties began preparing for that trial and in the process gained valuable new scientific information from the expert reports prepared by our respective trial witnesses about possible restoration strategies.

The Judge admonished the parties that the law did not permit him to finely tune a solution in the way the parties could through a negotiated settlement. The Judge's admonition resonated with the Friant contractors. It seemed to say what many of us had long suspected—that if the judge decided this case, there was going to be a great deal of Friant water used as a “remedy” down the river. And without a settlement, there wasn't going to be any of the extensive and critically needed work done in the channel and to structures to provide any sort of on-the-ground hope that salmon could be lured back by water alone. The Judge would likely have retained jurisdiction to increase water releases in order to accomplish the Restoration Goal. There was, however, a strong likelihood that Friant's water users and the economic and social structure in the San Joaquin Valley that depends upon this water supply could very well be severely impacted.

That was the situation fall of 2005 when then Chairman Radanovich and Senator Feinstein began a non-partisan effort to try to get Friant, NRDC and the government to try again to negotiate a mutually agreeable Settlement. It should be obvious that Mr. Radanovich and Mrs. Feinstein were amazingly persuasive! They asked the parties to respect the critical principles. The first was to respect the need for water supply and financial certainty in the Friant community. The second was to respect the need for certainty that the Restoration effort would actually occur. The concept was a good old-fashioned compromise. This is essentially how it was framed:

In exchange for restoring the San Joaquin River below Friant Dam, Friant's new water dedication for the fishery's needs would be capped at certain amounts based upon hydrologic conditions. That instantly provided Friant water users with what had long been missing—a declaration of water supply and quantity certainty for decades into the future. We were well aware in taking this key compromise and filling in the details that such an agreement would result in use of a portion of the Friant Division water supply for Restoration Flows. And, yes, it represents water that our already water-short area can't afford to lose. Friant also recognized that the cap on water for Restoration Flows would remove what promised to be years of continued uncertainty over the Friant water supply that would result in socio-economic disruption of the eastern San Joaquin Valley.

Of equal importance to that certainty and the river's restoration was development of the Settlement's unique means of using good, innovative water management to provide means to recover, re-use and recirculate water in an attempt to mitigate impacts on Friant water users. Also of great importance to Friant was another crucial compromise that capped Friant's financial contribution to river restoration at present levels—which add up to tens of millions of dollars each year paid into the CVP Improvement Act's Restoration Fund and Friant Surcharge.

By April of 2006, the parties were able to inform Judge Karlton that agreement had been achieved on numerous issues, including restoration goals, water flows, ways of managing and recovering water and a host of other issues. At the end of June, attorneys agreed to a Settlement in principle and would recommend approval to each of the constituencies.

THE SETTLEMENT AGREEMENT

The Settlement Agreement itself is constructed around two important, parallel and, Friant believes, equal goals:

- The Restoration Goal is to restore and maintain a self-sustaining salmon population below Friant Dam to the confluence of the Merced River.
- The Water Management Goal is to reduce or avoid adverse water supply impacts to all of the Friant Division long-term water contractors.

THE RESTORATION GOAL includes three essential elements. Those include:

- A number of improvements providing for channel capacity, related flood protection, fish passage and fish screening. These will take place in two phases. By the end of 2013, projects to be completed include a salmon bypass channel around Mendota Pool, increasing channel capacity between the Eastside Bypass diversion and Mendota Pool to 4,500 cubic feet per second; increasing the channel capacity (in Reach 4B) below the Sand Slough control structure to 475 cfs; modifying the Sand Slough control structure to provide for fish passage and appropriate routing of water; screening the Arroyo Canal diversion; and modifying Sack Dam and the Eastside and Mariposa Bypass channels for fish passage and low flow conditions; and providing seasonal fish barriers to screen fish at Salt and Mud Sloughs. The second phase improvements are to be completed by the end of 2016. These include increasing Reach 4B channel capacity below the Sand Slough control structure to 4,500 cfs unless it is determined not to substantially enhance achievement of the Restoration Goal; modifying the Eastside Bypass diversion structure to provide appropriate fish screening and passage; and isolating gravel pits near Fresno from the river.
- Flow releases from Friant Dam, beginning in 2009 with experimental interim flows and with full restoration flows beginning in 2014; with quantities determined according to hydrographs based upon water year types in order to provide fishery habitat water. These restoration flows may be supplemented by buffer flows of up to 10% and can be further augmented with water purchases from willing sellers. If construction of the river improvements is not completed, the Settlement agreement contains default provisions designed to preserve water for later use to achieve the Restoration Goal. Procedures are also specified for flexible management of Restoration Flows to account for temperature and biological factors. This adaptive management is to avoid causing harm to other downstream fishery programs. The flow schedule can't be modified until after December 31, 2026 and any change would require a court filing and a referral to the State Water Resources Control Board.
- Reintroduction of salmon and other varieties of fish into the upper San Joaquin River. The Fish and Wildlife Service is to apply to the National Marine Fisheries Service for a permit to reintroduce salmon and NMFS must decide on such application by April 30, 2012. Fall and spring run salmon are to be reintroduced by the end of 2012.

THE WATER MANAGEMENT GOAL and its implementation embrace two critical elements. They include:

- Development and implementation of a plan to recirculate, recapture, reuse, exchange, or transfer water released for Restoration Flows within bounds of the Settlement's terms and all applicable laws, agreements and environmental policies.
- Creation of a Recovered Water Account that provides an opportunity for Friant Division long-term contractors to recover water they have lost to Restoration Flows at a reduced water rate in wet water conditions. Friant Division long-term contractors providing water for Restoration Flows will be able to purchase water for \$10 an acre foot during certain wet conditions when water is available that is not necessary to meet contractual obligations or Restoration Flows. This provision is designed to increase water banking and management programs and boost incentives for districts to actively participate while reducing the Settlement's water supply impacts.

SOME OF THE SETTLEMENT'S OTHER FEATURES include and address:

- **State of California Participation:** This contemplates that the State will of necessity participate in implementing many provisions. A memorandum of understanding has been negotiated with various State agencies. It specifies how Friant, the NRDC coalition, federal government and the State will integrate

implementation activities. The State has expressed a desire for its Resources Agencies to be actively involved. We expect the State to provide technical and funding resources. Specific agreements will be negotiated with the State regarding specific Settlement actions. It should also be noted that Proposition 84 was approved by the California voters in November of 2006 and includes \$100 million for San Joaquin River restoration.

- **Funding:** There are very specific provisions related to Settlement funding, including provisions relating to the character of the capital investment, limitations on Friant Division long-term contractor payments, identification of existing funding resources and additional appropriations authorization. The Settlement provides that costs will not add to CVP capital obligations. It also commits Friant Division long-term water contractors to continue paying the CVPIA Restoration Charge and Friant Surcharge for the life of the Settlement but caps Friant's obligations at those amounts. The Friant Surcharge would be dedicated to implementing the settlement, as would Friant's capital repayment portion of CVP water rate payments. Up to \$2 million annually of the Friant CVPIA Restoration Charge payments will be made available for implementing the Settlement. In addition, the Settlement authorizes appropriations authority for implementation totaling \$250 million. (Some of these identified sources of funding are not subject to the appropriations ceiling or to annual appropriations and may not be subject to scoring for budget allocation purposes.) State funding from various revenue streams, including state bond measures, are anticipated. Funding identified in the Settlement is to be available to implement the Water Management Goal as well as the Restoration Goal.
- **Other Claims Resolved:** The Settlement resolves all claims pending in the existing litigation, including those challenging the validity of the Friant Division long-term renewal contracts. The exception is attorneys' fees and costs.
- **Third Party Impacts And Participation:** There has been a great deal of concern voiced about third party impacts. All of us clearly understand and the Settlement acknowledges that implementation will require a series of agreements with agencies, entities and individuals who are not parties to the litigation. The Interior Department is to coordinate with interested third parties (including third parties who own or control lands or facilities affected by Settlement implementation), and for public participation in Settlement implementation. Provisions of the MOU with the State contemplate joint efforts to provide mechanisms for non-party participation in Settlement implementation. Further, and as a result of a series of intense negotiations last September, a number of changes and additions were agreed to the legislation before you today that resolved most of the third party concerns. All participating in those discussions have signed a pledge that as a result of the changes, they will support the Settlement and the legislation and oppose changes that are not agreed to by all of the parties.
- **Management And Administration:** A Restoration Administrator position is to be established to help implement the agreement and advise the Interior Department on how the river restoration hydrographs are to be implemented, when buffer flows may be needed, river channel and fish passage improvements, reintroduction of salmon, interim flows for data collection purposes, targets, goals and milestones for successful implementation of the fishery program and coordination of flows with downstream tributary fishery efforts. Appointment will be for a six-year term. A Technical Advisory Committee will be created to advise the Restoration Administrator. It will include two representatives each from the plaintiffs' coalition and Friant defendants as well as two members mutually agreed upon, but none are to be federal employees. Terms are to be for three years.
- **Long-Term Friant Water Service Contract Amendments:** When the Friant Division's long-term renewal contracts were enacted in 2001, they included a stipulation requiring necessary contract amendments to reflect and be consistent with any Settlement agreement. Such a provision is part of the Settlement. Friant's long-term contracts will be kept in place with no further National Environmental Policy Act or Endangered Species Act compliance actions required.
- **Resolution of Disputes:** Procedures are included for attempting to resolve disputes by meeting and conferring. Should that be unsuccessful, services of a neutral third party are to be used. Finally, the parties could turn to the U.S. District Court.

FEDERAL LEGISLATION

This issue is before the Subcommittee because some Interior Department actions called for in the Settlement require Congressional authority. As you have seen, an exhibit to the agreement contains legislative language proposed to implement the Settlement. It is referred to as the "San Joaquin River Settlement Act." Passage of this legislation in substantially the same form as has been introduced is critical because any party could void the Settlement if the necessary legislation were not enacted on a timely basis. Further, State of California funds will be available to implement the Settlement on July 1, 2007. Enactment of this legislation is critical to effectively utilize the State funds and to keep implementation of the Settlement on the admittedly aggressive schedule agreed to by the parties.

MITIGATION WATER SUPPLY IMPACTS

The Friant Water Users have carefully evaluated the water supply delivery impacts of restoring Restoration Flows to the San Joaquin River. In addition to flood flows and surplus water supplies, Friant estimates the average annual impacts to historic water deliveries to be approximately 170,000 acre feet. Unmitigated, this annual impact would have significant adverse impacts on the Friant service area and the communities existing therein. These potential impacts are of concern to the Friant Contractors and many community interests along the eastern side of the southern San Joaquin Valley.

The Friant Water Users Authority and its member districts have undertaken to prepare a report that identifies a number of specific programs and projects that could be undertaken to substantially, if not completely, mitigate the water supply impacts. Some of provisions of the report identify options for recirculation, recapture and reuse of water that should be considered by the Secretary of Interior when developing the plan required by Paragraph 16 of the Settlement. Other provisions identify activities that the Friant Water Users Authority and its members are considering to further reduce the direct water supply impacts resulting from the initiation of Restoration Flows as well as the indirect impacts on the communities in the Friant service area. These programs and projects include, but are not limited to:

- Projects and programs that should be considered by the Secretary in developing the plan for recirculation, recapture and reuse of Restoration Flows that is required by the Settlement and the legislation;
- Rehabilitation and enhancement of Friant Division conveyance facilities to permit greater utilization of surplus River water to maximize the effectiveness of integrated regional and district programs and projects;
- Integrated regional management projects and programs that create improved integrated water management activities between districts and among groups of districts; and
- Improved district groundwater banking, conveyance, distribution and water management programs and facilities.

I offer a report that summarizes these programs and projects and includes a detailed exhibit for inclusion into the record of this hearing.

CONCLUSION

Settlement of the 18-year-old litigation known as NRDC v. Rodgers has been rightly applauded in much of the nation's press as an outstanding achievement. The Friant Water Users Authority and its member agencies appreciate that sentiment and view the Settlement as historic, and the beginning of a new era in which the policies and activities of the past are blended with society's environmental priorities of the present and future. This Settlement has been constructed upon a newfound willingness among the settling parties to cooperate and compromise for the common good, and to the benefit of each of our positions.

In addition to society's general interest in the San Joaquin River, there are three interest groups lobbying Congress on the legislation proposed for implementing this Settlement. These parties include:

- The environmentalists interested in restoring flows and salmon to the San Joaquin River.
- The San Joaquin Valley folks who are dependent on San Joaquin River water for sustaining their livelihoods and homes within the Friant Division.
- The third party interests who do not want the implementation of the Settlement to cause material adverse impacts to their constituents.

I submit to you that, collectively and individually, all these interests and society itself will be far better served by this Settlement than by Congress rejecting it. Of course not everyone is fully satisfied, from either the environmental coalition or the water users community:

- Some in the environmental community may wonder why they should settle with caps on Friant's costs and water releases when they have won so convincingly to date in Judge Karlton's Court. The answer for them is that this Settlement offers a process and constructive opportunity of cooperation for salmon restoration. With a court judgment, the attitude and approach by the valley folks would be predominantly one of perpetual resistance, and an emphasis on how to save as much water as possible. Under that scenario, water would nearly certainly be released upon orders of a federal judge, but the necessary improvements and cooperative nature essential to an effective salmon recovery would be entirely missing. And, if it were ever to be achieved, it would be accomplished only be after a much longer time with far greater amounts of water.
- Some water users interests may feel that this Settlement makes no sense because, they reason, Congress six decades ago agreed to make the Friant project a reality and decided to make it work by drying up 60 miles of the San Joaquin River. Valley folks may also feel a federal judge should not have the power to overturn such a decision made long ago, and subsequently reaffirmed, by Congress. There is a misperception by some that an unfavorable ruling to valley water users and agencies would be a strong candidate for being reversed on appeal to the Ninth Circuit or the Supreme Court. Unfortunately, Friant has already been down that road once with this judge's decisions, including that our contracts should be voided and that California Fish and Game Code Section 5937 should apply to Friant Dam. His ruling was upheld by the Ninth Circuit and the Supreme Court would not take the case.
- The Third Party interests have sought protection and indemnification against unfair water and fiscal costs they assert the Settlement would be inflict upon their constituents. We have addressed their concerns in the legislation before you. It is important to understand that rejection of the Settlement and proceeding to trial would not provide the third parties any of the protections contained in the Settlement and legislation.

This Settlement, and the legislation before you, is the product of literally thousands of hours or arduous negotiation and analysis. All parties to the litigation, and third parties who expressed concerns about the Settlement originally, have committed enormous good faith efforts to structure an agreement that fairly and acceptably balances all of the varied interests. Incredibly, we found such a balance. I believe this Settlement sets forth a model for resolving complex water resource disputes. The last piece is enactment of H.R. 24. I request that this Committee move this Bill as quickly as possible so that the parties can fully move forward to the challenging task of implementing this historic restoration program.

Thank you.

**Response to questions submitted for the record by the
Friant Water Users Authority**

Submitted by Mr. Nunes (CA) to all witnesses:

If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Response:

At the completion of negotiations on H.R. 24 in Senator Feinstein's Office on September 27, 2006, Friant signed a pledge (with all of the other Settling Parties and many third parties) not to support amendments to the legislation unless such amendments were agreed to by all of the other signatories. Friant will consider any amendments offered to H.R. 24 and confer with the other signatories to the September 27, 2006 pledge and only support any such amendments if the other signatories agree. Friant certainly has a critical interest in making sure the Water Management provisions of the Settlement are fully implemented.

Submitted by Chairwoman Napolitano to the Settling Parties:

Restoration of Salmon Fisheries

1. What was the value of the San Joaquin Chinook salmon fishery (sport and commercial) prior to extirpation of the species, in then-current, and in 2007 dollars?

Response:

In conjunction with the water rights hearing that led to the California State Water Rights Board's decision No. 935 in 1959, the California Department of Fish and Game submitted evidence of the value of California's commercial salmon fishery. Friant has no knowledge of that amount being converted into 2007 dollars. Friant has no knowledge of any effort to assign a monetary value specific to the salmon fishery of the San Joaquin River.

2. The Settlement Agreement calls for restoring fall and spring runs of Chinook salmon, yet § 10 of H.R. 24 only addresses restoration of spring-run Chinook. Will the fact that the bill does not directly address restoration of fall Chinook salmon affect reintroduction of fall Chinook as called for in the Settlement? Has a decision been made that it is infeasible to restore both spring-run and fall-run Chinook salmon, as provided for in settlements paragraph 14(a)? If so, please explain the basis for this decision.

Response:

The provisions of § 10 of H.R. 24 do not address fall-run Chinook salmon because the species already exists on the lower San Joaquin River and tributaries thereto, and the species is not currently listed under § 4 of the Endangered Species Act. Thus, all of the parties, including the downstream tributary interests did not feel it necessary to include protections for such species. The Settlement provides for the reintroduction of fall-run as well as spring-run Chinook salmon. The Settling Parties acknowledge that the spring-run was the dominant species on the upper San Joaquin River for a variety of biological reasons. Consequently, the hydrographs that are the foundation of the Settlement are principally designed to meet the needs of spring-run.

3. The report that would assess the success of the reintroduction of salmon is to be made no later than December 31, 2024, under H.R. 24. Why is the deadline 12 years after the expected introduction of the experimental population in 2012? Will there be other reports or monitoring that will gauge progress sooner or on a regular basis?

Response:

The date of the report required by § 10 of H.R. 24 was chosen, in part, so that Congress would be informed of the progress of the experimental population prior to the end of the protections provided to third parties that are included in the provisions of § 10. There are other provisions of the Settlement, the Memorandum of Understanding with the State of California and the Memorandum of Understanding with third parties that provide for constant monitoring of the progress of implementation of the Restoration and Water Management Goals. Twelve years was selected as the time period because Central Valley spring-run Chinook salmon generally mature and return to spawn when they are 3-4 years old, so twelve years provides an opportunity to examine the success of the experimental population through about three generations of fish.

4. In the 1992 Central Valley Project Improvement Act, Congress directed the Secretary of the Interior to develop a program to ensure sustainable anadromous fish populations double their average from 1967-1991 in 10 years; however, after 15 years, this goal has not been achieved. Given the difficulty in meeting the obligations set out in 1992, how long will it take to restore to "good condition" an extirpated species?

Response:

Friant is not aware of all of the reasons the doubling goal of the Central Valley Improvement Act has not been achieved. The reason is surely a function of many factors. In the case of restoration of a fishery to the San Joaquin River, the Settling Parties agree on the physical work necessary to restore the River. The Settling Parties have agreed upon Restoration Flow hydrographs and how those flows will be administered. Further, the Settling Parties have agreed upon a timeframe (concluding in 2026) that should allow sufficient generations of salmon to return to the San Joaquin River to evaluate the effectiveness of the Restoration effort. All of the parties acknowledge that the undertaking is significant and its success will be affected by a number of factors.

5. What other fish and wildlife species will benefit from this restoration effort? Do they include other listed or candidate species on federal or state endangered species lists?

Response:

There are a number of plant and animal species that will benefit from reintroduction of flows and reestablishment of riparian habitat along the San Joaquin River. Friant is not aware of all of the particular listed or candidate species that might

benefit from implementation of the Settlement, though it is anticipated that the re-establishment of a riparian vegetation corridor would benefit listed species which typically inhabit such areas in California's Central Valley, such as the Giant Garter Snake and the Valley Elderberry Longhorn Beetle. As a part of the early planning and design process for implementation of the Settlement, surveys will be performed that will identify species that exist in the area of the Restoration effort.

6. What recreation benefits might be realized from these restoration activities?

Response:

The Restoration of the San Joaquin River will provide many aesthetic benefits and will likely create opportunities for recreational benefits. Such opportunities must be balanced with the property rights of adjacent landowners along the restored river.

Experimental Populations Under the Endangered Species Act

1. Would any reintroduction of spring-run salmon to the San Joaquin River be outside the current range and wholly separate from nonexperimental populations of this species?

Response:

Friant understands that there are no spring-run on the San Joaquin River or tributaries thereto presently. Thus, reintroduced spring-run on the San Joaquin River would be wholly separate from existing populations on the Sacramento River and its tributaries. Of course, out migrating adults from the experimental population and existing populations on the Sacramento River and its tributaries will both proceed to the ocean via the Sacramento-San Joaquin Delta and San Francisco Bay.

2. Section § 10(b) of H.R. 24 makes the reintroduction of spring-run Chinook salmon dependent upon a discretionary finding by the Secretary that such a permit can be issued. What are the guarantees that the reintroduction will be allowed to proceed under this approach, or if it is allowed to proceed, that it will not be legally challengeable under a strict reading and interpretation of § 10(j) of the ESA?

Response:

The provisions of the Settlement explicitly state that the Settlement will be implemented in accordance with all applicable laws including, but not limited to, the Endangered Species Act. Thus, the Settlement is careful not to limit discretion of the Secretary of Commerce under provisions of the Endangered Species Act. Consequently, there are no guarantees that the Secretary will issue the permit as contemplated by § 10 of H.R. 24. Having said this, it is important to note that both the National Marine Fisheries Service and the Fish and Wildlife Service are parties to the Settlement and participated in negotiating the provisions of § 10 of H.R. 24. They have advised Friant, the other Settling Parties and the third parties that use of § 10(j) of the ESA and adoption of a § 4(d) rule is precisely the mechanism they would utilize for reintroduction of spring-run on the San Joaquin River. Clearly, the exercise of discretion under these provisions must be supported by sound science in order to avoid a sustainable challenge.

3. How will the introduced population be determined a success or failure? What if the experimental population of salmon does not succeed? Will this affect the terms of the Settlement? Will there be changes in the restoration flows or water management activities?

Response:

Provisions of Exhibit D to the Settlement provide a procedure by which the Technical Advisory Committee, the Restoration Administrator and the Secretary of Interior will develop interim and long-term targets and metrics to measure the effectiveness of the Restoration program. Additionally, the Bureau of Reclamation has already established a project implementation team that includes other state and federal agencies. This team includes a technical group working on the fishery management portions of the Settlement. The Settling Parties have acknowledged in the Settlement itself that, notwithstanding their best efforts, the effort may not succeed. Pursuant to the procedure included in the Settlement, any Settling Party may seek to modify the Restoration Flows after December 31, 2025. Prior to that time, there can be no changes to the required releases for the Restoration program. There are no provisions in the Settlement for modification of the water management provisions of the Settlement.

4. Section 10(b) of H.R. 24 directs the Secretary to reintroduce spring-run Chinook salmon pursuant to ESA § 10j and the Settlement. What potential conflicts exist between these prescriptions for introducing salmon and how will they be resolved?

Response:

Friant does not believe there are substantial conflicts between the Settlement and H.R. 24. However, to the extent that there are any conflicts between the Settlement and H.R. 24 with respect to issues such as the method of achieving ESA compliance for the reintroduced species, H.R. 24 is more recent and reflects the agreement reached amongst all of the negotiating parties, and it should therefore control.

5. The San Joaquin River supported spring and fall-run Chinook salmon in the southernmost part of their historical range. Could factors such as climate change or natural migration make it unlikely for salmon to exist in the San Joaquin River when experimental populations are assessed in 2024?

Response:

It is possible that these factors could affect the potential of success of the reintroduction. Friant has no specific information that enables it to conclude that these are relevant factors affecting success or not.

6. If the experimental population of Chinook salmon were determined to be essential, and critical habitat designated, will this modify federal water management activities on the San Joaquin River? Will third parties be affected?

Response:

Friant understands that the determination of nonessential relates to whether taking of "brood" stock from the spring-run populations existing on the Sacramento River and tributaries thereto will likely affect their survival in those watersheds. A similar determination must be made about whether the introduction of an experimental population on the San Joaquin River will affect the survival of the existing runs on the Sacramento River and its tributaries. Assuming it is found not to affect the survival of the spring-run on the Sacramento and tributaries thereto, Friant does not believe the presence of an experimental population of spring-run on the San Joaquin would result in a critical habitat designation on the San Joaquin. Thus, except as provided in the Settlement, the presence of an experimental population will not affect water management activities on the San Joaquin or adversely affect third parties.

7. Section 4(d) of ESA authorizes the Secretary to prepare regulations to provide for the conservation of threatened species. Has the National Marine Fisheries Service (NMFS) or Fish and Wildlife Service (FWS) ever been directed by Congress to issue a 4(d) rule under ESA for an experimental population?

Response:

Friant has no knowledge with which to answer this question.

Submitted by Mr. Radanovich (CA):

1. In his testimony to the Water & Power Subcommittee of the House Resources Committee on March 1, 2007, Allen Ishida, Chair of the Tulare County Board of Supervisors, asked that two studies be introduced into the Record. The first such study was prepared by Northwest Economics Associates and the second by the University of California. His testimony stated that the studies concluded that ground water levels would nearly double in depth and pumping costs significantly increase as a result of water releases required by the Settlement. Please answer the following:
 - a. Are you familiar with these studies?

Response:

Yes.

- b. Do you know the date each of the studies was prepared?

Response:

The University of California at Berkeley (UC) report was prepared in 1996. The second report was prepared by Northwest Economic Associates (NEA) in 1997 and was a re-examination of the Central Valley Production model used by UC.

- c. Were the water releases contemplated by these studies the same as those required by the Settlement that is the subject of H.R. 24? If not, what assumptions regarding water releases did the studies assume?

Response:

No, the studies did not contemplate the Restoration Flows contemplated by the Settlement. The UC report modeled the impacts of two water supply reduction scenarios, one equaling 200 thousand acre-feet (TAF) per year and one equaling 500 TAF per year. The NEA study estimated the results of the same two water supply reduction scenarios, but the NEA study modified the groundwater modeling and simulated 20 years rather than 10. The water supply reductions modeled by the UC and NEA reports are not the same as the water releases called for in the Settlement.

ment, which provides for restoration flows that will vary depending on the type of hydrologic conditions in that water year.

- d. Are you aware if any subsequent studies have been prepared based upon updated information? If so, when?

Response:

Yes. In conjunction with the litigation that ultimately gave rise to this settlement, one of the authors of the NEA report, Dr. Robert McKusick, prepared a report that specifically analyzes the economic impacts associated with the hydrographs that are incorporated into the settlement. This report was prepared in September 2005.

Unlike the other two studies, Dr. McKusick's September 2005 report was based on a new model developed to allow analysis of water supply impacts at a more disaggregate level than the Central Valley Production Model which had been used for the UC and NEA reports. This new model, the Friant Division Production Model (FDPM), was constructed and calibrated based on current agricultural conditions and San Joaquin River releases. Among other things, Dr. McKusick and his staff surveyed Friant water managers and water users about their current water demands and supplies and their anticipated reactions to water losses associated with the proposed river restoration flows.

- e. If you are aware of more recent studies, can you explain what different assumptions were utilized by the more recent studies?

Response:

While all of the studies anticipated that some of the lost Friant water would be replaced by increased groundwater pumping, the UC report's assumptions related to groundwater hydrology and pumping cost equations were rough. Those assumptions were refined in the NEA study and further refined with the development of Dr. McKusick's September 2005 report, which was premised on extensive, current data on groundwater conditions in the Friant service area collected by Dr. Charles Burt, Richard Moss, and Dr. Kenneth Schmidt. (Dr. Burt, Mr. Moss and Dr. Schmidt all submitted reports in September 2005 related to the impact of the river restoration flows on various aspects of groundwater conditions within the Friant Service Area.)

Furthermore, because the prior studies relied on the Central Valley Production Model, the UC and NEA reports treated the Friant Division as a whole and did not allow for local variations in cropping rotations, soils, water sources and quality, financial solvency, and other issues. In contrast, the Friant Division Production Model recognizes the differences between the 23 Friant Division agricultural contractors. The FDPM classified the Friant Division contractors into eight zones based on availability of other surface water supplies, groundwater availability and depth, cropping pattern, and geographic proximity. The FDPM assumes that agricultural producers facing a change in irrigation water supplies may change cropping patterns, reduce irrigated acreage, or adopt different irrigation technologies. The FDPM also assumes that farmers may reduce water application rates (thereby reducing yields), unlike the constant yields assumed in the CVPM.

- f. If you are aware of more recent studies, can you explain what different conclusions were reached by the more recent studies?

Response:

Dr. McKusick's September 2005 report indicates that, if the restoration flows are implemented without modification of project operations or any recovery of lost supplies, by 2025, crop acreage in the Friant service area would decline by 51,320 acres, or six (6) percent of existing acreage. Farm value of output would fall by \$159.3 million per year, causing regional declines of \$264.9 million in annual output, \$80.7 million in annual personal income, and a loss of 3,070 jobs. Reduced agricultural acreage would have spin-off impacts throughout and beyond the service area and would impact many industries, including agriculturally-related, retail, transportation, real estate, health, and financial services. The magnitude of these numbers highlights the importance of water supplies to the economy of California's Central Valley and emphasizes the need for effective implementation of the Settlement's Water Management Programs.

2. Are you aware of other independent studies that have been prepared that analyzing the impact of the water releases required by the Settlement on groundwater conditions or the economy of Tulare County? If so, what are the studies and what did they conclude?

Response:

The impact of the water releases required by the Settlement on groundwater conditions in the Friant service area was analyzed in three expert reports prepared by Richard Moss, Charles Burt, and Kenneth Schmidt, all of which are dated Sep-

tember 2005. Other than Dr. McKusick's September 2005 report, Friant is not aware of any studies that analyze the potential economic impacts to Tulare County associated with the water releases incorporated into the settlement.

3. Mr. Ishida's written testimony makes reference to a new well drilled by the City of Lindsay nearly 3 miles outside of the City limits. You stated that the distance outside of the City limits was related to salinity and nitrate water quality issues. Are you aware of what caused the salinity and nitrate problems necessitating the drilling of a well so far outside of the City limits?

Response:

Friant understands that groundwater contamination in and around the City of Lindsay is a result of the historic operation of a large olive processing facility in the City. While the plant is now closed, its historic operation apparently caused significant salinity and nitrate contamination affecting the City's municipal water system. The problem is not related to declining groundwater conditions.

4. What actions has Friant to inform local agencies and landowners about the terms and conditions of the Settlement?

Response:

Friant has undertaken a significant effort to inform local interests and landowners about the Settlement and the alternative of proceeding with the litigation. Attached is a spreadsheet that details the organized activities of the Authority. In addition, individual member water and irrigation districts also did considerable outreach, including, but not limited to, landowner meetings and production and distribution of a DVD explaining the Settlement. Further, there were monthly articles in the Friant Waterline (circulation of 5,500) that detailed the terms and conditions of the Settlement.

Mrs. NAPOLITANO. Thank you. We will next hear from Hamilton Candee, Attorney for the Natural Resources Defense Council in San Francisco. Sir.

STATEMENT OF HAMILTON CANDEE, SENIOR ATTORNEY, CO-DIRECTOR, WESTERN WATER PROJECT, NATURAL RESOURCES DEFENSE COUNCIL

Mr. CANDEE. Thank you very much. Thank you, Madame Chairwoman and Members of the Subcommittee. It is a wonderful opportunity to be back here to testify once again about restoration of the San Joaquin River.

My name is Hamilton Candee. I am an attorney, senior attorney with the NRDC, and Co-Director of the NRDC Western Water Project. I appreciate the opportunity to speak today in strong support of the historic settlement in NRDC v. Rogers, and the pending legislation to authorize and approve the settlement, H.R. 24.

For the past 18 years I have been a counsel of record in this case, representing a coalition of 14 environmental and fishing groups, which in turn represent over two million people nationwide, and more than 250,000 Californians.

Madame Chairwoman, you have emphasized recently, as recently as yesterday in a very nice event that I had the opportunity to attend, that it is very important to you and to this Subcommittee that people try to solve water problems through partnerships. And in particular, those partnerships be partnerships that will benefit people.

And I am very pleased, therefore, to be here today to support legislation that will approve and authorize an unprecedented partnership; one that will solve a major water problem in California, and will benefit millions of people.

Settlement on the San Joaquin River will literally bring back a living river to an entire region of our state, and will do so through

a creative and extraordinary partnership between farmers and environmentalists, fishermen and water districts, and Federal agencies and state agencies. And I must say, I want to thank Congressman Radanovich in particular and Senator Feinstein for bringing us all together and being leaders in this effort to build this partnership.

Governor Schwarzenegger mentioned in a letter to the Secretary of the Interior last year that one reason he was supporting the settlement effort is that it will benefit literally millions of Californians, while preserving a strong agricultural economy. And that is the spirit of our testimony today. We believe the settlement should be supported for all of those reasons.

I have previously appeared before the Subcommittee and testified on the San Joaquin River Settlement. I understand that transcript is now available and will be part of the legislative history, so I will not repeat that. What I do want to do is talk about some of the remarkable developments since the last hearing in September.

Madame Chairwoman, you have already outlined some of the developments. As many people in this hearing room know, Senator Feinstein invited us all back literally the same day, the afternoon, of that hearing, to bring the parties together to try to hammer out additional protections. We already felt there were protections in the settlement for third parties, but we added a lot of additional protections in the legislation to try to deal with the concerns about impacts to third parties. And after some very intense negotiations, on September 27 that agreement was reached. Senator Feinstein's press release announcing that agreement is in the attachments to my testimony.

Incidentally, we did bring some additional copies of those attachments in case anyone needs an additional copy of that.

So the legislation, the revised legislation, which is now pending before this Subcommittee, has the support of not only the settling parties in the State of California, but also the third parties who were in that room and involved in those negotiations.

Senator Feinstein did a very creative thing. She then handed around a piece of paper, a pledge-of-support document, and we all signed that. And I must say, yesterday we were all working together, the third parties and the settling parties, briefing Members of the Subcommittee and other interested Members of Congress about the revised legislation.

Since that time the Federal Court has now approved the settlement. It has gone into effect. And of course, in November the voters of California approved Proposition 84, which earmarks \$100 million of state money to support the settlement. There is also Proposition 1E, a flood bond that has additional funding. And Secretary Chrisman from the State of California has indicated that he thinks there may be as much as another \$100 million in those two state initiatives.

So we believe we are already off and running. The settlement is starting to be implemented, and the voters of California have spoken that they support it, and they are prepared to put funding into it.

As a result of these consensus discussions, we now have H.R. 24 and S. 27 pending before the committee. And I would like to thank

all of the co-sponsors of the legislation. We are very indebted to you.

We believe that the final thing to keep in mind is all of the benefits of this settlement and this legislation. I will just list them quickly, just a quick summary of some of the more important ones.

First, restore continuous flows to the San Joaquin River, California's second-longest river, and one of the two main arteries to the Bay Delta system, benefitting over 23 million Californians.

Second, restoring some of the historic salmon runs, as well as other fish species.

And then provide certainty of the Friant Division long-term contractors, preserve a strong economy, provide flexibility to the contractors through water management measures, and provide protections for third parties.

As Mr. Dooley said, now it is up to Congress to give a vote of approval, and we urge you to pass the legislation as quickly as possible. Thank you.

[The prepared statement of Mr. Candee follows:]

**Statement of Hamilton Candee, Senior Attorney; Co-Director,
Western Water Project, Natural Resources Defense Council**

Good morning. I would like to thank the Subcommittee for this opportunity to testify once again about restoration of the San Joaquin River. My name is Hamilton Candee and I am a senior attorney with the Natural Resources Defense Council (NRDC) and the Co-Director of NRDC's Western Water Project. I appreciate the opportunity to speak today in strong support of the historic settlement in NRDC v. Rodgers and the pending legislation to authorize and approve this settlement, H.R. 24. For the past 18 years, I have been a counsel of record in this case, representing a coalition of 14 environmental and fishing groups which, in turn, represent over 2 million people nationwide, and more than 250,000 Californians. With me today is NRDC senior attorney Kate Poole, who also represents the NRDC Coalition and participated with me in the multi-party negotiation that produced the landmark settlement that is the subject of today's hearing.

I previously appeared before this Subcommittee to discuss the San Joaquin River Restoration Settlement on September 21, 2006. At that time, the Subcommittee heard from two panels: the first comprised of representatives of the Settling Parties and the State of California, and the second comprised of interested third parties. I will not repeat here our earlier testimony which provided considerable background on the Settlement; however I would like to request that my prior testimony and submissions from that hearing be made part of the record for this hearing. I would like to focus my testimony today on the remarkable progress we have continued to make on the Settlement since that hearing last September.

Immediately following the hearing, the Settling Parties were invited by Senator Feinstein to commence negotiations with a wide coalition of third parties who had asked for revisions to the then-pending proposed Settlement legislation to address their concerns about potential impacts of the Settlement. These negotiations included several members of the House Resources Committee, other interested members of the House, both of California's Senators, as well as the various parties who testified on the third-party panel on September 21, 2006. On September 27, 2006, after extensive and difficult negotiations in Washington, DC and California, the Settling Parties, the State of California, and these numerous third parties agreed on a large number of changes to the proposed legislation that were acceptable to all of the parties. To memorialize this remarkable agreement, all of the parties signed what has come to be affectionately known as "the blood oath" which committed all the signatories to support the Settlement and the revised legislation, and to oppose any amendments to the revised legislation that are not agreeable to all of the parties. A copy of that Pledge of Support document, along with Senator Feinstein's press release announcing the agreement, is submitted with my testimony today as an attachment.

Subsequently, on October 23, 2006, the Federal Court in Sacramento that had presided over the NRDC v. Rodgers litigation for 18 years approved the Settlement following a hearing on the joint motion of the Settling Parties. The Court approved the Settlement without change after considering the views of 13 interested individ-

uals and groups who were not parties to the litigation but who were allowed to file amicus briefs expressing their views on the Settlement.

On November 7, 2006, the voters of the State of California passed two Initiatives that potentially provide substantial State funding for implementation of the Settlement. First, the voters passed Proposition 84, which contains \$100 million explicitly dedicated to implementation of the Settlement, as well as numerous other potential funding sources. Second, the voters passed Proposition 1E, the flood infrastructure bond, which provides several billion dollars in bond funds to upgrade the State's flood protection. Because the Settlement also calls for flood protection upgrades to be implemented along the San Joaquin River, the State has informed the Settling Parties that Prop 1E could potentially provide tens of millions of dollars in additional State funding towards Settlement implementation. In the aggregate, the State anticipates providing at least \$200 million towards Settlement implementation, as explained in the November 30, 2006 Letter from California's Resources Secretary Mike Chrisman to Senator Feinstein submitted as an attachment to my testimony.

In December, 2006, the Settling Parties and the State of California addressed Senator Feinstein's request to revise further the Settlement legislation to address the issue of "costsharing" between non-Federal sources of funding and the \$250 million in new Federal funds authorized in the legislation. The Settling Parties were able to successfully address the Senator's concerns. As a result of these two rounds of consensus discussions to make final revisions to the draft legislation, on December 6, 2006, H.R. 6377 and S. 4084 were introduced in the House and the Senate with broad, bi-partisan support, including original co-sponsorship by Senators Dianne Feinstein and Barbara Boxer and Representatives George Radanovich, Dennis Cardoza, Jim Costa, George Miller, Grace F. Napolitano and Richard Pombo. Action was not taken on the bills given the short time left in the 109th Congress, but were reintroduced on January 4th of this year as H.R. 24 and S. 27, on the first day of the 110th Congress, once again with bi-partisan support in the California delegation.

We thank all of the co-sponsors for their strong support. This is the background of the legislation that is now pending before you. It is unique legislation in that it has the support of the Settling Parties—who represent 22 water districts, 14 conservation and fishing groups, and 5 federal agencies—as well as a wide array of California water users and landowners who were not parties to the Settlement but who have now pledged their support for the settlement and this legislation, and the State of California (which has committed extensive financial and agency resources to the implementation of the Settlement).

We are also pleased to note that the President's recently-delivered federal budget, and Governor Schwarzenegger's recently delivered State budget, both support increased funding for the relevant government agencies to implement the Settlement. In closing, I would like to briefly recap the benefits of passing H.R. 24 and fully implementing the Settlement. The Settlement will:

- Restore continuous flows to the San Joaquin River—California's second-longest river and one of two main arteries to the Sacramento-San Joaquin River Delta, the source of drinking water for over 23 million Californians;
- Restore the Central Valley Spring-run Chinook salmon, fall run Chinook salmon, and other fish populations to the San Joaquin, much of which had been destroyed by the operation of Friant Dam over the past 60 years;
- Provide certainty to the Friant Division long-term water contractors through the specified water releases provided for in the Settlement;
- Preserve the San Joaquin Valley's strong agricultural economy, while enhancing environmental values in the Valley through restoration of a living river and associated habitat;
- Provide flexibility to the Friant Division long-term contractors to reduce or avoid the water supply impacts resulting from the Settlement through specified water management techniques such as recirculation, low-cost water in wet years, and other measures;
- Provide protections to the interests of third parties, as included in the current legislation and in the Settlement, and ensuring that all of the settlement provisions will be implemented in accordance with all applicable laws, including the National Environmental Policy Act, the Endangered Species Act, and State law;
- And provide for myriad opportunities for public input and participation during the implementation of the Settlement.

NRDC, having worked together with the other Settling Parties, the State and those third parties who have signed the attached Pledge of Support, is extremely proud of what we have accomplished in this Settlement and revised legislation. The Federal and State agencies and the Settling Parties have already begun the hard

work of Settlement implementation. The State and Federal governments have identified lead agency personnel and teams to execute certain tasks. The Settling Parties are cooperatively developing protocols and agreements for public and third party participation and input. But it is critical for all of us that we obtain passage of this legislation that is pending before you in order to fully implement what Secretary Kempthorne and so many other leaders have correctly described as an "historic settlement."

We ask that Congress promptly pass the San Joaquin River Restoration Settlement Act so that the San Joaquin River can flow once again and all of the benefits of the Settlement can be realized.

Thank you.

[The response to questions submitted for the record by Hamilton Candee, Co-Director, Western Water Project, Natural Resources Defense Council, follows:]

March 15, 2007

The Honorable Grace F. Napolitano, Chairwoman
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
1522 Longworth House Office Building
Washington, DC 20515

Attn: Emily Knight, Subcommittee Clerk

Re: March 1, 2007 Hearing on H.R. 24—SJ River Settlement Act: Submittal #1
Response to Additional Questions by Representative Nunes

Dear Chairwoman Napolitano:

Thank you for your letter of March 5, 2007 forwarding the two questions from Representative Devin Nunes to witnesses at the March 1, 2007 hearing of the Subcommittee on Water and Power regarding H.R. 24, the San Joaquin River Restoration Settlement Act. One of those questions was directed to Mr. Tom Birmingham. The other question was directed to all witnesses. We provide below the response of the Natural Resources Defense Council (NRDC) to the question directed to all witnesses.

Mr. Nunes asks:

If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

As the Subcommittee knows, the Settling Parties (including the Natural Resources Defense Council, the Friant Water Users Authority, the U.S. Bureau of Reclamation, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service) devoted extensive time and effort to creating a Water Management Goal as part of the San Joaquin River Settlement, and H.R. 24 would require the Secretary of the Interior to carry out a number of measures specified in the Settlement in the effort to achieve that goal. But none of those measures has been implemented yet. Accordingly, NRDC believes an amendment to H.R. 24 as proposed by Rep. Nunes would be premature and would not support it.

Among other things, the Settlement calls for the Secretary of the Interior, in consultation with the Plaintiffs and Friant Parties, to develop and implement a plan for recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows for the purpose of reducing or avoiding impacts to water deliveries to all of the Friant Division long-term contractors caused by the Interim Flows and Restoration Flows. That plan has not yet been developed. Until it is, the Settling Parties do not have sufficient information to identify the most efficacious and cost-effective measures to pursue the water management goal, and whether any further congressional authorization is necessary.

In addition, any new pumping and conveyance facilities could impact water users and other interests that are not currently represented by parties involved in the negotiations concerning the form of H.R. 24, including water users who rely on water from the Sacramento-San Joaquin River Delta for all or a portion of their supply. We look forward to the development of the Plan envisioned by Paragraph 16(a) of the Settlement, which we expect will consider a range of possible water supply miti-

gation measures. As that list is developed, we expect the Interior Department to engage potentially interested or affected stakeholders, including Delta water users, to obtain their input.

Thank you for providing us this opportunity to provide additional information to the Committee about H.R. 24.

Sincerely,

Hamilton Candee
Co-Director, Western Water Project

cc: Honorable Devin Nunes

Answers of Natural Resources Defense Council (NRDC) to Additional Questions by Chairwoman Napolitano re: SJ River Restoration Settlement Act, H.R. 24

Questions for the Settling Parties Represented by Dan Dooley, Hamilton Candee, and Jason Peltier

Restoration of Salmon Fisheries

- 1. What was the value of the San Joaquin Chinook salmon fishery (sport and commercial) prior to extirpation of the species, in then-current, and in 2007 dollars?**

ANSWER: State Water Rights Board Decision 935 (D-935) states that the California Department of Fish and Game estimated the combined value of the sport and commercial salmon runs on the San Joaquin River, at the time of commencement of storage and diversions at Friant Dam, to be \$1,032,000 (D-935, pg. 28, lines 11-20). That figure is based on 1957 wholesale price values and has not been updated to 2007 or current values. In its 2005 Water Plan, the California Department of Water Resources presented data showing that freshwater fishing alone generates over \$3 billion per year of economic output in California—a number that does not take into account the loss of the San Joaquin River salmon. We are not aware of a more precise and current estimate of the economic output generated by the sport and commercial salmon runs on the San Joaquin River prior to extirpation of the species.

- 2. The Settlement Agreement calls for restoring fall and spring runs of Chinook salmon, yet §10 of H.R. 24 only addresses restoration of spring-run Chinook. Will the fact that the bill does not directly address restoration of fall Chinook salmon affect reintroduction of fall Chinook as called for in the Settlement?**

ANSWER: No. The reason fall Chinook salmon was not addressed in the bill is because it is not listed under the ESA.

Has a decision been made that it is infeasible to restore both spring-run and fall-run Chinook salmon, as provided for in settlements paragraph 14(a)? If so, please explain the basis for this decision.

ANSWER: No such decision has been made.

- 3. The report that would assess the success of the reintroduction of salmon is to be made no later than December 31, 2024, under H.R. 24. Why is the deadline 12 years after the expected introduction of the experimental population in 2012?**

ANSWER: The Settlement provides for frequent monitoring of the progress of restoration. The deadline for the report on reintroduction was selected in part because twelve years is expected to provide data on at least 3 generations of salmon.

Will there be other reports or monitoring that will gauge progress sooner or on a regular basis?

ANSWER: The Settlement calls for annual Reports on the progress of the restoration effort as well as frequent monitoring.

- 4. In the 1992 Central Valley Project Improvement Act, Congress directed the Secretary of the Interior to develop a program to ensure sustainable anadromous fish populations double their average from 1967-1991 in 10 years; however, after 15 years, this goal has not been achieved. Given the difficulty in meeting the obligations set out in 1992, how long will it take to restore to “good condition” an extirpated species?**

ANSWER: The Settling Parties may have different views as to why progress under CVPIA has been slower than hoped; in fact, the adequacy of the government's implementation of the CVPIA has been a matter of some dispute. With respect to H.R. 24 and the San Joaquin River, the Settlement defines the Restoration Goal as

the restoration and maintenance of fish populations in “good condition” in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-reproducing and self-sustaining populations of salmon and other fish. The Settlement does not specifically define what “good condition” means in terms of population targets. However, the Settlement requires the Technical Advisory Committee and the Restoration Administrator to make recommendations to the Secretary of the Interior on interim and long term population targets toward meeting this goal. As seen historically on the main stem San Joaquin and, more recently, on other tributary rivers, Chinook salmon populations can grow from a few hundred to several thousand within a few years.

5. What other fish and wildlife species will benefit from this restoration effort? Do they include other listed or candidate species on federal or state endangered species lists?

ANSWER: Numerous fish and wildlife species will benefit from this restoration effort. The Settling Parties have focused restoration planning on Chinook salmon because satisfying the life history requirements for Chinook creates conditions that are favorable for a diverse native assemblage of fishes that historically existed below Friant Dam. It is anticipated that the restoration requirements outlined in the Settlement will sustain native anadromous fish such as spring and fall run Chinook salmon and Pacific lamprey, as well as resident native fish in the cool-water reaches, including Kern brook lamprey, hitch, California roach, hardhead, Sacramento pikeminnow, Sacramento sucker, rainbow trout, tule perch, threespine stickleback, prickly sculpin and ruffle sculpin. In warmer reaches, the restoration effort may also help Sacramento blackfish and Sacramento perch. In addition, elevated flows, especially spring pulse flows, should help Sacramento splittail and other native fishes to spawn in floodplain areas, as well as provide additional places for juvenile salmonids to rear. While some of these fish face varying levels of threats, none are currently listed as threatened or endangered under the federal or state endangered species acts, with the exception of spring run Chinook salmon.

The Settlement hydrograph includes “riparian recruitment” flows designed to help restore riparian vegetation and a riverine ecosystem along the banks of the San Joaquin River. This riparian corridor should sustain a wide variety of native wildlife and bird species. It could also provide a crucial link between existing conservation areas, from the San Luis National Wildlife Refuge, the Merced National Wildlife Refuge, and the Grasslands Wildlife Management Area along the northern stretch of the San Joaquin River to the Mendota Wildlife Area and the Kerman and Alkali Sink Ecological Reserves to the south.

6. What recreation benefits might be realized from these restoration activities?

ANSWER: By restoring continuous flow, fisheries and riparian habitat to the San Joaquin River, the restoration activities will have significant, positive impacts on water-dependent outdoor recreation along the San Joaquin River.

Water-dependent recreation activities are very popular in California. The California Department of Parks and Recreation has conducted statewide surveys of public opinions and attitudes on outdoor recreation in California every five years since 1987. The results consistently indicate the great importance to Californians of outdoor recreation, and water-dependent recreation in particular. In a recent survey, conducted in 2002, 84.1% of those surveyed responded that outdoor recreation areas and facilities were important or very important to them and their families. When respondents were asked to consider their favorite recreation activity and to assess the importance of various factors to their overall enjoyment of this activity, 67.4% said that being outdoors was a very important factor for them, and 43.8% said that the availability of water (lakes, reservoirs, rivers, wetlands) was very important for them. With regard to participation, 75.1 % of respondents had participated at least once in 2002 in wildlife viewing, bird watching and/or viewing natural scenery; 46.7% had participated in swimming in freshwater lakes, rivers and/or streams; and 34% had participated in freshwater fishing.

Using the data from this survey, the 2005 California Water Plan prepared by the Department of Water Resources estimates that, in 2002, adult Californians spent about 150 million participation-days on water-based recreation; in the case of water-related recreation, it estimates that there were 55 million adult participation-days for wildlife viewing, and 36 million adult participation-days for hiking. With regard to the economic impact of water-dependent recreation in California, the most specific information available is for sportfishing. The 2005 Water Plan presents data showing that freshwater fishing alone generates over \$3 billion per year of economic output in California. The economic activity generated by other components of water-dependent recreation, including water-related tourism, exceeds that associated with freshwater fishing by a very substantial margin. Thus, water-dependent outdoor

recreation by both residents and tourists is now an important part of the California economy.

Restoring the San Joaquin River to a living river will provide numerous opportunities for these types of water-dependent recreation, as well as significant economic benefits for providers and supporters of these activities.

Experimental Populations Under the Endangered Species Act

Section 10(b) of H.R. 24 requires a determination by the Secretary of Commerce as to whether a permit for an experimental population can be issued for reintroduction of spring-run Chinook salmon under § 10(j) of ESA. The language in § 10(j) of ESA, related to experimental populations, states that these provisions are applicable to introductions outside the current range of such species and wholly separate geographically from non-experimental populations of the same species. However, spring- (and fall-) run Chinook salmon reintroduced into the San Joaquin River may inhabit portions of the Sacramento-San Joaquin River drainage in common with other established Chinook salmon populations.

1. Would any reintroduction of spring-run salmon to the San Joaquin River be outside the current range and wholly separate from non-experimental populations of this species?

ANSWER: This issue was of primary concern to representatives of third-party water users who obtain water from tributaries of the San Joaquin River downstream of Friant Dam. A member of this group, Mr. Kenneth M. Robbins, General Counsel of the Merced Irrigation District, provided testimony on this question at the March 1, 2007, hearing on behalf of the San Joaquin Tributaries Association. While his views do not necessarily reflect the views of the Settling Parties, it should be noted that Mr. Robbins testified that:

With regard to the “wholly separate” criterion, the reintroduction of Central Valley Spring Run Chinook Salmon to the San Joaquin River should qualify as no other populations of Central Valley Spring Run Chinook Salmon exist on the San Joaquin River or its tributaries. Indeed, to reintroduce them in individuals or eggs of Central Valley Spring Run Chinook Salmon on the Sacramento River will have to be transported to the San Joaquin River.

2. Section § 10(b) of H.R. 24 makes the reintroduction of spring-run Chinook salmon dependent upon a discretionary finding by the Secretary that such a permit can be issued. What are the guarantees that the reintroduction will be allowed to proceed under this approach, or if it is allowed to proceed, that it will not be legally challengeable under a strict reading and interpretation of § 10(j) of the ESA?

ANSWER: Section 10(b) is consistent with existing provisions of the Endangered Species Act, which vests discretion with the Secretary of Commerce (in the case of anadromous fish such as spring run Chinook salmon) to determine whether a permit for the reintroduction of a listed species may be issued in light of certain defined factors. We anticipate that the Secretary will find that those factors are satisfied in this case. Once the Secretary makes that determination pursuant to section 10(a)(1)(A) of the Endangered Species Act, section 10(b) of H.R. 24 provides that spring run Chinook salmon “shall be reintroduced in the San Joaquin River below Friant Dam.”

3. How will the introduced population be determined a success or failure? What if the experimental population of salmon does not succeed? Will this affect the terms of the Settlement? Will there be changes in the restoration flows or water management activities?

ANSWER: The Settlement addresses all of these issues within the text of the Stipulation of Settlement. For example, as indicated in the answer to Question 4 above, the Settlement requires the Technical Advisory Committee (which includes representation of the California Department of Fish and Game) and the Restoration Administrator to make recommendations to the Secretary of the Interior on interim and long term population targets for the reintroduced salmon. Similarly, the Settlement provides that certain essential terms can be “reopened” after 2025 pursuant to a procedure by which the State Water Resources Control Board must make a number of specific findings to the Court, including findings about levels of progress or success under the Settlement. Finally, the Settlement provides explicitly that “achieving all of the Restoration Goal by December 31, 2025 may not be possible,” and that “nonetheless, the Parties agree that engaging in the restoration and water management efforts called for by this Settlement are expected to provide significant public benefits beyond the Restoration and Water Management Goals.”

4. Section 10(b) of H.R. 24 directs the Secretary to reintroduce spring-run Chinook salmon pursuant to ESA § 10j and the Settlement. What

potential conflicts exist between these prescriptions for introducing salmon and how will they be resolved?

ANSWER: We do not anticipate potential conflicts between the Section 10(b) of H.R. 24 and the Settlement. Nevertheless, the federal and state implementing agencies are in the process of creating mechanisms for inter-agency coordination as well as ongoing consultation with the Settling Parties and with third parties regarding implementation of the Settlement and the legislation.

5. The San Joaquin River supported spring and fall-run Chinook salmon in the southernmost part of their historical range. Could factors such as climate change or natural migration make it unlikely for salmon to exist in the San Joaquin River when experimental populations are assessed in 2024?

ANSWER: While climate change has the potential to warm our rivers and reduce habitat for cold water species like salmon, there are three reasons why the San Joaquin River salmon will likely fare better than other runs in some other locations. First, the snow pack which feeds the San Joaquin River is less likely to be reduced due to global warming because some of the highest mountains in the Sierra are in the upper San Joaquin drainage. Second, upstream of Friant Dam are several hydropower dams with a combined storage (about 600TAF) that is larger than Friant Dam (520TAF). These non-diversion dams generally store water high in the mountains until the late spring and summer and then release much of the water through underground tunnels for power generation. This keeps the water cold and provides cooler flows beneficial for fish later in the year. Third, spring run Chinook salmon are relatively well adapted to climate change because the up-coming adults and outgoing juveniles migrate during the cold winter and spring months. The Settlement also has three flexibility elements that will help in managing for the effects of climate change. First, flows are allocated in blocks of water to be released at times when they are most needed and will provide maximum benefits to fish. Second, the Settlement includes an additional 10% of "buffer flows" which can be called upon if needed to help meet temperature requirements. Third, if more flows are needed there are provisions allowing for the purchase of additional water from willing sellers.

*Before a population is deemed experimental under ESA, it must be determined to be essential or nonessential by the Secretary.*¹ An essential population is defined as a population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other populations would be determined as nonessential. Nonessential populations shall not have critical habitat designated; essential populations could have critical habitat designated through a special rule-making process.

1. If the experimental population of Chinook salmon were determined to be essential, and critical habitat designated, will this modify federal water management activities on the San Joaquin River? Will third parties be affected?

ANSWER: As explained above, these issues were of significant concern to representatives of third-party downstream water users. A member of this group, Mr. Kenneth M. Robbins, General Counsel of the Merced Irrigation District, testified at the March 1, 2007 hearing that H.R. 24 adequately addresses these concerns. While his views do not necessarily reflect the views of the Settling Parties, it should be noted that Mr. Robbins testified as follows:

With respect to the required finding that the experimental population's loss would not appreciably reduce the species' likelihood of survival, it would be difficult to understand how the Secretary could find that the population to be reintroduced is "essential to the continued existence of the species" and still remove it from a much more friendly habitat—particularly in light of its threatened status rather than endangered. One would reasonably conclude that the fish would not be taken from their original habitat for such an experiment if they were in fact "essential."

Mr. Robbins further testified that:

H.R. 24 contains a provision that provides that the reintroduction of the Central Valley Spring Run Chinook Salmon not impose more than de minimis water supply reductions, additional storage releases, or bypass flows on third parties. We support this language as it is currently written.

2. Section 4(d) of ESA authorizes the Secretary to prepare regulations to provide for the conservation of threatened species. Has the National

¹The term Secretary under ESA refers to the Secretary of the Interior or the Secretary of Commerce with respect to program responsibilities for the species in question, unless otherwise specified.

Marine Fisheries Service (NMFS) or Fish and Wildlife Service (FWS) ever been directed by Congress to issue a 4(d) rule under ESA for an experimental population?

ANSWER: This question is directed to two Federal agencies; accordingly, we refer the Committee to the response of the Federal Parties.

Mrs. NAPOLITANO. Thank you, sir. That was a very good wrap-up.

Next we will go on to Mr. Jason Peltier, Principal Deputy Assistant Secretary for Water and Science with the U.S. Department of Interior here in Washington. Welcome, sir.

STATEMENT OF JASON PELTIER, PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR, WASHINGTON, D.C.

Mr. PELTIER. Thank you, Madame Chairwoman, and congratulations on your ascendancy. And we look forward to working with you not only on this bill, but on a broad suite of issues facing the 17 western states that are—it is a show that never ends.

[Laughter.]

Mr. PELTIER. And we are happy to have you in the ringmaster seat, and look forward to working with you.

Mrs. NAPOLITANO. Sir, you don't know how close we are going to be working.

[Laughter.]

Mr. PELTIER. We look forward to that, whatever it is.

I am pleased to be here, and pleased to provide the Administration's support for H.R. 24. I know a lot of you over the years are not used to hearing us open our testimony with those words, but we are today very supportive of the legislation before the committee.

I think I would associate myself with everything our settling partners have said this morning. And I think I would like to move directly, in a few minutes, simply to address some of the concerns that Congressman Nunes has raised. Because I think the issues about uncertainty and ongoing concerns are two very big realities we face across the West. Wherever we see the interface of water project operations and ecosystems, whether it is in impacts or efforts to improve, absolutely those are the watch words. Those are the things that we struggle with every day as we deal with how to achieve the economic and environmental goals that we have. And uncertainty abounds on every front. And it is a great challenge for all sides, that we must face and deal with.

Certainly, in the broader context of water issues in your state, we are on the verge of dealing with some very large historical issues, whether it be on the Klamath River, the Salton Sea, flood control issues around Sacramento, the Delta of course, drainage on the west side. All of these issues have been evolving and developing and coming to the point of potential steps forward. And all of them are embedded with the issues of uncertainty and many, many concerns, as we go forward and attempt to deal with them.

I think on all of those issues we can look to this experience, to the progress we have made in resolving this long, ugly fight. We always weren't pals with Hal and his troop. But we have crossed into this new age of working together and solving problems. And

frankly, it feels very good. And it is a good feeling to know that as we strive to solve problems, as we strive to eliminate uncertainty, that we can do it in a partnership a lot better than we can when we are in a conflict mode.

The partnerships extend beyond the settling parties. The third parties have been mentioned. Certainly with our friends at the State of California, and in broader, within the U.S. Government. There is a range of Federal and state agencies that will be deeply, deeply involved in this effort as we go forward, all with their independent, and sometimes frankly conflicting or competing missions, but that is one of the uncertainties and concerns that we all must wrestle with, is aligning those missions to accomplish our common end goal.

With that, Madame Chairwoman, I am prepared to answer questions. Thank you.

[The prepared statement of Mr. Peltier follows:]

Statement of Jason Peltier, Principal Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior

Madam Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 24, the San Joaquin River Restoration Settlement Act. H.R. 24 provides authorization and funding for the Secretary of the Interior to implement the terms and conditions of the Stipulation of Settlement (Settlement) dated September 13, 2006, in Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., which was approved by the U.S. District Court on October 23, 2006. The Department supports H.R. 24.

During the eighteen years since this case was filed, relations between stakeholders in the San Joaquin River basin, including the State of California, Reclamation water users, environmentalists, and Federal agencies, have often been contentious. However, through the good faith efforts of the "Settling Parties," namely Natural Resources Defense Council (NRDC), Friant Water Users Authority (FWUA), and representatives of the Bureau of Reclamation, Fish and Wildlife Service, National Marine Fisheries Service, and the Department of Justice for the United States, an opportunity has been presented to resolve this litigation in a way that will both restore the San Joaquin River and increase water supply certainty to farmers in the Friant Division. My testimony today will provide an overview of the Settlement and the importance of this authorizing legislation.

Brief Background

The Bureau of Reclamation has water service contracts with 28 entities made up of cities and water districts of various sorts that rely on the water supply from the Friant Division, one of the key features of the Central Valley Project. Friant Dam is located on the upper San Joaquin River, where it forms Millerton Lake, and became fully operational in the late 1940s. Our understanding is that about 15,000 farms rely on Friant water supplies.

Except for flood-control operations, Friant Dam/Millerton Lake is operated to meet minimum downstream flow requirements and maximize water deliveries. As a result, approximately 60 miles of the 153 river miles between Friant Dam and the confluence of the Merced River have been dried up in most years, except during seasonal flood control releases. Prior to construction of Friant Dam, the stretch of river downstream of the dam supported a healthy fishery, including salmon runs, which the dam effectively eliminated.

In 1988, a coalition of environmental groups led by NRDC filed suit challenging the federal defendants' compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) in connection with the renewal of the long-term water service contracts between the United States and the Central Valley Project, Friant Division contractors. Most of the Friant Division long-term contractors intervened as additional defendants.

Through amended complaints, the plaintiffs subsequently included a claim asserting that pursuant to § 8 of the Reclamation Act of 1902, the federal defendants must operate Friant Dam in accordance with California Fish and Game Code § 5937. California Fish and Game Code § 5937 requires the owner or operator of any dam in California to allow sufficient water to flow through or around the dam in order to keep the downstream fishery in "good condition." During the initial phase of the liti-

gation, the District Court ruled that the contracts were not entered into in violation of NEPA requirements, but held that approval of the renewal contracts violated procedural requirements of the ESA. The District Court did not rule on the §5937 claim. On June 24, 1998, the Ninth Circuit Court of Appeals affirmed most of the District Court's rulings but remanded to the District Court the issue of the applicability of California Fish and Game Code §5937 to the operation of Friant Dam.

From 1998 to 2003, without direct involvement by Federal defendants, FWUA and NRDC attempted to settle the remanded issue. In 2003, those discussions were terminated, and on July 19, 2003, the plaintiffs amended their complaint by adding the Secretary of Commerce and the National Marine Fisheries Service as additional defendants and adding claims asserting that the long-term renewal contracts do not conform to the requirements of the Central Valley Project Improvement Act (CVPIA). In an Order issued on August 27, 2004, Judge Karlton concluded that Reclamation violated California Fish and Game Code §5937, and scheduled a trial on the issue of remedy for that violation.

During the summer of 2005, at the request of Subcommittee Chairman George Radanovich and Senator Dianne Feinstein, FWUA and NRDC reinitiated settlement discussions. In November 2005, the Federal government was invited into those discussions, and in spring 2006, the State of California was also approached about the negotiations since the negotiators foresaw that the State would have a significant role in the implementation of any settlement. On September 13, 2006, the Settling Parties filed the Settlement, including proposed Federal implementing legislation, with the Court. The Settlement Agreement is based on two goals and objectives:

1. To restore and maintain fish populations in "good condition" in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally reproducing and self-sustaining populations of salmon and other fish.
2. To reduce or avoid adverse water supply impacts to all of the Friant Division long-term contractors that may result from the Interim Flows and Restoration Flows provided for in the Settlement.

Restoration Goal

The Settling Parties have carefully studied San Joaquin River restoration for many years and as part of the Settlement have identified the actions and highest priority projects necessary to achieve the restoration goal. These include among others: expanding channel capacity, improving levees, and making modifications necessary to provide fish passage through or around certain structures in the river channel. Also called for are year-round flows in the San Joaquin River, including those areas that have been without continuous flows for decades. This action would be taken to restore and maintain fish populations in good condition, including naturally reproducing and self-sustaining populations of Chinook salmon and other fish in the 153-mile stretch of the river between Friant Dam and the confluence of the Merced River.

Water Management Goal

Recognizing that the Settlement's Restoration Flows will reduce the amount of water available for diversion at Friant Dam, the Settlement also includes provisions to protect water availability for the 15,000 farms that currently rely on these supplies. One million acres of some of the most productive farmland in the country as well as many towns and cities along the southern San Joaquin Valley's East Side receive all or a major portion of their water supplies from the Friant Division. The Settlement recognizes the importance of this water to those farms and calls for development of water management solutions to provide these users water supply certainty for the long term. Such a program would include a Recovered Water Account to make surplus water available at a reduced rate to farmers who have contributed water to the Restoration Flows and a flexible combination of recirculation, recapture, reuse, exchange and/or transfer programs. Additional groundwater banking may also be explored.

Phased Approach

Restoring continuous flows to the approximately 60 miles of dry river will take place in a phased manner. Planning, design work, and environmental reviews will begin immediately, and interim flows for experimental purposes will start in 2009. The flows will be increased gradually over the next several years, with the goal of reintroducing salmon by December 31, 2012.

The flow regime called for in the Settlement continues unchanged until 2026, with the U.S. District Court retaining jurisdiction to resolve disputes arising under the Settlement.

After December 31st, 2025 the court, in conjunction with the California State Water Resources Control Board, could consider any requests by the parties for changes to the Restoration Flows.

Importance of Legislation

As the implementation of this historic Settlement begins, I can't emphasize enough how important it is for Federal authorizing legislation to be approved and signed into law. Passing this legislation soon will demonstrate the kind of support and commitment from the Federal government that is necessary to prove we are serious about making this settlement and its twin goals a reality. Some initial funding and authority exists for Interior agencies to work with our State partners to initiate planning and environmental review activities, which we have already begun to do. Without authorizing legislation such as H.R. 24, however, we lack sufficient authority to implement the actions in the Settlement. Moreover, beginning in Fiscal Year 2008 we will have insufficient funding to stay on the aggressive schedule called for in the Settlement to complete the necessary planning and environmental reviews for initiating construction activities and ultimately restoring flows into the San Joaquin River from Friant Dam. Such delays would send the wrong message regarding the Federal support for implementation.

Restoration Funding

The proposed legislation is consistent with the recommendation in the Settlement regarding funding sources to support implementation of these projects, including the use of current payments from farmers and cities served by Friant Dam, redirection of Federal funds from the Reclamation Fund, state bond initiatives, and authorization for additional Federal appropriations as long as there is a non-Federal cost share. Funds are to be used to meet both the Water Management and Restoration goals.

More specifically, the proposed legislation, consistent with the Settlement, allows for the continuation of and the dedication of the "Friant Surcharge," an environmental fee charged pursuant to the Central Valley Project Improvement Act (CVPIA) of \$7 per acre foot of water delivered to Friant Contractors. This fee is expected to average about \$8 million per year (\$160 million over the 20-year period). Up to \$2 million annually of other CVPIA Restoration Fund payments made by Friant water users under the CVPIA (\$40 million over the 20-year period) would also be directed for implementation of the Settlement.

The legislation also calls for the dedication of the capital component of water rates paid by Friant Division water users to the Settlement implementation (approximately \$220-240 million over the 20-year period). These are funds that at present go to the Reclamation Fund in the U.S. Treasury to repay the capital costs of construction in the Friant Division. Under this bill, these funds would be deposited into a newly established San Joaquin River Restoration Fund to pay directly for implementing the Settlement. The Settlement provides that the monies contributed to the Settlement from the Friant Surcharge and capital repayment obligation may be used to fund bonds, guaranteed loans or other finance instruments issued by agencies or subdivisions of the State of California.

In addition, the legislation authorizes up to \$250 million of additional Federal appropriations to contribute to the implementation and requires a non-federal cost-share of an equivalent amount.

Funding by the State of California will also support the Settlement. Last November, State propositions 84 and 1e were passed by the California voters and should provide about \$200 million of State bond funds for projects that will directly contribute to the restoration efforts.

Although the Settling Parties have agreed on a suite of actions to be taken to restore flows and salmon runs, the total cost and the specificity of those actions still contain significant uncertainty. The Parties anticipate that a multi-agency technical team established to implement the Settlement would develop additional design details typically found in a Feasibility-level study needed to take the proposed actions. The Parties also anticipate that the estimated costs projected to be required to meet the restoration goal (i.e. \$250 million-\$800 million) would be further refined during the initial phase of implementation.

This uncertainty in project costs has been a source of concern to both the Administration and the State of California. As project partners, we realize that the Federal appropriations proposed in this legislation, in addition to the funding sources already described, may be integral to implementing the settlement. However, the Administration is not willing to commit to seeking any particular level of funding until further planning and engineering studies are completed that identify with more certainty the total estimated cost of this Program. All the parties to the Settlement

must also realize that implementation of this settlement, including this authorizing legislation, does not imply a limitless Federal commitment to fund whatever it costs.

Status of Implementation

As already mentioned, some initial funding and authority exists for Interior to work with our State partners to initiate planning and environmental review activities, and we have been doing just that. Interior, through Reclamation and the Fish and Wildlife Service, is working with the other Settling Parties, the State of California, the affected Third Parties (discussed below), and other Federal agencies regarding the implementation process and other related matters. A multi-agency Program Management Team including California Dept. of Water Resources, California Dept. of Fish and Game, and U.S. Fish and Wildlife Service, National Marine Fisheries Service, and Reclamation have begun efforts to initiate an implementation process, including public outreach, planning, design, and environmental reviews. This multi-agency team is developing a Program Management Plan (PMP), scheduled for completion this Spring, that will describe the implementation process, the scope and timeline of the activities, studies to be completed, and the process to involve and receive input from interested third parties as well as the broader public. The PMP will address strategies to meet both the Restoration Goal and the Water Management Goal described in the Settlement. As a further demonstration of the Administration's commitment to implementing this settlement, the President's FY 2008 Budget for Reclamation presumes a re-direction of capital repayment receipts away from the Reclamation Fund and into the newly-created San Joaquin Restoration Fund; it also presumes the allocation \$7.5 million of funds from the CVPIA Restoration Fund to the San Joaquin Restoration Fund. However, these actions in the Budget presume enactment of the legislation.

Third Parties

We fully recognize and appreciate the importance of involving affected third parties in the implementation of the Settlement, and several steps have been taken to meaningfully involve them in the development and implementation of the Settlement. Prior to the execution of the settlement documents, copies of the draft documents were made available in Sacramento, Fresno, and San Francisco for review by interested third parties, subject to confidentiality agreements. Representatives of water users on the west side of the Central Valley; water users from tributaries to the San Joaquin River downstream of Friant Dam; the Exchange Contractors, who receive water from the Delta in lieu of water they would otherwise divert from the San Joaquin River below Friant Dam; and other parties concerned about river management issues (collectively, "Third Parties") took the opportunity to review the Settlement documents. In addition, the Settling Parties conducted numerous briefings throughout the Central Valley, which were attended by approximately 70 Third Party representatives. At those briefings, the Settling Parties reviewed the proposed Settlement in detail, responded to questions, and listened to comments. Following those briefings, a number of entities submitted written comments on the Settlement documents. Their primary areas of concern were related to the ESA take provisions, operation & maintenance, funding, meaningful participation in implementation of the program, and water rights. After consideration of comments from Third Parties, the Settling Parties made modifications deemed appropriate to some of the settlement documents and further provided the Third Parties with a comprehensive written response to their written comments. In addition, language was added to the legislation before it was introduced to strengthen protections for Third Party interests.

Since the Settlement was signed and the legislation was drafted, the Bureau of Reclamation has been working closely with a group of Third Parties with downstream concerns on a Memorandum of Understanding (MOU), which was reviewed by the Settling Parties and was signed on February 26, 2007 by Reclamation and the Third Parties involved.

The MOU articulates the interests of these Third Parties and agrees that Reclamation will work closely and involve the Third Parties throughout the implementation of the Settlement on matters pertaining to their interests.

In supporting this settlement, the Administration remains committed to implementing other salmon restoration programs along the Pacific coast. The San Joaquin settlement that would be implemented by H.R. 24 provides a model of how stakeholders can come together to rebuild historic salmon populations and restore communities. We are open to exploring how this model could be used to help implement other similar restoration programs.

Conclusion

This monumental agreement ends an 18-year legal dispute over the operation of Friant Dam and provides increased certainty to Friant Division farmers who rely

on CVP water deliveries while returning flows and salmon runs back to the San Joaquin River. H.R. 24 would provide the federal authorization and funding needed to move into implementation. We believe that this historic agreement is the start of a truly collaborative process that will result in a restored river for all. I strongly recommend that this committee act swiftly on this legislation to allow the Federal government to move forward without delay and to send a message of support to the Parties and our implementing partners.

Madam Chairman, this concludes my testimony. I would like to reiterate my appreciation to the subcommittee for your interest in this settlement. I would be happy to answer any questions at this time.

Response to questions submitted for the record by Jason Peltier, Principal Deputy Assistant Secretary for Water and Science, U.S. Department of the Interior

Questions from Rep. Napolitano:

Some stakeholders are concerned that the financing mechanisms contained in §§ 7 and 9 of H.R. 24 will, in essence, divert funds currently flowing to the Central Valley Project Restoration Fund (CVPRF) to a new San Joaquin River Restoration Fund. The CVPRF currently funds fish, wildlife, and habitat mitigation and restoration projects throughout the CVP service area, including the Trinity River basin, with apparent emphasis on anadromous fish projects in the Sacramento River basin.

1. What has been the annual disbursement of CVPRF monies for projects in each of the following basins since 2002: the Sacramento River basin; San Joaquin River basin; the Trinity River basin?

Answer: The Central Valley Project is financially and operationally integrated and, therefore, Restoration funds are not tracked by river basin. Restoration funds are expended to meet the goals and objectives of those activities specified in Sections 3406 and 3408 of the Central Valley Project Improvement Act. Many of these activities cut across river basins.

2. How do these disbursements compare with revenues taken into the fund from various CVP unit contractors (§3407(d) charges)? Can you please provide a breakdown of annual CVPRF charges by contractor and/or by CVP unit?

Answer: Because the CVP is financially and operationally integrated, Restoration charges collected from each division are pooled to meet the objectives listed in the CVPIA. Therefore, disbursements cannot be compared with revenues taken into the fund from various CVP contractors. Congress appropriates revenue collected by the Restoration fund and allocates it to ongoing CVPIA program priorities.

The following table provides a breakdown of annual Central Valley Project Restoration fund revenues, collected pursuant to Section 3407(d), by CVP division for Fiscal Years 2002 through 2006.

CVP Division	2006 ¹	2005	2004	2003	2002
American River	\$1,489,424	\$944,815	\$1,364,178	\$1,136,120	\$1,050,003
Cross Valley	-\$126,515	\$439,128	\$532,961	\$122,954	\$417,807
Delta	\$3,497,755	\$3,355,185	\$3,706,133	\$3,672,835	\$3,316,748
East Side	\$122,199	\$0	\$117,991	-\$137,396	\$25,254
Friant	\$13,245,847	\$11,913,272	\$9,240,895	\$8,706,767	\$8,952,134
San Felipe	\$1,751,798	\$1,673,205	\$2,184,423	\$1,785,822	\$2,050,951
San Luis	\$8,668,882	\$7,345,599	\$8,104,110	\$8,130,675	\$6,689,667
Sacramento River	\$1,571,543	\$1,533,891	\$1,114,427	\$618,949	\$1,107,341
Shasta	\$91,197	\$58,678	\$96,155	\$79,026	\$63,485
Trinity	\$121,075	\$108,980	\$130,969	\$150,767	\$171,640
Total §3407(d)	\$30,433,205	\$27,372,753	\$26,592,242	\$24,266,519	\$23,845,030

¹ 2006 figures are preliminary and not from the Annual Report to Congress -- negative figures reflect overpayments refunded to contractors

3. How might annual disbursement of CVPRF monies change if H.R. 24, as written, were enacted?

Answer: Congressional appropriations dictate the annual disbursement of CVPRF monies, which for years beyond Fiscal Year 2007 are unknown at this time. However, Reclamation anticipates that the disbursement would take into account the shift of the "Friant surcharge,"* collected pursuant to Section 3406(c)(1) of the CVPIA, to the San Joaquin River Restoration Fund (approximately \$7.5 million annually), and that the remaining CVPRF monies would be allocated to ongoing CVPIA program priorities.

It appears from Reclamation's recent budget request for FY2008 that Friant contractors have paid approximately \$7.5 million annually in §3406(c)(1) surcharges.

4. How much have Friant contractors paid annually in §3407 charges?

Answer: The average annual amount that Friant contractors have paid in §3407 charges over the past ten years (1997-2006) is \$9.5 million.

5. How much money has been collected in §3407 charges on water flowing from the Trinity Division?

Answer: Water flowing from the Trinity Division is combined and integrated with water from other divisions of the Project for multiple authorized purposes of the CVP, not all of which are charged a restoration charge pursuant to Section 3407 of the CVPIA. Therefore, we cannot calculate an amount that has been collected specifically on water that originates from the Trinity Division.

6. Given that §7(2) of H.R. 24 states that the Friant surcharge shall continue to be counted toward the requirements of the Secretary to collect charges under §3407(c)(2) of the CVPIA (but deposited into a different fund), is it correct to assume the pool of money available for disbursement from the CVPRF would be reduced by at least \$7.5 million per year (the amount of the Friant surcharge collections)? What about Friant §3407(d) charges? Will Friant contractors continue to be assessed a mitigation and restoration charge under §3407?

Answer: Yes, the amount collected for appropriation into the CVPRF would be reduced by the amount of the Friant surcharge (which instead would be deposited into the newly created San Joaquin River Restoration Fund). As a result, on average the amount of money collected for appropriation into the CVPRF would be reduced by \$7.5 million per year. However, under CVPIA §3406(c)(1), the Friant division contractors are required to pay the surcharge only "until such time as flows of sufficient quantity, quality and timing are provided...to meet the anadromous fishery needs identified...". Thus, once Congress authorizes releases from Friant Dam, the Friant surcharge would no longer be collected. As part of the Settlement, the Friant Contractors have agreed to continue to pay the surcharge, which is reflected in §7(1) of H.R. 24. The amount of funding assessed and collected by the Secretary under all provisions of the CVPIA would remain the same should H.R. 24 be enacted, including §3407(d) charges.

Section 9. Appropriations; Settlement Fund

Section 9 of H.R. 24 outlines expected implementation costs of the settlement and how they shall be covered. Non-federal payments are estimated to total \$200 million, while the federal share is expected to be \$240 million in repaid CVP capital obligations that would go into the San Joaquin River Restoration Fund, instead of the Reclamation Fund (U.S. General Treasury), an additional \$250 million in appropriations authorized under the Act, as well as authorized use of other CVPRF monies.

7. At minimum, what is the expected annual amount of money to be made available for implementation of the Act? Is it correct to assume at a minimum that \$7.5 million in former Friant surcharges and \$8.8 million in capital payments would be made available in the first year of implementation?

Answer: Under section 9 of H.R. 24, funds collected pursuant to section 3406(c)(1) of the CVPIA (the Friant "surcharge") would be deposited into the newly established San Joaquin River Restoration Fund beginning the fiscal year following enactment of the legislation. Those surcharges have averaged about \$7.5 million over the past ten years. Capital payments for the first fiscal year after the date of enactment would also be deposited into the fund. Capital payments have averaged \$8.8 million over the past three years. The actual amount collected in any given year for both surcharge and capital, however, is dependent upon, among other things, the annual water deliveries, which vary based on hydrology and water availability. As a result, a minimum funding level cannot be guaranteed. Also, under CVP rate-setting policies, application of revenue against annual operation and maintenance costs may reduce the amount of anticipated revenue credited toward CVP capital in a given year. In the past three years, the lowest amount collected was \$7.4 million in Friant surcharges, and approximately \$7 million was collected from Project water deliveries and credited to capital repayment.

8. If it is so that \$16.3 million could be expected for immediate implementation, what could be expected to be accomplished annually with these funds? Will funding go to projects similar in nature to what is currently funded via the CVPRF, but within the framework of the Settlement? What will be the highest priority projects/programs for funding?

Answer: As stated above, because of uncertain hydrology and related water deliveries, we cannot ascertain the exact amount of funding available for implementa-

tion, immediately or otherwise. However, we do know that available funds will be used during the early years of implementation for initial planning activities. During the next several years, the Department of the Interior and the State of California will complete a programmatic planning and environmental review process that evaluates all of the actions expected to be taken to implement the Settlement. Questions such as implementation strategies, priorities, and performance measures will be addressed in the programmatic document.

9. In addition to these funds, how much funding is likely to be requested annually via the Energy and Water Development appropriations acts?

Answer: Although the Settling Parties have agreed on a suite of actions to be taken to restore flows and salmon runs, the total cost and the specificity of those actions still contain significant uncertainty. Reclamation anticipates that a multi-agency technical team established to implement the Settlement would develop additional design details typically found in a feasibility-level study needed to take the proposed actions. We also anticipate that the estimated costs projected to be required to meet the restoration goal (i.e. \$250 million-\$800 million) would be further refined during the initial phase of implementation. Until those planning and engineering studies are completed, it is premature to attempt to identify what additional annual funding might be appropriate to request. Further, H.R. 24 specifies that any such additional federal appropriations would only be available for expenditure as State and other non-federal funds become available.

10. Can the Bureau reasonably be expected to meet the time lines and deadlines of the Settlement and H.R. 24 with this level of expected federal funding?

Answer: In the Settlement (specifically Exhibit C), the Settling Parties acknowledged that the implementation timelines in the Settlement are very ambitious, and are premised on a number of assumptions. Meeting those timelines will require a high level of cooperation from all levels of government, water agencies, environmental groups, and private land owners. However, should a bill such as H.R. 24 be enacted this fiscal year, federal funding should not be the limiting factor in meeting the timelines as specified in H.R. 24.

Section 9(c)(2) of H.R. 24 directs future capital repayment obligations of the Friant Division long-term contractors to be covered to the San Joaquin River Restoration Fund. Friant long-term contractors shall be credited for repayment, and the "appropriate share" of existing federal investment in the CVP shall be reduced by an equivalent sum.

11. Does this language protect other CVP water and power contractors from having to absorb the construction cost repayment allocated (but credited) to Friant contractors? Does it reduce the amount other CVP water and power contractors are otherwise currently expected to repay?

Answer: This language does not change or otherwise impact other CVP water and power contractor obligations for project repayment. Allocation of capital costs is a function of total CVP water delivered, and, to the extent contractor deliveries fluctuate, the share of capital will fluctuate as well. Capital costs are allocated to water taken by Friant contractors. Friant contractors pay for CVP water according to the existing rate-setting policies, and, in accordance with those policies, the capital repayment will be credited appropriately.

12. By crediting the Friant contractors for repayment, wouldn't the total share of existing federal investment (allocated construction costs) automatically be reduced by that amount?

Answer: Crediting will not happen automatically. Friant contractors will receive credit for capital payments made and their prorated capital repayment obligation will be reduced accordingly even though the money is transferred into the newly established fund. The federal investment is prorated to all CVP contractors. As drafted, the legislation will assure that the overall federal investment will be reduced to reflect the Friant payments.

13. Under this language, who (e.g., Friant contractors, other CVP water and power contractors) gets credit for what?

Answer: The language does not change the process for crediting CVP water and power contractors, including Friant contractors, for payments made. Payments will be applied in accordance with the CVP rate-setting policies.

Section 9(c)(4) directs that proceeds from the sale of water pursuant to the Settlement be covered to the new San Joaquin River Restoration Fund. Currently, under 3407(d)(2) of the CVPIA an annual \$25 per acre-foot charge is imposed on certain water sales and transfers and is deposited into the CVPRF.

14. How much money has been collected from such water sales and deposited into the CVPRF since 2002?

Answer: The amount collected from water sales under the referenced section 3407(d)(2) from FY2002-FY2006 is \$4,082. This is for monies collected for M&I surcharges.

15. What “proceeds” from the sale of CVP water would be available to be covered to the new San Joaquin River Restoration Fund?

Answer: The Settlement provides that the Secretary shall make surplus water available to Friant Division contractors during wet hydrologic conditions when water is not needed for the Interim Flows and Restoration Flows at a total rate of \$10 per acre foot. In addition, if full Restoration Flows cannot be released by January 1, 2014, one option available to the Secretary is to sell or transfer the remaining Restoration Flows, which might generate revenues. Proceeds from each of those types of sales would be deposited into the San Joaquin Restoration Fund.

16. Would these proceeds include the \$25 per acre-foot charge currently going to the CVPRF? If so, what affect would such have on programs and project funded by the CVPRF?

Answer: No, the water to be made available at \$10 per acre foot will not include an additional \$25 charge. The Friant contractors have not to date been involved in the transfer of water that carried the \$25 charge.

Section 9(d)(2) authorizes the Secretary to enter into agreements that would allow the proceeds from state issued bonds, loans, or other financing mechanisms to be deposited into the San Joaquin River Restoration Fund, and be repaid by Friant Division long-term contractors (in lieu of making required deposits into the Fund).

17. How much money can be expected to be leveraged by using this unusual financing mechanism?

Answer: The amount of funding that could be acquired through bonds to implement the Settlement is unknown at this time. Factors such as the type of projects as well as the timing and magnitude of the projects will influence the pursuit of bond funding and the type of bond financing and associated interest costs. Other factors such as whether bonds may be tax exempt, the amount that may be issued relative to a variable cash flow (revenue) repayment, etc., will also need to be taken into account.

18. What are the advantages from entering this type of financing arrangement with the state and Friant contractors? What are the disadvantages?

Answer: Once construction activities are initiated, there is a possibility that the annual funding requirements will exceed the amount available. The advantage of this financing arrangement would be the ability to access the amount of funding needed for construction at the time it is needed. The disadvantages could be that interest cost would be associated with accessing the funds earlier and the borrowing capacity of the non-Federal agency could be affected.

19. What is the total expected state contribution to implementation of the Settlement under H.R. 24?

Answer: State propositions 84 and 1E were passed by the California voters in November 2006 and should provide at least \$200 million of State bond funds for projects that will directly contribute to the restoration efforts

Restoration of Salmon Fisheries'

20. What was the value of the San Joaquin Chinook salmon fishery (sport and commercial) prior to extirpation of the species, in then-current, and in 2007 dollars?

Answer: To our knowledge, there has not been a comprehensive analysis done that would adequately calculate the total value of the San Joaquin Chinook salmon fishery prior to the extirpation of the species. However, the recovery of San Joaquin salmon could move us closer to de-listing the Spring Run Chinook.

21. The Settlement Agreement calls for restoring fall and spring runs of Chinook salmon, yet §10 of H.R. 24 only addresses restoration of spring-run Chinook. Will the fact that the bill does not directly address restoration of fall Chinook salmon affect reintroduction of fall Chinook as called for in the Settlement? Has a decision been made that it is infeasible to restore both spring-run and fall-run Chinook salmon, as provided for in settlements paragraph 14(a)? If so, please explain the basis for this decision.

Answer: No. The restoration goal for implementation has not changed from what is described in the Stipulation of Settlement. Many of the planned activities would benefit both spring and fall-run Chinook salmon.

22. The report that would assess the success of the reintroduction of salmon is to be made no later than December 31, 2024, under H.R. 24.

Why is the deadline 12 years after the expected introduction of the experimental population in 2012? Will there be other reports or monitoring that will gauge progress sooner or on a regular basis?

Answer: Given the three year cycle of salmon runs, variations in conditions from year to year, varied habitats, and the need to adaptively manage the system based on the observed responses of the fish species, the restoration activities will need time to work to allow the fish populations to respond. Subsequent to the reintroduction of fish species, we anticipate monitoring and reporting on the progress of the reintroduction efforts on a regular basis.

23. In the 1992 Central Valley Project Improvement Act, Congress directed the Secretary of the Interior to develop a program to ensure sustainable anadromous fish populations double their average from 1967-1991 in 10 years; however, after 15 years, this goal has not been achieved. Given the difficulty in meeting the obligations set out in 1992, how long will it take to restore to "good condition" an extirpated species?

Answer: The goal in the Settlement is to fully achieve restoration by 2025. This goal is based on estimated time to implement the complete physical improvements in the River, initiate sufficient flows from Friant Dam, and to adaptively manage the system based on the observed responses of the fish species. Our modeling, monitoring and experimentation is being set up to help accomplish this goal.

24. What other fish and wildlife species will benefit from this restoration effort? Do they include other listed or candidate species on federal or state endangered species lists?

Answer: During the next several years, the Secretary of the Interior and the State of California, in consultation with other agencies, will complete a programmatic planning and environmental review process that evaluates all of the actions expected to be taken to implement the Settlement. This programmatic review process will assess the possible impacts, benefits, and costs from a system-wide perspective, including other benefit opportunities that may be achieved. In broad terms, we anticipate that a San Joaquin river that flows year-round would produce a riparian corridor that could provide habitat for a wide range of aquatic, avian and terrestrial species.

25. What recreation benefits might be realized from these restoration activities?

Answer: During the next several years, the Secretary of the Interior and the State of California, in consultation with other agencies, will complete a programmatic planning and environmental review process that evaluates all of the actions expected to be taken to implement the Settlement. This programmatic review process will assess the possible impacts, benefits, and costs from a system-wide perspective, including other benefit opportunities that may be achieved. In the Settlement, the Settling Parties acknowledge the potential for increased recreational activities that may result from implementation of the Settlement. We will also work closely with local governments and the recreation community as they consider what recreational opportunities they might pursue for the river corridor.

Experimental Populations Under the Endangered Species Act

Section 10(b) of H.R. 24 requires a determination by the Secretary of Commerce as to whether a permit for an experimental population can be issued for reintroduction of spring-run Chinook salmon under §10(j) of ESA. The language in §10(j) of ESA, related to experimental populations, states that these provisions are applicable to introductions outside the current range of such species and wholly separate geographically from non-experimental populations of the same species. However, spring- (and fall-) run Chinook salmon reintroduced into the San Joaquin River may inhabit portions of the Sacramento-San Joaquin River drainage in common with other established Chinook salmon populations.

26. Would any reintroduction of spring-run salmon to the San Joaquin River be outside the current range and wholly separate from non-experimental populations of this species?

Answer: Our understanding of Section 10(j) is that "wholly separate geographically" is not a criterion for release of an experimental population.

Section 10(j) states that a released population can be regarded as experimental "only when, and at such times as, the population is wholly separate geographically from nonexperimental populations of the same species." The conference report accompanying the 1982 amendment to the ESA that enacted 10(j) states: "If an introduced population overlaps with natural populations of the same species during a portion of the year, but is wholly separate at other times, the introduced population is to be treated as an experimental population at such times as it is wholly sepa-

rate.” H.R. Conf. Rep. No. 835, 97th Cong. (Sep. 17, 1982). The possibility of overlap was specifically contemplated by Congress in Section 10(j). The purpose for treating a released population as experimental, with the lesser level of protections that comes with that status, only when it was geographically separate from natural populations was for the purpose of “protect[ing] natural populations and to avoid potentially complicated law enforcement problems” during times of overlap. H.R. Conf. Rep. 97-835.

27. Section § 10(b) of H.R. 24 makes the reintroduction of spring-run Chinook salmon dependent upon a discretionary finding by the Secretary that such a permit can be issued. What are the guarantees that the reintroduction will be allowed to proceed under this approach, or if it is allowed to proceed, that it will not be legally challengeable under a strict reading and interpretation of § 10(j) of the ESA?

Answer: We cannot guarantee in advance the outcome of any deliberative process required by the Endangered Species Act without violating the Administrative Procedure Act. The only requirement for release of an experimental population under Section 10 is that the Secretary find that such release “will further the conservation of the species.” Given the potentially available resources in this collaborative effort, we do not believe that standard will be difficult to meet.

28. How will the introduced population be determined a success or failure? What if the experimental population of salmon does not succeed? Will this affect the terms of the Settlement? Will there be changes in the restoration flows or water management activities?

Answer: Consistent with the legislation, the Secretary of Commerce will report to Congress not later than December 31, 2024, on the success of the reintroduction. That report is to set out an assessment of the major challenges, if any, to reintroduction, as well as an assessment of the future of the effort. In the Settlement, the Settling Parties acknowledge that complete achievement of the Restoration and Water Management Goals may not be possible during the term of the Settlement (through December 31, 2025). For the restoration flows to be changed prior to December 31, 2025, the Secretary can either: 1) use water acquired from willing sellers to increase flows or 2) have all the Parties agree to the change in writing.

29. Section 10(b) of H.R. 24 directs the Secretary to reintroduce spring-run Chinook salmon pursuant to ESA § 10j and the Settlement. What potential conflicts exist between these prescriptions for introducing salmon and how will they be resolved?

Answer: We do not believe there are conflicts between ESA § 10j and the Settlement. The Settlement states that reintroduction efforts will be carried out “consistent with all applicable law.”

30. The San Joaquin River supported spring and fall-run Chinook salmon in the southernmost part of their historical range. Could factors such as climate change or natural migration make it unlikely for salmon to exist in the San Joaquin River when experimental populations are assessed in 2024?

Answer: During the next several years, the Secretary of the Interior and the State of California, in consultation with other agencies, will complete a programmatic planning and environmental review process that evaluates all of the actions expected to be taken to implement the Settlement. This programmatic review process will assess the possible impacts, benefits, and costs from a system-wide perspective. This analysis will be based on the existing conditions and the most-likely future conditions of the habitats occupied by the reintroduced species.

*Before a population is deemed experimental under ESA, it must be determined to be essential or nonessential by the Secretary.*¹ An essential population is defined as a population whose loss would be likely to appreciably reduce the likelihood of the survival of the species in the wild. All other populations would be determined as nonessential. Nonessential populations shall not have critical habitat designated; essential populations could have critical habitat designated through a special rule-making process.

31. If the experimental population of Chinook salmon were determined to be essential, and critical habitat designated, will this modify federal water management activities on the San Joaquin River? Will third parties be affected?

Answer: Our understanding is that if the experimental population of spring run Chinook on the San Joaquin River were determined to be essential, then they would

¹ The term Secretary under ESA refers to the Secretary of the Interior or the Secretary of Commerce with respect to program responsibilities for the species in question, unless otherwise specified.

be treated as a threatened species under the ESA. Threatened species do not receive protection under the ESA until the National Marine Fisheries Service promulgates a regulation under Section 4(d) of the Act. Section 10(c) of H.R. 24 directs the Secretary of Commerce to issue a final rule under Section 4(d) of the ESA governing incidental take of the reintroduced salmon, and to provide that the reintroduction not impose more than de minimis water supply reductions, de minimis additional storage releases, or de minimis by-pass flow requirements on unwilling third parties. Critical habitat for spring run Chinook was already designated in 2005, and is not coextensive with the range of the species.

32. Section 4(d) of ESA authorizes the Secretary to prepare regulations to provide for the conservation of threatened species. Has the National Marine Fisheries Service (NMFS) or Fish and Wildlife Service (FWS) ever been directed by Congress to issue a 4(d) rule under ESA for an experimental population?

Answer: We are not aware of any such Congressional direction in the past, although we are aware of one instance where Congress codified a proposed recovery activity for southern sea otters that included an experimental population and various types of incidental take (Pub. L. No. 99-625, 100 Stat. 3500).

Questions from Rep. Radanovich:

33. In testimony submitted for the record, Clifford L. Marshall, Chairman of the Hoopa Valley Tribe, states that “the Department of the Interior has concluded that the San Joaquin settlement will harm third parties including the Hoopa Valley Tribe and other beneficiaries of the Trinity River Restoration program by causing annually up to a 25% reduction in funds available from the CVPIA Restoration Fund.” Has Interior made such a determination? Please explain the effect the Settlement Act would have on total funds available for environmental restoration activities in the CVP, compared to those available under the CVPIA.

Answer: Interior has not made a determination that there will be any harm to third parties. On the contrary, under the proposed legislation for the San Joaquin Settlement, the same amount of monies will be collected for environmental restoration activities in the CVP as is currently collected. However, under the Settlement, the Friant “surcharges” will be deposited to the San Joaquin Restoration Fund, rather than into the CVPIA Restoration Fund. Based on a ten year annual average, \$7.5 million of the \$44.3 million in total collections that currently goes to the CVPIA Restoration Fund (approximately 17%) will go to the newly created San Joaquin Restoration Fund. In addition, the Settlement and legislation also provide for dedication of capital payments, authorization of up to \$250 million in additional federal appropriations, and matching State funds for use for restoration of the San Joaquin River. Absent the legislation, none of those funds would be available for such a purpose. As a result, the legislation significantly increases the overall funding available for environmental restoration actions in the Central Valley Project. Based upon the ten year annual average, \$36.8 million per year would still be available from the CVPIA Restoration Fund for CVPIA restoration activities, including the Trinity River Restoration Program. Although this does translate into a redirection of the funds available for appropriation from the CVPIA Restoration Fund, Interior believes that this is more than made up for by the overall increase in funding for restoration activities and the fact that San Joaquin restoration activities will no longer be funded out of the CVPIA Restoration Fund.

Question from Rep. Nunes:

34. If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Answer: The Settlement calls for the Secretary, in consultation with the other parties, to develop a plan for recirculation, recapture, reuse, exchange or transfer of the Interim and Restoration Flows. The Settlement also specifically provides that any such plan must not adversely affect the Restoration Goal, downstream water quality, or fisheries, and further must not impair the Secretary’s ability to meet his existing contractual obligations. Until that plan is developed in a manner meeting those criteria, it is premature to consider whether additional construction authorization might be required. Therefore, Interior does not support such an amendment.

Mrs. NAPOLITANO. Thank you, sir. And two things. First I want to congratulate you for getting your testimony ahead of time, which is a novelty in this committee.

And second, for your words and being able to work with the parties that are involved. Because all we want is to be able to help solve those problems and look for the solutions, especially when coalitions are willing to give to be able to get to that step. And in litigation, I am sorry, gentlemen, only the attorneys win. So we look forward to working with you, sir.

Next we have Nancy Saracino, Chief Deputy Director of the Department of Water Resources from the State of California. Welcome.

**STATEMENT OF NANCY SARACINO, CHIEF DEPUTY DIRECTOR
OF THE DEPARTMENT OF WATER RESOURCES, STATE OF
CALIFORNIA**

Mrs. SARACINO. Thank you very much. Good morning, Chairwoman Napolitano and Members. It is a pleasure to be here today.

I am appearing on behalf of the State of California to express strong support for H.R. 24. I would like to highlight three things in my testimony today.

The first is a brief summary of the basis for the state's support for this legislation. The second is to discuss the elements of the bill that are essential to the state's support today. And finally, I would like to emphasize the importance of early Congressional action on this, and how that relates to leveraging state funding and ensuring uninterrupted progress toward the restoration of the San Joaquin River.

We have a unique opportunity, with the resolution of this longstanding litigation, to accomplish something significant here, which is the restoration of an important Western river. The state's support has actually been longstanding. We have put resources and a lot of effort into hoping to settle this litigation and be where we are today, which is proceeding with an implementation of restoration.

The expressions of that support have included the Governor Schwarzenegger letter, mentioned before, expressing the importance of restoring flows and a healthy fishery at the San Joaquin River. Also, Secretary of Resources Mike Chrisman testified here in support of the settlement, and has charged the Directors of the California Departments of Fish and Game and Water Resources to look for opportunities to further support the settlement and find funding to match the Federal commitment that we are anticipating under this legislation to make sure that the restoration is completed.

And finally, the voters of California have endorsed the settlement by authorizing \$100 million under Proposition 84 to support the implementation.

The aspects of H.R. 24 that are critical to our support are in three areas. The first is the provision that makes explicit that Congress does not intend to preempt state law or modify existing obligations of the United States to operate the Central Valley Project in conformity with state law.

The second is those provisions that ensure that impacts associated with the restoration efforts will be identified, and measures

implemented to mitigate them, for adjacent and downstream water users and landowners.

And finally, those provisions of the legislation that ensure that a rule regarding incidental take coverage will be adopted, and re-introduction of the spring run will not impose more than a de minimis impact on water supplies.

For the importance of early Congressional action, we are actually on the ground working now to support the implementation. Once the Judge entered that settlement, the clock started to run. California had money in the budget. The Federal government redirected monies. We have 14 state staff working full time on implementation with a management team with the Federal agencies.

The Legislative Analyst's Office has expressed concern about the state moving ahead of the Federal government in our efforts to restore this river. And while we are committing resources today, it is very important that the full resources of the Federal government also be brought into the mix.

We want to make sure that this restoration is successful. Delay or any kind of interruption of progress will just make it more expensive. And the planning process is critical with the collaboration that we have underway. We believe that it is important that we move together to ensure that we get started, that we plan appropriately, and invest these monies in a way that makes the most sense moving forward.

Thank you for the opportunity to speak today.

[The prepared statement of Mrs. Saracino follows:]

**Statement of Nancy Saracino, Chief Deputy Director,
California Department of Water Resources**

Introduction

Chairwoman Napolitano and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 24, the San Joaquin River Restoration Settlement Act. I am here to convey the State of California's support for this legislation.

As you know, the settlement that H.R. 24 would implement represents unprecedented consensus on a process that will have lasting positive impacts on the natural environment while protecting farmers and the Central Valley economy. The settlement creates a clear obligation to the settling parties, but more importantly, an incredible opportunity to achieve a historical restoration of a western river.

The role of the State of California

Although not a signatory to the settlement, the State of California has many interests in a healthy fishery and the successful restoration of the San Joaquin River. To that end, we have already allocated a considerable amount of our resources to facilitate restoration of this important resource.

Recognizing the importance of an agreement that could set the stage for restoration of the San Joaquin River, the state has expressed its support throughout the process that ultimately resulted in the settlement to be implemented by H.R. 24. In January of 2006, Governor Schwarzenegger sent a letter to Secretary of the Interior Gale Norton, in which he conveyed early state support for a solution to the long-debated future of the San Joaquin River.

In September of last year, the State of California joined with federal agencies and other settling parties to sign a Memorandum of Understanding (MOU) to help implement the Stipulation of Settlement. Soon after, California Secretary for Resources, Mike Chrisman presented testimony at a hearing held by this Subcommittee which reaffirmed the strong support of the state for the Settlement Agreement. This testimony was followed by a letter from Secretary Chrisman to Senator Feinstein on November 30, 2006, which reiterated the state's support and outlined the state's financial commitment to the restoration process.

California has already allocated \$1.5 million dollars for restoration activities in the current budget year. An additional \$18.3 million in funding from prior bonds

and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, has been proposed in the Governor's 2007-2008 budget to initiate restoration activities consistent with the settlement.

Furthermore, as pledged in Secretary Chrisman's November letter, the state is committed to looking for opportunities under Proposition 1E, the Disaster Preparedness and Flood Prevention Bond Act of 2006, as well as other provisions of Proposition 84, in order to fund multi-benefit projects in support of the settlement. For example, at least \$40 million dollars is available under Proposition 84 for water quality improvement projects on the San Joaquin River.

Coordination and communication among parties

State agencies, including the Resources Agency, the Department of Water Resources and the Department of Fish and Game, federal implementing agencies and the settling parties have already begun collaborating to plan, design, fund, and implement actions to support the restoration of the San Joaquin River.

If Congress approves legislation implementing the settlement, the Department of the Interior will be tasked with new responsibilities to carry out the commitments made in the settlement to resolve the longstanding litigation. It will be very important for the state to coordinate closely with the Department of Interior to ensure that planning on restoration activities is well coordinated and funds spent in a way that optimizes the value of the investment of scarce resources.

In addition, it will be important to ensure that a full and open public process allows for all interested in the restoration efforts to be heard as we move forward. Effective communication and coordination among all parties early on and throughout the restoration will be a challenge, but it is a challenge which must be met.

Progress towards implementation

Concurrent with the settling parties' signing of the settlement, the State of California entered into a MOU which then became an appendix to the Agreement and filed in federal court. The intent of the MOU was to set out the initial framework for state collaboration with the settling parties on implementation.

The MOU included two critical requirements. First, the Secretaries of Interior and Commerce, along with the California Secretaries of Environmental Protection and Resources, were required to establish a process for the state and federal agencies to implement the settlement. This requirement is important because the Stipulation of Settlement assigns to the Secretary of Interior many restoration tasks that will require California's participation and approval for them to be achieved. We have established implementation teams with the federal government and a process for coordination consistent with this requirement in the MOU.

Second, the state and the settling parties are to establish a mechanism to ensure public participation and input into the implementation of the settlement. In addition to concern for the environmental considerations of the restoration, the State of California recognizes that there are many interested third parties along the river and many that have already spent years working on restoration efforts. To successfully restore this river, we must work collaboratively with all of these interests.

Allow me to summarize progress to date in achieving the goals of the MOU and settlement as well as significant coordination efforts among the state and federal governments, the settling parties and other interested and affected entities.

We are engaged with the settling parties in the process of hiring a Restoration Administrator who will be charged with directing the program manager, and will have the responsibility of assisting with the overall implementation of the agreement. The Technical Advisory Committee is also taking shape, Friant and NRDC have already appointed representatives, and ex-officio state representatives have been identified.

A five-agency Program Management Team has met on multiple occasions and is making progress on a Program Management Plan. The Plan will serve as the agencies' agreement for implementation of the restoration plan and is expected to be completed by the end of April. A public involvement process is being developed by the Program Management Team to ensure the opportunity for input and participation throughout the development of the plan.

The state is contracting with a nonprofit entity to oversee the funding for the Restoration Administrator as well as other charges related to the Technical Advisory Committee and public outreach.

Finally, work is underway to install additional water quality and flow stations along the San Joaquin River for the purpose of monitoring restoration efforts as they move forward.

In conclusion, we are pleased with the progress made towards restoration thus far. In order to move forward and to begin to reap the rewards of restoration the

parties await the critical missing piece necessarily for full scale implementation, and that is the proposed legislation that is before you today.

Conclusion

The restoration of the San Joaquin River will have enduring statewide and national significance. The rejuvenation of a critical fishery, restoration of devastated habitat, improvements to the water-delivery network for more than 22 million Californians and the irrigation lifeblood for the productive breadbasket that is California's Central Valley: this is what we can all look forward to as implementation advances.

A discouragingly long battle in the courts has at last culminated in what can truly be called a landmark settlement. The San Joaquin River will once again become a living river, flowing as nature intended, from its headwaters in the High Sierra all the way to San Francisco Bay.

Chairwoman Napolitano and members of the Subcommittee: I urge you to consider the paramount significance of this settlement, and I respectfully ask for you to support this legislation and make the long overdue restoration of the San Joaquin River part of your legacy.

Thank you.

Response to questions submitted for the record by Nancy Saracino, Chief Deputy Director, California Department of Water Resources

STATE OF CALIFORNIA -- THE RESOURCES AGENCY
ARNOLD SCHWARZENEGGER, Governor
DEPARTMENT OF WATER RESOURCES
1416 NINTH STREET, P.O. BOX 942836
SACRAMENTO, CA 94236-0001
(916) 653-5791
March 15, 2007

The Honorable Grace F. Napolitano, Chairwoman
Subcommittee on Water and Power
Committee on Natural Resources
U.S. House of Representatives
1522 Longworth House Office Building
Washington, DC 20515

Dear Chairwoman Napolitano:

As you are aware, the Subcommittee on Water and Power held a legislative hearing on the San Joaquin River Settlement Act in Washington on March 1, 2007. I represented the interests of the State of California at that hearing. Representative Devin Nunes had additional questions directed to those who testified at this hearing.

The question directed to the state is answered below.

Question posed by Mr. Nunes: If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Response: The State of California has committed to supporting both the Water Management Goal and the Restoration Goal of the settlement referenced in H.R. 24. While the settlement agreement and H.R. 24 set out a framework for restoration of the San Joaquin River consistent with the Water Management Goal, much work remains on identifying and analyzing the alternatives for achieving the Water Management Goal before any particular method is chosen. It is the state's understanding that H.R. 24 as written would provide sufficient flexibility for the Department of the Interior to implement appropriate actions to accomplish the Water Management Goal once they are chosen through a process that fully considers and mitigates for all impacts, including those on the two water projects and other water users as well as the environment. Therefore, the state does not believe that H.R. 24 should be amended.

Thank you for this opportunity to address Mr. Nunes' question. If there are additional questions please do not hesitate to contact me at (916) 653-6055.

Sincerely,

/s/ Nancy Saracino
Nancy Saracino

Chief Deputy Director

cc: The Honorable Devin Nunes, U.S. House of Representatives

STATE OF CALIFORNIA -- THE RESOURCES AGENCY
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DEPARTMENT OF WATER RESOURCES
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March 15, 2007

The Honorable George Radanovich
438 Cannon House Office Building
United States House of Representatives
Washington, DC 20515-0519

Dear Representative Radanovich:

We have received a copy of your letter dated March 9, 2007 addressed to The Honorable Grace F. Napolitano, Chairwoman of the Subcommittee on Water and Power and The Honorable Cathy McMorris Rodgers, Ranking Member. In your letter you requested answers to your questions posed as a result of the legislative hearing on H.R. 24, the San Joaquin River Restoration Agreement, held March 1, 2007 by the Water and Power Subcommittee.

These questions were posed to those testifying on the San Joaquin River Restoration Agreement and the state's response is below.

Question: In your testimony to the Water and Power Subcommittee of the House Resources Committee on March 1, 2007 you mentioned that the voters of California approved Proposition 84, which included \$100 million for restoration of the San Joaquin River. Does Proposition 84 include any other funds that could be available for implementation of the Water Management Goal of the Settlement and/or integrated water management programs? If Proposition 84 includes such funds, which procedures will be required for qualification for such funds?

Response: Proposition 84 allocates \$100 million for restoration of the San Joaquin River consistent with the terms of the settlement agreement. In addition to the \$100 million, there are additional opportunities under Proposition 84 for funding programs that would provide multiple benefits in support of the Water Management Goal as set forth in the settlement agreement. Examples of such programs may include, but are not necessarily limited to, funding for Integrated Regional Water Management Plans, water quality improvement actions in the San Joaquin River, land acquisition, urban streams projects and flood protection. Fifty-seven million dollars is specifically allocated under Proposition 84 for Integrated Regional Water Management Plans in the San Joaquin hydrologic region. Integrated Regional Water Management grants are available on a competitive basis and eligible projects must be consistent with Department of Water Resources' guidelines.

Proposition 84 also allocates funds in various other areas, including \$40 million to be spent on actions to improve water quality in the San Joaquin River, where we anticipate projects supporting San Joaquin River restoration and the Water Management Goal would be eligible to compete for grant monies. We anticipate that all expenditures of state funds in the region will be made with an eye to the state's commitment to support the settlement agreement, including both the Restoration and Water Management Goals.

In summary, the State of California has already committed to investing \$100 million towards the restoration of our state's second largest river. Furthermore, by funding multi-benefit projects from bond funds in the Central Valley, we expect that the aggregate state commitment to San Joaquin River restoration will easily reach and likely exceed \$200 million.

If you have additional questions please do not hesitate to call me at (916) 653-6055.

Sincerely,

/s/ Nancy Saracino
Nancy Saracino
Chief Deputy Director

cc: The Honorable Grace Napolitano, Chairwoman, Subcommittee on Water and Power

The Honorable Cathy McMorris Rodgers, Ranking Member, Subcommittee on Water and Power

Mrs. NAPOLITANO. Thank you, ma'am. Next we have the Hon. Lois Wolk, Assembly Member and Chair of the Committee on Water and Parks and Wildlife for the California State Assembly, and to whom I have had the privilege to speak on numerous occasions, but it is time for you to call me.

**STATEMENT OF THE HON. LOIS WOLK, ASSEMBLY MEMBER
AND CHAIR, COMMITTEE ON WATER, PARKS, AND WILDLIFE,
CALIFORNIA STATE ASSEMBLY**

Mrs. WOLK. With pleasure. Good morning, Madame Chair. Congratulations to you on this first hearing, new session, and what an auspicious event, to deal with H.R. 24.

I represent the northern part of the Sacramento San Joaquin Delta, and I am very honored by your invitation to come here and speak before the Subcommittee, which is our counterpart in Congress. And both committees I know strive to balance the protection of natural resources with often conflicting and contradictory demands for water.

I am here as an ardent advocate for the settlement of the long-standing dispute on the San Joaquin. I urge you to pass H.R. 24 to implement the settlement.

This litigation, this fight that has lasted for a generation has sapped the financial resources and political energy of the litigants, as well as much of the California water community. California can no longer afford the costs of conflict on the San Joaquin.

Since I appeared here last September, much has changed. First, Congress and the Subcommittee has changed substantially, and I hope that that change will result in speedy passage of H.R. 24, and more important, the beginning of a state/Federal partnership in addressing the challenges that we find on the San Joaquin.

Second—and reference has already been made to this—conditions in the State of California have changed with the passage of Prop. 84 and Prop 1E. Prop. 84 authorizes up to \$100 million in general obligation bonds to support the settlement on the San Joaquin River conflict.

Before that funding becomes available, the Legislature will need to appropriate the funding through the budget. The Governor, in his proposed budget, said that we should, and he proposed that we spend \$14 million beginning in July. That is assuming, for those of you who served in the Legislature, that we will have a budget in June. That may be harder to achieve than the settlement, I don't know.

But I do appreciate, I do anticipate that the Legislature, as was stated by my colleagues, that there may be some difficulty in approving the appropriation without action by Congress to approve and to implement the settlement. As my colleague, Nancy Saracino, said, the Legislative Analyst's Office raised some concerns and advised the Legislature last week it shouldn't appropriate money until the Congress does. Basically, we both have to act. We will walk through the door together. We both need to act this year.

Finally, the settlement itself has changed, with the third-party concerns now resolved by the language that is in H.R. 24. And I, along with my colleagues here, congratulate Senator Feinstein, Member Radanovich, and all of you who participated in the resolution of these last-minute disputes.

Taking all that into consideration, it is time to act. A significant portion of the California water community has been preoccupied with this for decades, and it is now on the way to resolution. It is over, and it is our duty to support this settlement, and do all we can to restore the San Joaquin River, as well as the interests that rely upon that water.

I hope that our two governments, state and Federal, can find a way to collaborate in the most effective, balanced use of the resources of the San Joaquin for agriculture and fisheries.

With our two legislative bodies working together in partnership, which is, I know, your intention, Madame Chair, I have no doubt that this settlement will be a success. And thank you again for inviting me to testify.

[The prepared statement of Mrs. Wolk follows:]

**Statement of The Honorable Lois G. Wolk, Chair,
Committee on Water, Parks & Wildlife, California State Assembly**

Good morning, Madame Chairman and members. My name is Lois Wolk and I chair the California Assembly Committee on Water, Parks and Wildlife. I also represent the northern part of the Delta. I am honored by your invitation to appear today before the subcommittee, which is our counterpart in Congress. Both committees strive to balance the protection of our natural resources heritage with conflicting and often contradictory demands.

I. Support for San Joaquin River Settlement

I appear before you today as an ardent advocate for settlement of the long-standing dispute on the San Joaquin River. I urge Congress to pass H.R. 24, which would implement the settlement. While the Friant Division of the Central Valley Project has produced vast abundance of agricultural products, it has produced substantial conflict as well. The most recent litigation—and the one we all are here today to resolve—has lasted 18 years, often sapping the financial resources and political energy of the litigants as well as much of the California water community.

I support the proposed San Joaquin River settlement because it reflects a reasonable balance between water supply reliability and River restoration. This settlement will confer benefits on many Californians, not just the ones who have spent the last two decades in court.

A. What Has Changed

Since I appeared here last fall, much has changed. First, Congress—and this subcommittee—has changed substantially. I hope that change will allow speedy passage of H.R. 24 and the beginning of a state-federal partnership in addressing the challenges we find on the San Joaquin River. While there are many other issues on the San Joaquin River, including drainage, H.R. 24 needs to proceed now without trying to resolve all the other thorny challenges on the San Joaquin. This bill may provide a forum for developing a state-federal partnership where we can work together to start addressing the many San Joaquin River issues.

Second, conditions for the State of California have changed, with the passage of Proposition 84, which authorizes up to \$100 million in general obligation bonds to support the settlement of the San Joaquin River conflict. Before that funding becomes available, the Legislature will need to appropriate the funding through the State Budget. The Governor's budget proposes that we spend \$14 million next year in support of the San Joaquin River settlement. I anticipate that the Legislature will have concerns about approving that appropriation, without action by Congress to implement that settlement. In fact, just last week, the Legislative Analyst's Office advised the Legislature that it should not appropriate money for the San Joaquin River restoration until Congress appropriates funding for the restoration. So, effective implementation of the settlement through a state-federal partnership will depend on the Congress' timely action.

Finally, the settlement has changed, with the third-party concerns now resolved by language that is in H.R. 24. When we were last here, some witnesses objected to potential risks of adverse consequences to third parties. Those parties and the settling parties, working with Senator Dianne Feinstein, developed the language that is now in H.R. 24. We may not all agree that this language is necessary substantively, but we all can agree that resolving those disputes makes an important contribution to achieving—and implementing—a settlement that works and enjoys success. We don't need further litigation over this settlement, as some witnesses threatened at the last hearing.

Taking all these changes into consideration, the time has come for Congress to act. We have resolved a conflict that has sapped the energy of a significant portion of the California water community for decades. That conflict is over, and it is our duty as elected representatives to do all we can to support that settlement.

B. Value of Resolving Long-Standing Conflict

This settlement offers all of us an opportunity to move beyond conflict. Water conflicts—particularly court litigation—simply cost too much. It costs money to pay our advocates—the lawyers and expert witnesses. It costs time and missed opportunities. As we fight, we too often ignore the continuing and changing needs to operate, maintain and rebuild the water infrastructure that may have served us well in another time. But with improved technology and increased value for each drop of water, we need to invest in creating the most efficient water system possible—one that balances the many competing water needs—agricultural, urban and environmental. Moreover, the inherent risks of litigation put the use of our water resources and water supply reliability in jeopardy.

Finally, as we fight, the ecosystem collapses. The public trust resources that we have a duty to protect deteriorate. California cannot afford the costs of conflict. That's why I'm here today to urge you to support H.R. 24, which will let California move beyond this long-standing conflict.

I hope that our two governments—state and federal—can find a way to collaborate on promoting the most effective and balanced use of the San Joaquin's water—for agriculture, cities and the fishery. Only recently did the Schwarzenegger Administration begin investing time, attention and resources on improving the situation on the San Joaquin. I am proud to be one of the legislators who fought for State funding in this year's budget to support this settlement. I was also encouraged to see that the draft legislation includes a "savings clause" for existing federal law requiring Central Valley Project compliance with State law. This provision will protect the State's sovereignty and ensure the State's proper role in overseeing the San Joaquin River's water resources.

C. Settlement Helps Resolve Multiple San Joaquin River Issues

I would like to share a broader perspective about how this helps California as a whole.

Certainty for Water Users. First, there is the added certainty for water users throughout the San Joaquin River basin. For more than a decade, we have crafted water agreements that would allow for some uncertainty due to this litigation. The Federal Government and water users on San Joaquin tributaries crafted the 1998 San Joaquin River Agreement, often called the VAMP (or the Vernalis Adaptive Management Program), leaving some flexibility for an outcome of this litigation. The State's Delta water quality standards were imposed on all the Central Valley Project permits, to allow for the possibility that water might some day come down the mainstem from Friant to the Delta. This time of bracing for uncertainty can now end, and we can begin the conversation about how to promote greater water certainty throughout the San Joaquin system.

Assistance for Fishery Resources. And, of course, this settlement will help the San Joaquin system's fishery resources. I understand there may be some who question how much the water released under this agreement will help the spring run and, perhaps, may not help fall run salmon at all. But let us keep in mind our starting point—a dead river—and a basic fact—fish need water for life. Breathing life-giving water back into this river—even if not as much as some suggested would be required—is better for the fishery than dry sand. This water will contribute to the fishery needs in the San Joaquin River and downstream in the Sacramento-San Joaquin Delta.

Diluted Salinity. This infusion of water also contributes to diluting the salinity flowing downstream from the westside of the San Joaquin Valley to the Delta. Some of you may remember the Kesterson wildlife debacle when the last drain operated in the 1980's. While some have suggested that we tie this settlement to resolving the drainage issue, it is more important that we proceed with the settlement now than try to resolve all San Joaquin River issues at one time. This settlement will

contribute a new water resource to this chronic salinity problem on the San Joaquin and in the Delta. Even a small contribution will nevertheless be a contribution.

Flood Protection. While flood protection was not one of the original purposes, some of the actions required by the settlement will improve flood protection, particularly the expansion of the River's capacity to 4,500 cfs at various points. Last year, the small town of Firebaugh suffered a huge risk that its levees would fail and deluge the town. This settlement provides a small indirect flood protection benefit that, in these years after Hurricane Katrina, may be appreciated.

II. Benefits for the Sacramento-San Joaquin Delta

This settlement's benefits reach beyond the confines of the San Joaquin River, particularly to the broader Sacramento-San Joaquin River Delta—California's Critical Crossroads for water. I note that the Delta's name includes the San Joaquin River. The Delta is formed by two of California's great rivers—the Sacramento AND the San Joaquin. Admittedly, the settlement was not necessarily intended, nor are there any commitments, for the benefit of the Delta. But, when you begin moving toward a healthier river, the Delta cannot help gaining some sort of benefit, albeit unquantified.

A. Delta

The Delta currently suffers from two inter-related problems—water quality and an ecosystem crisis. The Delta's water quality issues are multi-faceted, involving salinity (both drainage and saltwater intrusion), contaminants (including pesticides, mercury and urban runoff), and water circulation or flow standards. Increasing the availability of San Joaquin River flows will, in any case, contribute to improving water quality in the South Delta, where the San Joaquin River flows into the Delta.

Also, in the last year, the State has been investigating the causes of the substantial decline of pelagic fish (e.g. delta smelt) and much of the ecosystem that supports them. We still do not have final answers, but we have seen indications that three categories of causes have contributed to this decline—invasive species, contaminants and water project pumping operations—and we have recognized that there are connections among all three of those categories. Last fall's CALFED Science Conference demonstrated that the water project exports play the central role in affecting the ecosystem—both directly (taking fish into the pumps) and indirectly (changing Delta hydrological flow patterns). Those categories also share a connection to the flow of water into and within the Delta. The cause of the decline is likely related to all of these causes. So, the best news is that introducing additional flows into the Delta may assist California in addressing the root causes of the Delta ecosystem crisis.

B. Export Water Supplies

Because California's export water communities—in the San Joaquin Valley and Southern California—rely on water exported from the Delta, any assistance the Delta receives can help the water supply reliability for export water supplies. They had concerns that they may suffer negative impacts, but H.R. 24 now has addressed that issue to their satisfaction. It may help the two large water projects comply with the interior Delta salinity standards. Or the additional San Joaquin River inflows may improve the export-inflow ratios that regulate export-pumping operations. In either case, export water supply may improve because there is more water flowing into the Delta.

III. Next Steps

The next steps to implement the San Joaquin River settlement involve both of our legislative bodies. First, California needs the Congress to enact H.R. 24 to implement the settlement, including elimination of the CVPIA prohibition on Friant releases for these purposes. Then, I can assist the effort in the California Legislature to enact other supportive legislation and budget appropriations to advance the settlement's implementation. For example, one of my colleagues, Jared Huffman, who chairs the water quality committee and sits on my committee, introduced a short provision to authorize the State to participate in this settlement. There will be additional work needed on this bill, which may respond to how Congress acts. The Federal Government needs to act first, considering its long history of controlling the operation of the main stem of the San Joaquin River. I have supported state legislation to start addressing San Joaquin River issues in this past session, but, before the settlement, it did not enjoy the necessary broad support that today's settlement may provide. With our two legislative bodies working together, I have no doubt that we will succeed in making this settlement a great success!

Response to questions submitted for the record by Rep. Devin Nunes to Assemblywoman Lois Wolk, Chair, Assembly Committee on Water, Parks & Wildlife, California State Assembly

Question Submitted by Mr. Nunes (CA) to all witnesses:

If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Response of Honorable Lois Wolk, Chair, Assembly Committee on Water, Parks & Wildlife

At this point, the most important task for Congress is completing the San Joaquin River settlement by passing the San Joaquin River Restoration Settlement Act. Upon passage, the State and the Federal Government will be able to effectively work together on implementing the settlement, which includes both river restoration and water supply improvements. It is during implementation that the pumping and conveyance facilities you have proposed would best be analyzed, consistent with federal and state laws requiring feasibility studies and environmental documentation. While I cannot speak for the entire California State Assembly, I would support pursuing further investigation of such facilities—after passage of the federal authorization statute.

Mrs. NAPOLITANO. Thank you so very much, Mrs. Wolk. Before we move on to the question-and-answer period, I would like to receive for the record the testimony of Clifford L. Marshall, Chairman of the Hoopa Valley Tribe, which was given to me. It is his statement on this issue.

So without objection, I will order the receiving of this testimony.

[NOTE: The statement submitted for the record by Clifford L. Marshall, Chairman, Hoopa Valley Tribe, has been retained in the Committee's official files.]

Mrs. NAPOLITANO. OK. So first of all, Mr. Dooley, one of the issues that, in reading some of the testimony given, I have a question that deals with a new water management report which discusses the options for more aggressive groundwater management and/or groundwater banking.

Does it have that in there? Because I could not find something.

Mr. DOOLEY. I am sorry, the question is does the report include—

Mrs. NAPOLITANO. The options for more aggressive management and banking for the groundwater.

Mr. DOOLEY. Absolutely. There are a number of programs that are regional programs, including a number of different districts that include additional groundwater banking programs. There are also individual groundwater banking programs included in the report. In fact, of the district-generated proposals, additional groundwater recharge and banking are the dominant types of programs that are included in the report. So there are several different proposals that are included in this document that deal with expanded groundwater banking and recharge.

Mrs. NAPOLITANO. Makes good bedtime reading.

Mr. DOOLEY. I didn't find that to be the case.

[Laughter.]

Mrs. NAPOLITANO. Mr. Candee, the question that I have for you, sir, is, what is the economic benefit timeframe? Because we know there is an economic benefit. But what is the timeframe for a recov-

ered salmon fishery in the San Joaquin River? And have any studies been done to gauge that economic benefit or effect?

Mr. CANDEE. Well, actually, I think Mr. Dooley mentioned that before the settlement negotiations began, we were all preparing for trial. And in preparation for trial, all of the parties brought in economists to analyze both the impacts and the benefits. And so there actually has been some analysis about other river systems, and how restoring the river can provide economic benefits, not just for the fishing industry, but also for recreation, for water quality, for other farmers downstream, for example.

I don't know if any studies have been done specifically on the restoration of these two salmon species on this river. The river has been dry for 60 years. But the analysis of economic benefits from restoration programs is out there, and it is cited in that expert report.

Mrs. NAPOLITANO. And that has been shared with the rest of the parties.

Mr. CANDEE. Yes. All of the parties have it, and I would be happy to make it available.

Mrs. NAPOLITANO. OK, great. Thank you.

Mr. Peltier, has the Interior Department requested funding for the San Joaquin River Settlement in the Fiscal Year 2008 budget? If so, how much money? And then, of course, what will the money be used for? And what happens if this authorizing legislation, which I hope is not the case, is not enacted, will the Department be able to spend the money on implementing the settlement anyway?

Mr. PELTIER. Yes. In the President's 2008 budget proposal, we identify \$17 million for funding the restoration program. There are some other, there are other monies within the region that, such as the monies we are using now to get kick-started some of the planning efforts. But there is that \$17 million identified, along with the commitment of the Administration to send up authorizing legislation that would make possible the expenditure of that money. It will not be possible without the passage of authorizing legislation. H.R. 24 is legislation that will make possible the expenditure of that money.

Mrs. NAPOLITANO. So the funding hinges on the passage.

Mr. PELTIER. Yes.

Mrs. NAPOLITANO. Thank you, sir. I think I will yield to my Ranking Member.

Mrs. MCMORRIS RODGERS. Thank you, Madame Chairman, and thank you, everyone, for being here. I certainly applaud the effort to reach an agreement. It is very difficult, to say the least, and I understand some of those challenges, coming from Washington State. And without a doubt, it is much better to reach this settlement among ourselves, rather than allowing the Court to be the one dictating.

We have had that experience most recently. I mentioned it in my opening remarks, but we do have an example where, per a judge out of Portland, we are spending—we did, in 2004, spend over \$3 million per Chinook salmon because it was a court-mandated spillover in the Columbia Snake River system.

So my question to all the witnesses on the first panel is, having the settling parties, I wondered if in the settlement, have the parties defined what success is when it comes to river restoration and salmon reintroduction? And what benchmarks will be in place to determine future success?

Mr. CANDEE. I would be happy to take the first stab at that, but I am sure others will want to add to it.

There are several answers. First of all, a process has been set up by which the Federal fish agencies and the state fish agencies, and also the parties, the settling parties, through a technical advisory committee, will try to develop interim targets and long-term targets to try to guide the restoration program.

But second, there is a reopener in the settlement which was carefully negotiated by all of the settling parties, in which if any party seeks to change the fundamental terms of the settlement after 2025, that the State Water Board would be asked to make a series of findings. And it is not just on the success of the restoration program, but also the success of the water management program and the reasonableness of any changes.

And so those were actually spelled out in the settlement which the legislation would be approving. So all of that is in there, and we hope the fishery agencies and the other parties are going to be moving very quickly to start developing some of these long-term targets.

Mr. DOOLEY. Maybe if I could just add a little bit. And I will be very candid. The experts for the Friant community and the experts for the Plaintiffs did not agree on what level of success could be achieved. I think our experts believe that you can restore fish, but perhaps not as many as the Plaintiffs' experts.

And we don't anticipate reintroducing fish until 2012. And as Mr. Candee said, the approach in the settlement is that a technical committee composed of people who really know what they are talking about.

I practiced a lot of fishery biology in the last 18 months, but the people who are really fishery biologists are going to sit down and try to develop metrics that will define whether we are achieving our goal or not.

Further, I would say there is a provision in the settlement where we acknowledge that there are benefits other than simply restoring a fishery, to restoring flows to the river. And we acknowledge that, notwithstanding our best efforts, we might not be successful in the fishery. So there is an acknowledgment that it is a challenging effort, but we are all committed to try to make it happen.

Mrs. MCMORRIS RODGERS. Is there a concern, because this hasn't been defined clearly, what success is, or what the benchmarks for success will be at some point in the future, when the money is gone, that we will be in litigation again as a result of not having this defined now?

Mr. DOOLEY. Let me say that the structure of the settlement does not provide an opportunity to relitigate these issues. It resolves the issue pursuant to the terms of the settlement.

The only option really is to seek to adjust flows in the river, in 2026 or thereafter. And that is through a defined process that Mr. Candee mentioned. It was very, very important to the Friant com-

munity that this matter be removed from the jurisdiction of the Federal Courts. And we have tried to do that, to the extent we can.

Furthermore, our interest, candidly, in seeing this succeed is tempered in substantial part by the assurances we have on the limit of the water supply committed to the effort, and the agreement of all the parties to cooperate in making sure that we do what we can to recirculate that water and recapture it for use within the Friant service area.

So that was our principal motivation. And we think we have achieved the highest level of certainty that we could within the context of this litigation.

Mrs. MCMORRIS RODGERS. Yes?

Mr. PELTIER. I would just like to more broadly speak to the challenges we face when investing in environmental improvements across the West. It is very common. You have had a lot of experience with it in the Central Valley of California, between the Central Valley Project Improvement Act Restoration Fund, expenditures of over \$600 million, and the CALFED expenditures for ecosystem, we totaled well over \$1 billion of investment in a little over a decade in ecosystem improvement. Primarily that investment has been focused on fisheries.

And yes, there is this tremendous uncertainty we live with. And giving performance measures, getting metrics, is something the managers are constantly asking, constantly demanding. The CALFED Science Board has had numerous reviews to try and identify what investments are producing what returns. And it is very difficult.

We can see habitat improvements. We can see blocks to fish passage eliminated. We can see improvements. But what the result, what the population level effect of our investments is, is something that will be determined over the generations of fish, and over the generations of future water management practices. And that uncertainty is something that we are forced to live with. Because it really is, there are many alternatives to how we spend the money, but there is no alternative to attempting to address the ecosystem problems.

Mrs. MCMORRIS RODGERS. OK. Thank you very much.

Mrs. NAPOLITANO. Thank you. Now we will move on to Mr. Costa.

Mr. COSTA. Thank you very much, Madame Chairperson.

A couple of different focuses. First of all, Mr. Peltier, you talked about the funding level. You are really relating to administrative costs, right, when you are talking about the implementation of this agreement?

Mr. PELTIER. Well, no. There are—

Mr. COSTA. But the bulk of the restoration efforts as a part of this agreement are going to come from the redirection of the restoration fees that are currently being paid by the Friant water users.

Mr. PELTIER. Right. And capital and diversion of capital repayment.

Mr. COSTA. Right.

Mr. PELTIER. Both of those are proposed in the President's budget to occur in 2008. That is the \$17 million. And that will go to——

Mr. COSTA. And so have you estimated what your administrative fees are going to be on this?

Mr. PELTIER. Higher than we would like.

Mr. COSTA. Shall we use the typical gold plate of 20 percent for Bureau projects?

Mr. PELTIER. No.

Mr. COSTA. Good.

Mr. PELTIER. Unacceptable.

[Laughter.]

Mr. PELTIER. But I have a regional director, Kirk Rogers, here with me to address his——

[Laughter.]

Mr. PELTIER. What it costs him to get the job done. It is a simple reality that we have to deal with.

Mr. COSTA. But seriously, though, we would like to get a much greater handle on frankly what those are. Because I really view that, in my mind, separate and distinct from the actual dollars that have been committed for the totality. And I know there are differences of opinion on how much it is ultimately going to cost for restoration, depending upon it, because the goals have already been discussed here.

But the bulk of the funding for the restoration efforts, would you not, or would you agree, is the \$100 million from the state bond, and the Friant water users restoration fee that is going to be redirected for the purpose of restoring the river?

Mr. PELTIER. Yes. And the capital repayment. The bill does authorize additional Federal appropriations, which would be, we anticipate——

Mr. COSTA. No, I understand that.

Mr. PELTIER. OK.

Mr. COSTA. No, I just want to make sure we get a handle on the administrative costs, because I think that is important.

Has DWR, Mrs. Saracino, looked at your administrative costs? Separate of the \$100 million?

Mrs. SARACINO. We are actually capped. Yes, we are capped on expenditure bond costs at 5 percent for administrative costs.

Mr. COSTA. Maybe we ought to apply that on the Federal level.

Mrs. SARACINO. And we do manage to come in under that. Most of the expenditures we see going into actual project implementation, digging out the dirt, changing the facilities, constructing new levees, bypasses, et cetera.

Mr. COSTA. Right. As it was alluded to earlier, I believe it may be Assembly Member Wolk's comments with the legislative analyst on the State of California, Elizabeth Hill, who many of us worked with before, and I think she does a very good job. In reading some of the press accounts last week about her recommendations, holding off to the state, I mean, I think it needs to be clear, and I hope, as the Chairman of the committee and member of the Assembly, that you will indicate that, I mean, notwithstanding our process here on the enabling legislative authorization, and in subsequent appropriation, that the Legislature and the budget analysts recog-

nize that the \$100 million has already been passed, as you stated in your testimony, by the voters, and the Friant water users, as a part of the settlement agreement, have already committed. Therefore, we obviously have to enact it to redirect those funds.

But this, unlike a lot of Congressional authorizations and appropriations where we have to create the box and then appropriate the money, this is different in that sense.

Mrs. WOLK. Mr. Costa, I understand your concern. We have a great deal of respect in California and the legislature on all sides, both sides of the aisle, for Elizabeth Hill. We don't always follow her advice, however, and there has been a tremendous amount of support, budgetary support, from the Administration, and from the legislature, for engaging in the settlement. And I have full confidence and will support the \$14 million that is proposed by the Governor in his budget. And I feel that the Assembly, and I believe the Senate, will, as well.

Mr. COSTA. All right. Thank you very much.

Mrs. WOLK. Again, if we have a budget.

Mr. COSTA. Yes. I see my time is—do I? OK, wonderful.

Let me get to the area of the holding contracts and try to cover that quickly.

When we discussed in great detail third-party impacts, as Congressman Cardoza and Congressman Nunes and Radanovich and the rest of us that were a part of those discussions in September with Senator Feinstein, it didn't come to my attention until after we had concluded those meetings about the holding contracts.

And I would like both Mr. Peltier, as well as Mr. Dooley, to comment, why does the settlement assume that downstream diversions will continue at their current levels? Because we are talking about 120,000 acre-feet of water approximately that has been continuing to flow down the river since Friant Dam was built. That 120,000 acre-feet has, based upon the agreements when the dam was completed, has served water users that now we refer to as holding contracts. And their concerns about their impacts, third-party impacts, I think are important.

Could you please tell me your view as it relates to those holding contracts?

Mr. PELTIER. I will simply say that we believe that H.R. 24 does protect the interests of the holding contract folks, and there is no question about it in our mind: about the validity and the ongoing obligations and responsibilities the project has to those people.

But maybe Dan, who has been engaged in some one-on-one discussions that I have not been involved with, would have more to offer on that.

Mr. DOOLEY. Mr. Costa, actually the settlement agreement itself has direct provisions in Exhibit B, which are the hydrographs upon which the flows are built. That assumed that the holding contractor leases that historically occurred will continue to be made for the purpose of the holding contractors, and the hydrographs are identifying additional releases that would be needed on top of that for the purpose of restoring the river.

Further, that the structure of the agreement is that there are releases at the dam, and then there are measuring points downstream, that, where specific flows are—

Mr. PELTIER. All the way to Gravelly Ford.

Mr. DOOLEY. Well, beyond even Gravelly Ford.

Mr. PELTIER. Right.

Mr. DOOLEY. And if the releases at the dam are insufficient to meet those downstream requirements, then the Bureau has an obligation under the settlement agreement to increase the releases at the dam to meet the required flows downstream.

So to the extent a holding contractor is exercising their contractual right to divert from the river, and that affects the downstream measurements, then additional releases are required. And that is built into the settlement.

So I think, from our perspective, the settlement provides greater protection to the holding contracts than any other water user, because of the way the release schedules are required to be met.

Mr. COSTA. Do you concur, Mr. Candee? Just say yes or no.

Mr. CANDEE. I do, actually.

Mr. COSTA. OK, thank you. And Madame Chairman, I know my time has expired. I have some questions I would like to submit for the record, as it relates to further questions on the holding contracts.

Mrs. NAPOLITANO. OK. Without objection, so ordered.

Mr. COSTA. Thank you.

Mrs. NAPOLITANO. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Madame Chair. I just have one quick question of Mr. Dooley.

Mr. Dooley, Friant Water Users Authority, can you kind of give us a little bit of background on what they are? Why were they created, for what purpose were they created? How many districts? What was their support of this agreement? Was it unanimous? Was it a split decision? Can you give me a background of Friant and their support of this thing?

Mr. DOOLEY. Well, let me say the Friant Division of the Central Valley Project extends from the Chowchilla Water District north of Madera to the Arvin-Edison Water Storage Districts south of Bakersfield. And it involves diversions from Millerton Lake behind Friant Dam into the Friant Kern Canal south, and into the Madera Canal North, which serves the Madera Irrigation District and Chowchilla.

There are 28 long-term Friant contractors. There are 22 long-term contractors who are members of the Friant Water Users Authority. All 22 members of the Authority endorse the settlement. The Friant Water Users Authority endorse the settlement. And to the best of my knowledge, of all of the 22 boards of directors who considered the settlement, there was on no vote, and that related to the extension of the Friant surcharge, not to the substance of the settlement.

So I am very confident in appearing before you today in saying that there is unanimous support among the members of the Friant Water Users Authority for this settlement, and in a strong view that we do not want to go trial on the remedy and put the matter back in the hands of Judge Carlton.

Mr. RADANOVICH. Thank you very much. That is all.

Mrs. NAPOLITANO. Thank you. Mr. Cardoza? You pass. Mr. Nunes? I don't have any on my side.

Mr. NUNES. Thank you, Mrs. Napolitano. Mr. Dooley, I have a specific question for you here.

Friant has a document, this one here, "Potential Programs and Projects," that was submitted by you for the record. As I understand, the intent of this document is to outline potential projects for the implementation of the water management bill.

On page 3 of the document it says that NRDC and Friant previously prepared a water supply report that considered various options to achieve this objective, and I think that is referring to the water management goal in the settlement.

Was the trans-valley canal one of the conceptual projects NRDC and Friant considered?

Mr. DOOLEY. It was not prepared—let me make a clarification, Mr. Nunes. That reference to a water supply report is not in connection with this settlement effort. It was prepared in connection with a settlement effort that candidly blew up about four years ago.

And I don't recall if it was called the trans-valley canal. My recollection is there was a new cross-valley facility, though, that was considered as one of the options in that water supply report.

Mr. NUNES. And I understand that, Mr. Dooley. But was NRDC made aware of this plan?

Mr. DOOLEY. The water supply report that was prepared in the prior settlement process was a jointly prepared document. It was prepared by a contractor under joint contract with NRDC and Friant.

Mr. NUNES. So it may have been called something else, but it was talked about.

Mr. DOOLEY. Right.

Mr. NUNES. So, Mr. Candee, you referred to everyone, all the people party to the settlement have signed what you called a blood oath in your testimony. If everyone was to agree, all the other parties, that the trans-valley canal needed to be built, why not authorize it in this settlement? Make an amendment to H.R. 24, authorize the trans-valley canal?

Mr. CANDEE. You know, until I received the Friant document a day or two ago, I am not sure I ever heard the term trans-valley canal, and I frankly can't remember whether the proposals that were considered in the water supply study—there were 73 that we went through—included the same location and everything. And my understanding is that Friant just prepared this document very recently. So I don't think anyone has actually—

Mr. NUNES. I mean, you have committed to the water management goal, Mr. Candee.

Mr. CANDEE. Right.

Mr. NUNES. And you know my issue with the settlement is that there is no way in this settlement to get the 200,000 acre-feet back, OK?

Now, what I am trying to ask is, wouldn't it be worth looking at some concrete objectives? You know, maybe some of these that are in here, in the next two months, three months, as this bill moves its way through the Congress, that everyone sit down and all agree that yes, let us try to get some of that 200,000 acre-feet back. Would you support any of that?

Mr. CANDEE. Congressman, I think it was, as Congressman Cardoza pointed out, there is a phased approach in this settlement. And the full flows don't even begin for quite a while. And the document from Friant—

Mr. NUNES. Mr. Candee, though, I mean, it is just a yes or no question. Why can't you just be willing to support something concrete that we can put into law, that has teeth, so that we can get the water back?

Mr. CANDEE. Let us give an example where CALFED had the idea to let us build a storage project called Delta Wetlands. And they spent a lot of money studying it, and everybody thought that sounds like an interesting idea. And when it was all done, guess what? They couldn't find anybody, anybody—

Mr. NUNES. Yes, but what you are saying is a feasibility study. And this settlement doesn't even have a feasibility study.

Mr. CANDEE. I am not aware of any party that is asking right now for Congress to amend this settlement to pre-authorize a project that until a few days ago nobody had even heard about as a proposal, and hasn't been studied or even endorsed, as far as I know, by the—

Mr. NUNES. Only the parties that you ignored. Only the parties that were ignored, that happen to be my constituents.

Mr. CANDEE. I am not aware—we did so much—

Mr. NUNES. Only those parties that every elected official in Tulare County has submitted a request to have concrete mitigation to protect their water supply.

Mrs. NAPOLITANO. Mr. Nunes, would you allow the gentleman to finish? And then you can proceed.

Mr. NUNES. I will, but I don't want him to burn the time out.

Mrs. NAPOLITANO. Well, the way it is being timed, the only time is your questions, not his.

Mr. CANDEE. Thank you. The water management goal provision which is the subject of the proposal that Friant just came forward with. But there is also a separate second plan called the recovered water account, in which NRDC agreed to reduce the price of Federal water and make it available to those districts who were putting up water.

Mr. NUNES. It was never your water to agree to lower the price on.

Mr. CANDEE. We are asking Congress.

Mr. NUNES. So you are supporting it, OK. I just wanted to make sure you knew that was the people's water; NRDC doesn't own it.

Mr. CANDEE. I couldn't agree with you more. That is the people's water, and believe me, that is very clear.

But the idea there was to encourage further groundwater banking. We have heard a lot of support from a number of members for expanded groundwater recharge and groundwater banking.

These programs, the Federal government has committed to developing a plan on the recirculation side. I think what Senator Feinstein was asking Friant to do was help jumpstart that process with some ideas. I think some of the proposals that Friant put forward are new ideas. Some of them have been around for a while. As we mentioned, Friant and NRDC spent a lot of time trying to

study these different ideas, but I don't think any of them yet are ready for Congressional action in terms of Congressional—

Mr. NUNES. Well, Mr. Candee, my time is up here, and we have a vote on. But in the spirit of working together, if you truly want to work together, then why not bring the cities and the counties that have asked for mitigation—and I know that farmers within my district that are Friant farmers have asked for mitigation—why not all sit down, all work together, come up with a plan for mitigation to bring the water back?

I mean, I think there is a lot of ideas out there that could do that. We need to put it into law, though, so that everybody has some assurances that this is going to happen.

Mr. CANDEE. My understanding is that the Interior Department already plans—in fact, I think that was the subject of the MOU that Congressman Cardoza mentioned, that there is going to be public input and participation on all parts of the settlement, including the development of the water management plan.

For example, the farmers in San Joaquin County have a lot of views about the water management plan and the idea of recirculation. And so you are right, there is a lot of people who want to be involved in reviewing those different options.

Mr. NUNES. Is my time up, Mrs. Napolitano?

Mrs. NAPOLITANO. You have a minute.

Mr. NUNES. Mr. Peltier, do you have a comment?

Mr. PELTIER. Yes. I would just add that Hal did mention the role that the Secretary will play in further developing the ideas, the water management plans. And it is critical, the success of that planning effort and the implementation work will be a function of, if everybody is at the table. Everybody brings something different, a different interest. And unless we are looking at all of them, our success will be limited.

So it is not just the Friant farmers in the service area; there are folks outside the service area that can contribute. There is going to be a huge organized effort that has already begun, inter-agency, and not only among the agencies, but also with the various water management folks. Congressman Costa has a regional water management effort that he is spearheading. There is some integration of these efforts that will occur. And I think everybody shares the concern about the uncertainty of our future water supplies.

My quick comment would be that if we were talking the loss of about 15 percent of the Friant water 20 years ago or more, it would be pretty close to a one-to-one loss in terms of water available for use. Today, I think we have learned a tremendous amount about improved water management, and we will have a great opportunity and great success in mitigating that adverse impact.

Thank you.

Mr. NUNES. But Mr. Peltier, what do I do, though—

Mrs. NAPOLITANO. I am sorry, Mr. Nunes, we have a vote that we have only a few minutes, and I think we need to wrap the panel up. I think, Mr. Dooley, if you have a quick comment, and then let us move on.

Mr. NUNES. So you are going to dismiss this panel?

Mrs. NAPOLITANO. I dismiss it until they come back. You can put your questions in writing, sir. Yes, sir.

Mr. DOOLEY. I would just mention that a number of the proposals that are identified in the report that we submitted for the record are what we call integrated regional water management plans. And it should be noted that Proposition 84, in addition to \$100 million for the San Joaquin River Settlement, has \$117 million that is available for implementation of integrated regional water management plans. And we expect a number of those projects that are identified will be funded through Proposition 84 funds.

Mrs. NAPOLITANO. OK. Well, thank you very much for all of you. Any further questions can be submitted for the record, and we will forward them to you.

I would like to ask the witnesses, we have a vote on. I believe we have a couple votes. If the witnesses would remain until the hearing is adjourned, because there may be some other questions that may be falling on your lap.

We will proceed with the second panel. My colleague tells me she may not be back because she has another engagement, so we will work on it when we get back.

So thank you very much. We will right now adjourn, just temporarily.

[Recess.]

Mrs. NAPOLITANO. This meeting will reconvene. And I will turn over the introduction of Panel II to my Acting Ranking Member, George Radanovich.

Mr. RADANOVICH. Thank you very much, Grace. Well, I am almost back; I have one more chair to move over.

[Laughter.]

Mr. RADANOVICH. Thank you very much, Grace. I would like to introduce Panel II. Tom Birmingham, the General Manager of the Westlands Water District in Fresno, California; Cannon Michael, landowner in the San Joaquin River Exchange Contractors Water Authority in Los Banos, California; Ken Robbins, Attorney for the Merced Irrigation District; and Allen Ishida, Supervisor for Tulare County Government in Visalia, California.

Welcome to the Subcommittee. Thank you for being here, and I look forward to your testimony.

Mrs. NAPOLITANO. And may I add to Mr. Radanovich, if he is not going to learn to pronounce the Mexican names better than that, I will rethink—

Mr. RADANOVICH. I cannot roll my R's, Grace. I am working on it.

[Laughter.]

Mrs. NAPOLITANO. You are on, sir.

**STATEMENT OF THOMAS W. BIRMINGHAM, GENERAL
MANAGER/GENERAL COUNSEL, WESTLANDS WATER
DISTRICT, FRESNO, CALIFORNIA**

Mr. BIRMINGHAM. Thank you, Madame Chairman and Mr. Radanovich, other Members of the Subcommittee. I appreciate the opportunity to appear here today to testify in support of H.R. 24.

From the perspective of Westlands Water District and the San Luis and Delta-Mendota Water Authority, this settlement represents a fair balance between the needs of the natural resources

of the San Joaquin River and the preservation of a water supply that is critical to the economy of the San Joaquin Valley, and indeed the State of California.

Farmers on the west side of the San Joaquin Valley have had first-hand experience dealing with chronic water-supply shortages that resulted from involuntary reallocations of water from irrigation uses to fish and wildlife uses. And we certainly understand and support the efforts of the Friant water users to minimize water supply impacts that could result from an adverse judicial decision.

At the outset of this process, we had a number of concerns about the potential impact that implementation of the settlement agreement could have on the area served by the San Luis and Delta-Mendota Water Authority, as well as Westlands Water District, and those concerns were outlined in testimony that I submitted to the Subcommittee last September. I can't express enough the appreciation that we have for the efforts of Members of this body, as well as Senator Feinstein, and the willingness of the settling parties to sit down and discuss with us amendments to the original proposed legislation, to address the concerns that the third parties involved in the discussions had.

And I think that it is fair to say, as outlined in my written testimony, that we are very confident that the legislation in its present form expresses an unambiguous Congressional intent that the implementation of this settlement will not or shall not have adverse impacts on third-party water agencies.

This settlement represents what I would characterize as another milestone in efforts to resolve resource issues through a consensus process, as opposed to through litigation. And again, I want to express our wholehearted support for the legislation, and express our appreciation to Members of the Subcommittee and to the settling parties.

Thank you.

[The prepared statement of Mr. Birmingham follows:]

**Statement of Thomas Birmingham, General Manager/General Counsel,
Westlands Water District**

Madam Chairman and members of the Subcommittee, my name is Thomas Birmingham, and I am the General Manager/General Counsel of the Westlands Water District ("Westlands"). I also serve as a Director of the San Luis & Delta-Mendota Water Authority ("Authority"). I appreciate the opportunity to testify today in support of H.R.24, "The San Joaquin River Restoration Settlement Act."

At the outset, I would like to express our appreciation to Members of Congress and the parties to *Natural Resources Defense Council v. Rodgers*, the litigation that would be settled through enactment of the San Joaquin River Restoration Act, for their efforts to ensure that third parties will not be adversely affected by implementation of the Settlement Agreement or the San Joaquin River Restoration Act. Resolution of this longstanding litigation would be historic, and the settlement would bring water supply certainty to a portion of the San Joaquin Valley that is of critical importance to the agricultural economy of the State of California. In our view, however, it is critical that the settlement be implemented in a manner that does not shift to other agencies unwarranted burdens associated with the San Joaquin River restoration program. H.R.24 was drafted carefully to avoid creating uncertainty and risk for other portions of the Valley, and Westlands and the Authority support its enactment.

South-of Delta Contractors' Experience with Water Shortages

Westlands is a public agency of the State of California, which serves irrigation water to portions of the westside of the San Joaquin Valley in Fresno and Kings counties. Westlands is comprised of more than 605,000 acres, and the demand for

irrigation water is 1.4 million acre-feet per year. Historically, that demand has been satisfied through the use of groundwater, water made available to the District from the Central Valley Project ("Project") under contracts with the United States for the delivery of more than 1.15 million acre-feet, and annual transfers of water from other agencies.

The Authority was formed in 1992 and consists of 32 member public agencies, including Westlands, each of which contracts with the United States Department of the Interior, Bureau of Reclamation ("Reclamation"), for supply of Project water. The Authority's member agencies are entitled to approximately 2.5 million acre-feet of water for agricultural lands within the western San Joaquin Valley, San Benito County, and Santa Clara County, California. Authority members also supply water for municipal and industrial uses, including the delivery of approximately 150,000 acre-feet of water to the Santa Clara Valley Water District, which serves the Silicon Valley. In addition, Authority members provide approximately 200,000 acre-feet of water for waterfowl and wildlife habitat in the San Joaquin Valley. In addition, the Authority operates and maintains certain Project facilities under contract with Reclamation. Two such facilities are the C.W. Jones Pumping Plant ("Jones Pumping Plant"), located in the southern portion of the Delta, near the city of Tracy, and the Delta-Mendota Canal, which is used to deliver water from the Jones Pumping Plant to the Authority's member agencies.

The area served by Westlands and other Authority member agencies is one of the most fertile, productive and diversified farming regions in the nation. Rich soils, a good climate, and innovative farm management have helped make this area incredibly productive. Farmers in the area served by Authority member agencies produce over 60 different high-value, commercial crops that are sold both domestically and internationally in the fresh, canned, frozen and dry food markets. However, like every other region of the arid west, the ability of these farmers to produce these crops and generate the associated economic activity depends on the availability of an adequate, reliable source of water.

Our experience with the implementation of the Central Valley Project Improvement Act (CVPIA), Pub. Law 102-575, is illustrative of what can happen to an agricultural region like the area served by the Friant Division of the Project when significant quantities of water are involuntarily reallocated from irrigation use to fish and wildlife use. Project water deliveries to south-of-Delta contractors began in 1952, and up until 1991, those deliveries were highly reliable and adequate to meet the demand for irrigation water. Indeed, from 1952 to 1991, Project water was the principal source of water for irrigation within Delta Division, and the only reduction in Project water supplies resulted from the extraordinary drought conditions in 1977, the driest year on record in California. However, enactment of CVPIA made Project water supply both unreliable and inadequate. The CVPIA was implemented by the Department of the Interior in a manner dedicated more than 1,200,000 acre-feet of Project water for the restoration and enhancement of fish and wildlife. Much of this water was taken away from farms, ranches and business that had relied on it for decades. Contrary to the assumption at the time of CVPIA's enactment, that it would reduce water supplies by approximately 10% Project wide, virtually all of the water supply reductions resulting from implementation of CVPIA were imposed on south-of-Delta Project agricultural water service contractors. The reliability of water supplies for south-of-Delta water service contractors went from approximately 92% in 1991 to approximately 50% in 2000, when the CalFED Record of Decision was adopted.

In response to chronic water supply shortages caused by CVPIA, farmers have had to rely more on the use of groundwater as a source of irrigation water. As an example, in 2004, farmers in Westlands pumped more than 210,000 acre-feet of groundwater, which is significantly more than the USGS's estimate of the safe yield of the groundwater basin (135,000 acre-feet). The extent to which farmers are compelled to rely on groundwater is contrary to sound principals of conjunctive use, which dictate that in wet or above normal years of precipitation, groundwater use should be reduced to allow the groundwater table to recover. In addition, Westlands has acquired and fallowed more than 89,000 acres of land to help balance the demand for water with the District's available supply. Westlands has also acquired all of the lands in Broadview Water District and the water service contracts of Widren Water District, Centinella Water District, Mercy Springs Water District, and Ora Loma Water District. Lands in these other districts that were previously irrigated with Project water have been retired from irrigated agricultural production. In the San Joaquin Valley land fallowing results in third party impacts, which disproportionately affect the poor and minorities.

It is easy for westside farmers, who have suffered the turmoil and increased costs resulting from unreliable, inadequate water supplies, to understand the Friant

water users' keen interest in resolving a conflict that has the potential of taking more than a-half-a-million acre-feet from farmers for fishery restoration. Although we have not prepared a detailed analysis of potential impacts, it is safe to conclude that a judicial decision adverse to the Friant water users would devastate the agricultural economy of the eastside of the San Joaquin Valley. For this reason, Westlands and the Authority support the Friant water users' efforts to minimize through the Settlement Agreement potential water supply losses resulting from a San Joaquin River restoration program.

Need to Avoid Third-Party Impacts

The Settlement Agreement among the NRDC, other environmental plaintiffs, the United States, and the Friant water users states that the parties neither intend nor believe that implementation of the Settlement Agreement will have a material adverse effect on any third parties. Given the nature of the claims that the settling parties seek to resolve through the Settlement Agreement any other intent would be unreasonable. However, in their original form, the Settlement Agreement and the proposed legislation attached thereto could be have been interpreted or implemented in ways that would have significant adverse effects on agencies that were neither parties to the litigation nor involved in development of the restoration program. For instance, without close coordination, the restoration program established by the Settlement Agreement could frustrate efforts undertaken by other agencies to restore or enhance the fall run Chinook salmon fishery on tributaries of the San Joaquin River. In addition, if as contemplated by the Settlement Agreement, spring run Chinook salmon are reintroduced into the San Joaquin River, the take prohibition of the Endangered Species Act could dramatically reduce the water supply or hydroelectric generating capability of other agencies. To avoid such unintended consequences, the proposed San Joaquin River Restoration Settlement Act was amended prior to its introduction in the 110th Congress to express an unambiguous congressional intent that third parties not suffer any adverse effects.

I am confident that other witnesses will focus their testimony on potential effects that could have been suffered by their agencies had the San Joaquin River Restoration Settlement Act not been amended. My testimony will focus on potential impacts on south-of-Delta long-term contractors that currently receive water from the Delta Division of the Project, including the San Luis Unit.

Use of Central Valley Project Water for Restoration of the Spring and Fall Run

The Settlement Agreement establishes a "Restoration Goal" of restoring and maintaining in good condition fish in the main stem of the San Joaquin River below Friant Dam to the confluence of the Merced River, including naturally-reproducing and self-sustaining salmon fisheries. Flow criteria established by the Settlement Agreement limit for a period of years the quantity of water that can be released from Friant Dam for the restoration and maintenance of fish below the Dam, but the Settlement Agreement contains no comparable limitation on the use of other Project water or facilities to accomplish the Restoration Goal. Although the Settlement Agreement provides that the Secretary of the Interior shall comply with Endangered Species Act in connection with his operation of the Friant Division of the Project, the Settlement Agreement limits the quantity of water that can be involuntarily taken from Friant Division long-term contractors to achieve the "Restoration Goal" or to implement the San Joaquin River restoration program. There is in the Settlement Agreement no comparable protection for other Project long-term contractors.

For this reason it is conceivable that, absent clear direction from Congress, the Secretary could be required to use water from Project facilities outside of the Friant Division to accomplish the "Restoration Goal" established by the Settlement Agreement. As an example, if it were determined that the flow provided by releases from Friant Dam is insufficient to support out-migrating spring run salmon and the insufficient flow would cause jeopardy for the species, the Endangered Species Act and the San Joaquin River Restoration Settlement Act, when read together, would obligate the Secretary to look to other sources of Project water to provide additional flow. To avoid such a circumstance Section 10 was added to H.R.24. Section 10 provides:

(a) FINDINGS.—Congress finds that the implementation of the Settlement to resolve 18 years of contentious litigation regarding restoration of the San Joaquin River and the reintroduction of the California Central Valley Spring Run salmon is a unique and unprecedented circumstance that requires clear expressions of Congressional intent regarding how the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are utilized to achieve the goals of restoration

of the San Joaquin River and the successful reintroduction of Central Valley Spring Run Chinook salmon.

(b) REINTRODUCTION IN THE SAN JOAQUIN RIVER.—California Central Valley Spring Run Chinook salmon shall be reintroduced in the San Joaquin River below Friant Dam pursuant to section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) and the Settlement, provided that the Secretary of Commerce finds that a permit for the reintroduction of California Central Valley Spring Run Chinook salmon may be issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

(c) FINAL RULE.—

(1) Definition of third party.—For the purpose of this subsection, the term “third party” means persons or entities diverting or receiving water pursuant to applicable State and Federal law and shall include Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project.

(2) Issuance.—The Secretary of Commerce shall issue a final rule pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) governing the incidental take of reintroduced Central Valley Spring Run Chinook salmon prior to the reintroduction.

(3) Required components.—The rule issued under paragraph (2) shall provide that the reintroduction will not impose more than de minimis water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.

In addition, Section 4 of the San Joaquin River Restoration Settlement Act provides:

(f) EFFECT ON CONTRACT WATER ALLOCATIONS.—Except as otherwise provided in this section, the implementation of the Settlement and the reintroduction of California Central Valley Spring Run Chinook salmon pursuant to the Settlement and section 10, shall not result in the involuntary reduction in contract water allocations to Central Valley Project long-term contractors, other than Friant Division long-term contractors

Westlands and the Authority understand these provisions of H.R.24 to provide clear congressional direction that the implementation of the Settlement Agreement shall not adversely affect the water supply or project operations of entities, including Project water service contractors outside of the Friant Division, that were not party to the litigation.

Recirculation or Recapture of Water

Provisions of both the Settlement Agreement and the San Joaquin River Restoration Settlement Act direct the Secretary to develop and implement a plan or program of recirculation, recapture, reuse, exchange or transfer of water released for restoration flows, for the purpose of reducing or avoiding impacts to water deliveries to the Friant long-term contractors. It has been reported in the press that Peter Vorster, Ph.D., a hydrologist for the environmental plaintiffs has calculated that approximately 100,000 acre-feet of water released from Friant Dam pursuant to the Settlement Agreement could be recaptured in the Delta for export back to the Friant Division. If these reports are accurate, Dr. Vorster’s conclusion is unrealistic.

Presently, the capacity of the Jones Pumping Plant and the permitted capacity of the Harvey O. Banks Pumping Plant (“Banks Pumping Plant”) are fully dedicated to meeting contractual commitments to agencies outside of the Friant Division. Indeed, because of existing restrictions imposed at these pumping plants to protect or enhance anadromous and pelagic fish, except in extremely wet hydrologic conditions, neither the Secretary nor the California Department of Water Resources can meet water supply commitments to their respective contractors. If a program to recapture, recirculate, or reuse restoration flows released from Friant Dam were to displace existing uses of the Jones Pumping Plant or the Banks Pumping Plant, the water supplies of other agencies would undoubtedly be reduced and significant conflict would ensue.

In discussions with representatives of the Friant Division water users they stated that it was not their intent to displace existing uses of either the Jones Pumping Plant or the Banks Pumping Plant. Instead, they expect to only use excess capacity at these facilities, when such capacity is available. To avoid any future conflict concerning this issue, Section 4 of the H.R.24 was amended to provide that the Secretary shall:

(4) Implement the terms and conditions of paragraph 16 of the Settlement related to recirculation, recapture, reuse, exchange, or transfer of water released for Restoration Flows or Interim Flows, for the purpose of accomplishing the Water Management Goal of the Settlement, subject to—

- (A) applicable provisions of California water law;
- (B) the Secretary's use of Central Valley Project facilities to make Project water (other than water released from Friant Dam pursuant to the Settlement) and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors; and
- (C) the Secretary's performance of the Agreement of November 24, 1986, between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project as authorized by Congress in section 2(d) of the Act of August 26, 1937 (50 Stat. 850, 100 Stat. 3051), including any agreement to resolve conflicts arising from said Agreement.

Stated succinctly, Westlands and the Authority understand this provision of H.R.24 to mean that the Secretary's duty to implement a program to recapture, recirculate, or reuse water released from Friant Dam pursuant to the Settlement Agreement shall be subordinate to the Secretary's use of the Jones Pumping Plant to make Project water and water acquired through transfers available to existing Project contractors that receive water from the Delta Division of the Project. Moreover, because the Agreement of November 24, 1986, Between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project, authorized by Pub. Law 909-546, provides, inter alia, for the coordinated operations of the Jones the Banks Pumping Plant, the Secretary's duty to implement a recapture, recirculation, or reuse program will be subordinate to his performance of that agreement and any agreement to resolve conflicts arising from the coordinated operations agreement.

Conclusion

Again, I want to express Westlands' and the Authority's support for the Friant water users' effort to minimize the water supply losses that could result from an adverse ruling in the judicial proceedings concerning the Secretary's obligation to release water from Friant Dam to restore and maintain in good condition fish that exist below the Dam. In addition, I want to express Westlands' and the Authority's appreciation of the settling parties' willingness to draft amendments to H.R.24 to ensure that implementation of the Settlement Agreement will not have a material adverse effect on any third parties. I would welcome any questions from members of the Subcommittee.

[Response to questions submitted for the record by Thomas W. Birmingham, General Manager/General Counsel, Westlands Water District, follows:]

March 14, 2007

Emily Knight, Clerk
Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, D.C. 20515

RE: Response to Questions

Dear Ms. Knight:

Thank you for the opportunity to testify regarding the H.R.24, the San Joaquin River Restoration Settlement Act. As I indicated in my testimony, Westlands Water District supports the enactment of H.R.24. It is important legislation that will resolve a long-standing dispute regarding the United States Bureau of Reclamation's obligation to release water from Friant Dam to keep in good condition fish that exist below the Dam and will help provide water supply certainty for an area of California that is vital to the state's agricultural economy. Below is my response to written questions posed by Representative Devin Nunes after the hearing.

Question Submitted by Mr. Nunes:

During your oral testimony before the Subcommittee you testified that the Bureau of Reclamation and San Luis Unit water service contractors are not now ready to pursue legislation to authorize the concepts for resolution of drainage issues in the San Luis Unit. Realistically, how quickly could the parties to litigation regarding drainage issues in the San Luis Unit be prepared to pursue authorizing legislation for a settlement?

Answer:

On February 15, 2007, the United States Bureau of Reclamation briefed Members of Congress and congressional staff on discussions among Reclamation, San Luis

Unit contractors, and other interested agencies concerning alternatives means of addressing the drainage issue in the San Luis Unit of the Central Valley Project. Among the alternatives described by Reclamation were "Concepts for Collaboration Drainage Resolution," which describe a potential settlement of litigation brought against Reclamation and the San Luis Unit contractors by the San Joaquin River Exchange Contractors. A substantial amount of work went into the development of those concepts, but additional work is required to assure other entities, particularly the California Department of Water Resources, that implementation of the concepts will not negatively affect their water supply, project operations, or costs. If the parties and other interested agencies work diligently to address questions raised by the other interested agencies, I believe the parties to the litigation could be prepared to pursue authorizing legislation by the end of May, 2007.

Question Submitted by Mr. Nunes:

If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Answer:

Except in very rare circumstances, there presently exists no excess capacity at the C.W. "Bill" Jones Pumping Plant or the Harvey O. Bank Pumping Plant for the implementation of the recirculation or recapture elements of the Water Management Goal. This is especially true during the periods of the year during which Restoration Flows will be released. Therefore, if the Secretary is going to successfully implement the recirculation and recapture elements of the Settlement Agreement, it may be necessary to construct new pumping and conveyance facilities. H.R.24 currently provides that implementation of the terms of the Settlement related to recirculation, recapture, reuse, exchange, or transfer of water released for Restoration Flows or Interim Flows shall be subject to, inter alia, the Secretary's use of Central Valley Project facilities to make Project water and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors and the Secretary's performance of the Agreement of November 24, 1986, between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project as authorized by Congress in section 2(d) of the Act of August 26, 1937 (50 Stat. 850), 100 Stat. 3051), including any agreement to resolve conflicts arising from said Agreement. So long as these provisions of H.R.24 are maintained in the legislation and the other parties involved in the negotiations concerning the form of H.R. 24 agree to the amendment, Westlands Water District would support an amendment of H.R. 24 that authorizes the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal. If any party involved in those negotiations were to object to the amendment, Westlands Water District could not support it because of its prior commitment not to support an amendment unless all parties agree.

Again, thank you for the opportunity to testify on this important legislation. If I may be of further assistance to the Subcommittee, please contact me at your convenience.

Very truly yours,

Thomas W. Birmingham
General Manager/General Counsel

cc: The Honorable Grace F. Napolitano
The Honorable Devin Nunes
The Honorable George Radanovich
The Honorable Dennis Cardoza
The Honorable Jim Costa

Mr. RADANOVICH. Next is Cannon Michael. Cannon, you are welcome to the Subcommittee. You are recognized for five minutes.

STATEMENT OF CANNON MICHAEL, LANDOWNER IN SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, LOS BANOS, CALIFORNIA

Mr. MICHAEL. Thank you. Chairwoman Napolitano and honorable Members of this Subcommittee, good morning and thank you for allowing me the opportunity to testify here before you today.

I would like to just quickly point out the San Joaquin River Exchange Contractors Authority. Some of the land that we farm is within that authority, but I am not here directly to testify on behalf of the exchange contractors. Steve Chedester, the Executive Director, is here today, and is happy to answer any questions if they are specifically directed at the Water Authority.

As I said, I am a landowner and a farmer. We have a family farm near Los Banos, California. Some of the land that we farm is adjacent to the Reach 4B that is now part of what is now known as Reach 4B.

Having had some opportunity for input into this legislation, I am here today for two purposes. First, to testify in support of the legislation; and second, to share some concerns if the legislation is not implemented in the way that we foresee that it will be.

I am a sixth-generation Californian. My great-great-grandfather came here from Germany in the 1800s, and we have been farming ever since that time. And I have three young boys, and would like to continue the tradition of farming. I don't know whether they will do it, but I have other cousins and other family. And we are just one of many families along the San Joaquin. As the San Joaquin stretches for miles below the Friant Dam, it goes through many different reaches, and each of those reaches will experience different challenges that will come from this restoration. And many other landowners, many communities will be affected, I feel, by this restoration effort.

We don't know necessarily how those, what the impacts will be at this point. I believe firmly that this legislation was crafted in a way, with the collaborative effort of all these different parties, and third-party input was requested and was given. And I think that it is that type of unified effort that is going to help move this forward, and is going to make, if there is any chance for success, it is going to have to be through collaborative effort here.

I would like to say that as one of these third parties, there is a lot more to being a third party than just that name. We are a group of landowners. We are families, we are teachers, parents, communities. We are providers of food and fiber for all of this great nation. We are not just third parties. There is a real group of people out there who have been here for either a long time or a short time, it doesn't matter; but there is a chance that we all could face some real impacts from this situation.

Reach 4B is obviously a place that is very close to me; it is a place that I work in and live in, and every day I travel across it. I know the challenges there. I see studies where there are estimates of about \$400 million to restore it. At this point it is not capable of carrying anywhere near the flows that are called for by the restoration, and I see it as one of the major, major challenges. And there are other challenges up and down the entire river, that it is not going to be an easy—there is no easy way to restore the river.

But I do believe that it can be done, as I said, through a collaborative effort. And I feel that it is imperative that the third parties do have a voice in this settlement process. And I think that we have had input into the legislation, as I have said.

We do have fears of a project such as the San Luis Drain that maybe didn't get completed, that this restoration needs to move forward in the phased approach that is outlined in the legislation. We need to make sure that the funding is there for the project before it goes forward, and that it is taken—the water is not reintroduced before we have these improvements in place to ensure that the impacts are not too great on the landowners there.

And that is mainly my testimony. I just hope that you will all keep in mind that this is a major undertaking, and it is going to be a long process for all of us involved. And just please don't forget there are many of us who are living along this river, and we need your support in order to make sure that we are not adversely affected by this restoration effort.

[The prepared statement of Mr. Michael follows:]

Statement of Cannon Michael, Bowles Farming Company, Inc.

Chairwoman Napolitano and honorable members of this Sub-Committee, good morning and thank you for allowing me the opportunity to testify before you.

My name is Cannon Michael and I assist my uncle in operating our family farm, Bowles Farming Company, Inc., located near Los Banos, California. A good portion of the land we farm is adjacent to the San Joaquin River along the stretch now known as Reach 4b. Having had an opportunity for input into this legislation, I am here today for two purposes, first to testify in support of the legislation and second, to share with you some concerns should the legislation not be implemented in the way we hope it will.

I am a sixth generation Californian and my family has been involved with agriculture since the mid 1800's. My great-great-great grandfather came to America, like so many immigrants have, in search of the promise of better life and freedom. He arrived in California as a young man with little more than a dream of what could be.

The San Joaquin Valley was no land of dreams for those who settled there in the 1800's. It has taken the united efforts of farmers, communities, state and local agencies and the federal government to make the valley the "breadbasket of the world" that it is today. The key component in the transformation of the valley has been a reliable supply of water. With the reliable water supply, and the protection from flooding, the San Joaquin Valley has become the most diverse and productive agricultural center in the world.

I come before you today to testify on behalf of the farmers and citizens that will be affected by the proposed restoration of the San Joaquin River. We are not just "Third Parties" to this Settlement; we are families, community leaders, teachers, coaches, providers of food and fiber for our great nation. The restoration of the San Joaquin River has far reaching impacts for all the residents of the San Joaquin Valley. It is imperative that the Third Parties have a voice in this complicated, lengthy and costly process.

For those of us located in Reach 4b, having a voice in the restoration process is of vital importance. The San Joaquin River holds to a defined channel in its upper reaches, but historically it would spread into many "braided" channels as it reached the flat valley floor in our area. The flows called for in the Settlement are exponentially greater than the existing capacity of Reach 4b and could severely impact the families that live and farm along this stretch. The bill you are considering, H.R. 24, calls for the restoration's impact on Reach 4b to be studied carefully and completely prior to introducing any high level flows.

I understand that restoration of Reach 4B will cost in the range of \$400 million. Cost-benefit is one measure that will have to be considered when studying the feasibility of using this reach of the river. It is important that you understand the challenge of moving fish through this reach. First of all, a sizeable amount of privately held land will have to be acquired in order to create a stream channel of sufficient width and depth to convey flow of at least 4500 cfs. The valley floor here is very flat and the water table is high, so highly engineered levees will be needed to pro-

tect the adjacent lands from surface and sub-surface flooding. The new stream channel will also need to be constructed in a fish friendly manner. Even after that, this stretch of river has little elevation change, the slow moving water will be warm—approaching 80 degrees during the summer, no matter how much is released from Friant Dam. Reach 4b will, at best, be a hostile environment for fish.

The San Joaquin River stretches for miles below the Friant Dam and every reach has its own unique characteristics. The proposed Restoration presents challenges for every mile of the San Joaquin and there are many landowners who will be affected. We all need a reliable water supply and our lands need to be protected from flooding. We are mindful of the experience of water agencies and farmers in our area regarding the federal government's failure to complete the San Luis drain. We do not want to see a repeat of a half-finished project in this restoration program. If our water supplier agencies are adversely affected, we will be too. Therefore, it is essential that adequate funds be appropriated and that the third parties have a place at the table to make sure this program is implemented in a manner that doesn't cause us harm.

In conclusion, this bill was crafted out of a collaborative effort by the parties to the litigation, state and federal agencies and the third party interests. This is the same type of collaborative effort that will be needed if the restoration of the San Joaquin River can ever truly be a success. Any changes to this bill could potentially subvert the positive results that it represents. I respectfully ask that you do not entertain any changes to this legislation.

**Response to questions submitted for the record by Cannon Michael,
Bowles Farming Company, Inc.**

Thursday, March 15, 2007

Submitted by Mr. Nunes (CA) to all witnesses:

If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?

Answer:

So long as the existing provisions contained in the January 4, 2007 version of H.R.24 are maintained in the legislation, the other parties involved in the negotiations concerning the form of H.R. 24 agree to the amendment and there are no adverse impacts to the funding to be made available for the mitigation necessary for the measures already identified in the legislation and settlement, I would support an amendment of H.R. 24 that authorizes the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal. In addition, I have received the approval from the San Joaquin River Exchange Contractors Water Authority and the San Joaquin River Resource Management Coalition who, as you know, were active participants in developing the Legislation to support the proposed amendments on the same terms.

Respectfully,

Cannon Michael
Bowles Farming Company, Inc.

Mr. RADANOVICH. Mr. Michael, thank you for your testimony.

Next is Mr. Ken Robbins, who is the attorney for the Merced Irrigation District. Ken, welcome to the Subcommittee.

**STATEMENT OF KENNETH M. ROBBINS, ATTORNEY,
MERCED IRRIGATION DISTRICT**

Mr. ROBBINS. Thank you, Mr. Radanovich. I am pleased to be here. Madame Chairwoman, I appreciate your invitation to us to speak to you again today.

A lot of things have actually occurred relative to the third-party positions in this matter since we last spoke, not the least of which obviously is the negotiation of mitigations for the issues the third

parties, at least downstream of Friant, raised with respect to this issue.

By understanding that the reintroduction of salmon into the upper San Joaquin River would be done pursuant to an experimental population designation, and by using the tools provided by the Endangered Species Act, particularly sections 10[j] and 4[d], we have assured that the downstream water users and the reservoir flood control water supply operators will not be damaged by the reintroduction and the reopening of this river.

We also want to report that a very strong promise that was made last fall, at the conclusion of our negotiations, whereby a mechanism would be created for the continuing input from third parties, the downstream third parties, to the process would be concluded. And as you have already heard this morning, that memorandum of understanding was negotiated, has been signed, almost in record speed, for purposes of what we are talking about today. And we are very pleased to support the legislation, and that MOU.

We have also been in contact with one of the other parties on the river that were not at the table, the Lower San Joaquin River Levee District. Our discussion with those folks, I believe we have come to the conclusion with them that this legislation covers their issues as well; but nevertheless, they are in need of a memorandum of understanding as well to ensure that their maintenance activities on the levees can be smoothly coordinated with the implementation of this legislation. And the third parties to this have pledged themselves to assisting the levee district with the negotiations of their own MOU in this regard.

I would echo the sentiments from the Department of Water Resources. Nancy Saracino put very succinctly that our support for this is obviously a result of our ability to have the issues relative to the introduction of these threatened species into the river actually mitigated.

Our projects on the Merced, the Tuolumne, the Stanislaus Rivers that will be coming up for relicensing before the Federal Energy Regulatory Commission, this legislation will hold in abeyance any actions relative to those relicensing for spring-run salmon until at least 2025 or 2026, whenever the agreement may be looked at again relative to the flows.

So it puts us on essentially the same footing with the settling parties, in terms of the protection we can expect from the implementing legislation.

So with the mitigation for the reintroduction of this experimental species, and for the relicensing of facilities that provide us with water supply assurances, while at the same time allowing us to support the reintroduction of salmon and the reopening of the river, we are very pleased today to support the legislation.

Thank you very much.

[The prepared statement of Mr. Robbins follows:]

**Statement of Kenneth M. Robbins, General Counsel,
Merced Irrigation District**

Good morning, Chairwoman Napolitano and members of the Subcommittee. My name is Ken Robbins. I am General Counsel for Merced Irrigation District. I am pleased to have the opportunity to testify today regarding H.R. 24, the San Joaquin River Restoration Settlement Act, introduced by Mr. Radanovich and others, that

would implement the settlement agreement reached by the parties to the Friant litigation.

The Merced Irrigation District is part of the San Joaquin Tributaries Association (SJTA), a group of five associated eastside Irrigation Districts with water storage and hydroelectric facilities located on the three principal tributaries to the San Joaquin River.

The SJTA, including the Merced Irrigation District, is supportive of the goals of the settlement. The District is confident the settlement can be implemented in a manner that ensures both the restoration of the San Joaquin River and the mitigation of impacts from such an undertaking on third parties. The District believes the settling parties when they say they do not intend to impose impacts on third parties.

As you may recall, I testified before this Subcommittee last fall. Rather than repeat the background information that was contained in that testimony, I respectfully request that my earlier testimony and that of Mr. Allen Short, General Manager of the Modesto Irrigation District, be incorporated as part of the record of this hearing. Our testimony stressed that the third parties were supportive of the settlement. At that time we offered suggestions and proposed legislative language to ensure that the goal of the settlement is achieved without imposing impacts on third parties. A lot has happened since last September, and I am happy to report to you that we continue to support the efforts of the settling parties and the legislation as introduced.

The legislation before you is the product of months and months of hard work by the parties to the litigation and by the third parties and could not have been successfully negotiated without the efforts of Senator Feinstein, Congressmen Radanovich, Cardoza, and Costa, and their excellent staffs. We are grateful to them for their support of this legislation that is so vital to the San Joaquin Valley.

The settlement package negotiated by the parties to the NRDC v. Rodgers litigation included proposed legislation to implement the settlement. While we felt that the legislation was a good start, it did not, by itself, provide the kind of third party protections needed to make good on the promise by the settling parties that the settlement not impose substantial third party impacts.

Speaking for my client, the Merced Irrigation District, and the SJTA, we feel that H.R. 24 as it now stands provides the protections we need to support the settlement. This legislation is the product of months of negotiations, culminating with a signed pledge by all the parties to support the legislation. Any changes to the legislation, therefore, could easily undo that fragile support.

I want to now focus my discussion on Section 10 of the Act. The third parties offered language to amend the legislation proposed by the settling parties. These amendments were made to protect the Eastside districts, as well as the San Joaquin River Exchange Contractors, other water users on the mainstem San Joaquin River, and the U.S. Bureau of Reclamation and the California Department of Water Resources, from the unintended consequences of introducing a federally-listed threatened species of Chinook salmon into the San Joaquin River. Section 10 was added to allow for the reintroduction of Central Valley Spring Run Chinook Salmon without impacting the third parties and to permit the restoration of the San Joaquin River to move forward in a cooperative manner.

The first thing to note is that Section 10(a) makes a finding that the settlement and the reintroduction of the Central Valley Spring Run Chinook Salmon is a unique and unprecedented circumstance requiring clear Congressional intent on the application of the Endangered Species Act (ESA) to ensure that the goals of the settlement are accomplished. Section 10(b) of the Act goes on to state that the reintroduction shall be reintroduced pursuant to Section 10(j) of the ESA provided that the Secretary of Commerce makes the requisite findings.

Section 10(j) of the ESA authorizes the Secretaries of Commerce or the Interior to release "experimental populations" of threatened or endangered species outside the current range of the species in order to further the conservation of the species. 16 U.S.C. § 1539(j). At the present time, NMFS has not adopted any regulations concerning experimental populations, although it is permitted to do so under the ESA. The U.S. Fish and Wildlife Service (USFWS) has, however, adopted regulations under Section 10(j).

"Experimental population" means a designated population, including subsequent off-spring, which can be introduced into an area where it is "wholly separate geographically from nonexperimental populations of the same species." 16 U.S.C. § 1539(j)(1); 50 C.F.R. § 17.80(a). When a population is designated "experimental," it is treated as if it were listed as a threatened species, rather than an endangered one. 16 U.S.C. § 1539(j)(2)(C); 50 C.F.R. § 17.82. A "nonessential experimental population" means an experimental population whose loss would not appreciably reduce

the likelihood of the species' survival in the wild. 50 C.F.R. sec. 17.80(b). If an experimental population is deemed nonessential, no critical habitat designation is made for the population. 16 U.S.C. § 1539(j)(2)(C); 50 C.F.R. § 17.81(f). In addition, for purposes of Section 7 consultations, nonessential experimental populations are treated as species proposed to be listed under Section 4 of the ESA, rather than threatened or endangered. 16 U.S.C. § 1539(j)(2)(C)(i).

The SJTA believes that in order to protect third party interests from unintended impacts of the settlement, it is both reasonable and essential for the Secretary of Commerce to issue a final rule pursuant to section 4(d) of the ESA that will govern the incidental take of the Central Valley Spring Run Chinook Salmon prior to its reintroduction in the San Joaquin River. Included in the final 4(d) rule should be a provision to ensure that third parties not suffer water supply impacts as an indirect effect of the San Joaquin River restoration and that current lawful operations in the San Joaquin River watershed—including tributary water supply and hydroelectric operations on which the SJTA districts are critically dependent—would not be subject to “take” under the ESA. H.R. 24 contains a provision that provides that the reintroduction of the Central Valley Spring Run Chinook Salmon not impose more a than de minimis water supply reductions, additional storage releases, or bypass flows on third parties. We support this language as it is currently written.

With regard to the “wholly separate” criterion, the reintroduction of Central Valley Spring Run Chinook Salmon to the San Joaquin River should qualify as no other populations of Central Valley Spring Run Chinook Salmon exist on the San Joaquin River or its tributaries. Indeed, to reintroduce them individuals or eggs of Central Valley Spring Run Chinook Salmon on the Sacramento River will have to be transported to the San Joaquin River.

With respect to the required finding that the experimental population's loss would not appreciably reduce the species' likelihood of survival, it would be difficult to understand how the Secretary could find that the population to be reintroduced is “essential to the continued existence of the species” and still remove it from a much more friendly habitat—particularly in light of its threatened status rather than endangered. One would reasonably conclude that the fish would not be taken from their original habitat for such an experiment if they were in fact “essential.”

This protects all San Joaquin River and tributary water operations in three ways. First, if the experimental reintroduction of Central Valley Spring Run Chinook Salmon cannot be sustained based upon the actions of the settling parties, the Eastside Districts will not be required to release additional water, change operations, or commit resources to make up the shortfall. Second, if the experimental reintroduction is successful, such success will demonstrate that the current, lawful operations of the five Eastside districts have no detrimental effect on the reintroduced Central Valley Spring Run Chinook Salmon. Third, the designation of the reintroduced Central Valley Spring Run Chinook Salmon as a nonessential experimental population protects the water users while the experiment is in effect and allows an opportunity for the third parties, the State of California, the settling parties and the federal government to develop a longer term Habitat Conservation Plan.

H.R. 24 also protects the Merced, Turlock and Modesto Irrigation Districts from having to mitigate impacts to the experimental population of Central Valley Spring Run Chinook Salmon prior to 2026 when their hydroelectric projects are relicensed by Federal Energy Regulatory Commission (FERC) in 2014 and 2016. The Merced Irrigation District and the other eastside districts need the same level of protection as is afforded to the U.S. Bureau of Reclamation under the terms of the settlement. Under the settlement there is no re-opener for twenty years, until 2026, for the release of additional water from Friant Dam. The Third Parties want this same protection given to them for their FERC relicensing. Merced Irrigation District's current FERC license expires in 2014, while Modesto Irrigation District and Turlock Irrigation District will seek to relicense their Don Pedro Project in 2016. The National Marine Fisheries Service has mandatory conditioning authority under section 18 of the Federal Power Act and section 7 of the ESA to condition these licenses with terms and conditions related to the reintroduced, experimental population of Central Valley Spring Run Chinook Salmon. The Districts are agreeable to have a reopener clause in their new FERC licenses to specifically address the population's status at that time, but not earlier.

In recognition of this unique circumstance, H.R. 24 provides that the final 4(d) rule specify that the Secretary of Commerce exercise its authority under Section 18 of the Federal Power Act by reserving its right to file prescriptions until after the settlement terminates or December 31, 2025. This protects the district from potential unreasonable mandatory conditions placed in their licenses to protect a reintroduced, experimental population. We think the time to address this issue is after termination of the settlement.

Following the agreement on the legislation which is now H.R. 24, the Stipulation of Settlement was approved by Judge Karlton on October 23, 2006. The SJTA filed an amicus curiae brief in that proceeding supporting the proposed settlement and also identifying for the judge the potential third party impacts from the settlement as proposed. I, and others, expressed these same concerns to you and the members of the Subcommittee at the previously held hearing on September 21, 2006. Those concerns have been largely alleviated by H.R. 24.

The third parties, including the SJTA, plan to be active participants in the restoration efforts on the San Joaquin River. The final major activity involving the third parties was the development of a Memorandum of Understanding (MOU) with the United States Bureau of Reclamation. The settlement and the draft legislation did not provide a direct vehicle for third party participation. To that end we have approved a MOU that will allow the third parties to provide meaningful input into the restoration activities and to coordinate our ongoing operations on the tributaries and mainstem with those of the Restoration Administrator and the other restoration participants.

The MOU is necessary because the five eastside irrigation districts of the SJTA have expended substantial amounts of water and money to restore the Fall Run Chinook Salmon fishery on the Merced, Tuolumne and Stanislaus Rivers. These efforts include active participation in, and funding for the San Joaquin River Agreement, the Vernalis Adaptive Management Plan (VAMP), Federal Energy Regulatory Commission (FERC) proceedings, on-going district funded studies and monitoring and restoration activities, and the Merced River Fish Hatchery. These efforts were covered in my September 21, 2006, testimony.

This concludes my testimony. Madam Chairwoman, thank you for the invitation to testify before this Subcommittee today. I will be happy to answer any questions members of the Subcommittee may have.

[Response to questions submitted for the record by Kenneth M. Robbins, General Counsel, Merced Irrigation District, follows:]

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March 15, 2007

Ms. Emily Knight, Clerk
Subcommittee on Water and Power
1522 Longworth House Office Building
Washington, D.C. 20515

RE: Response to Questions

Dear Ms. Knight:

Thank you for the opportunity to testify regarding the H.R.24, the San Joaquin River Restoration Settlement Act. As I indicated in my testimony the Merced Irrigation District and the San Joaquin Tributary Association supports the enactment of H.R. 24. This legislation is critical to resolving long standing litigation regarding the operation of the Friant Division of the Central Valley project. This legislation will also resolve questions of certainty regarding water supply in the region.

Below is my response to the question posed by Representative Devin Nunes.

Question: If all of the other parties involved in the negotiations concerning the form H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required

to implement the recirculation, recapture, and reuse elements of the Water Management Goals of the Settlement?

Answer: Answering on behalf of myself appearing as a witness for the Merced Irrigation District and for the San Joaquin Tributary Association and on behalf of Mr. Cannon Michael, who appeared as a witness on behalf of The San Joaquin River Resource Management Coalition, a group of landowners potentially impacted by river restoration efforts, and assuming the premise of the question is true, that is to say, that all other parties concur, our agencies and landowners would agree to such an amendment as well. Reviewing the circumstances upon which such facilities would be constructed and operated is of course critically important to ensure that the spirit of the legislation continues by providing assurance that such new facilities would not impact the water rights or supplies of others is critical. We would therefore suggest that extensive studies be included within the context of any construction authorization prior to implementation.

Thank you again for the opportunity to testify.

**Very truly yours,
MASON, ROBBINS, BROWNING & GODWIN
KENNETH M. ROBBINS**

cc: The Honorable Devin Nunes
The Honorable George Radanovich
The Honorable Dennis Cardoza
The Honorable Jim Costa

Mr. RADANOVICH. Thank you, Mr. Robbins, for your testimony. We appreciate that.

And we would like to welcome Mr. Allen Ishida, Supervisor from Tulare County. Mr. Ishida, welcome to the Subcommittee. You may begin.

**STATEMENT OF ALLEN R. ISHIDA, SUPERVISOR,
TULARE COUNTY GOVERNMENT, VISALIA, CALIFORNIA**

Mr. ISHIDA. Well, thank you, and thank you for the opportunity to be here.

I am a third-generation citrus farmer who takes my water from the Friant. I am also the Chair of the Board of Supervisors.

We appreciate this opportunity to appear before you to provide my perspective on the San Joaquin River Settlement. Madame Chair, I request that I may place the following documents into the record: resolutions supporting mitigation with a loss of surface water from Tulare County, from Kern County, and all eight of our incorporated cities. Letters supporting mitigation from the Community Water Center, the Plainview Mutual Water Company, and Self-Help Enterprises. An article from February 11 from the Fresno Bee detailing the water quality issues we have on the east side, and studies from the Northwest Economic Associates and the University of California about the impact of the settlement on our economy.

Let me begin by stating that we do not oppose the efforts of the settling parties to resolve the San Joaquin River dispute. We believe that the restoration of this river is a noble goal.

When the Friant Dam was put in, the main reason for building this dam was to secure additional water supplies to address the water depletion that happened during the 1920s and 1930s in the Central Valley. After the dam, our water supplies were met, and we actually increased our water table. So it was a very plus-plus benefit for the Central Valley.

Today I am here to give my perspective as an elected official. It is a little different than what we have heard earlier, because most of the third parties represented here today are directly involved either as irrigation districts, or the state government, or the Federal government. I am here to represent the third parties, the 400,000 residents we have in Tulare County who are not direct users of this water.

We are impacted by any loss of additional surface water. As we reduce, as farmers, the need to pump more water from the underground, it creates an overdraft situation which diminishes the underground water quality.

To give you a little demographic of Tulare County, over 50 percent of our population is Latino. In a 2000 census, over one third of our population was between the age of zero and 19. We are a very young county, and our projected population growth of over 50 percent in the next 20 years mainly will come from within existing families that we have.

The future of Tulare County will depend upon the quality and quantity of water that is available to our residents. Providing water quality is currently a major challenge.

For example, the City of Lindsay received 60 percent of its water from the Friant Kern Canal, and to supplement that water, their closest water well is three miles outside the city limits. My hometown community of Strathmore is 100 percent dependent upon Friant water. Several of our unincorporated communities' water supplies do not meet California State water quality standards. We are currently looking for new wells.

The result of the proposed water release from this settlement will have a significant native impact on our communities. The resulting overdraft of our underground water table will further decrease our water quality.

In closing, I must emphasize all changes to surface water deliveries from Friant Dam, absent a mitigation, will undermine the very foundations of the economic success and prosperity in the Central Valley. A promise to mitigate the loss of surface water for the settlement is not adequate for my constituents. We are asking for concrete mitigation language and the implementation of legislation.

Thank you for this opportunity to express our concerns.

[The prepared statement of Mr. Ishida follows:]

**Statement of Allen Ishida, Board Chairman,
Board of Supervisors, County of Tulare**

My name is Allen Ishida, a third generation citrus grower in the Lindsay-Strathmore area and the Chairman of the Tulare County Board of Supervisors. I have spent over 20 years in the commercial real estate business selling farm and subdivision properties in California before returning to our family farm. I appreciate the opportunity to appear before you to provide my perspective of the San Joaquin River Settlement.

Let me begin by saying that this settlement threatens to turn back the clock on an economic and environmental decision that was deliberately made by your predecessors to address regional water reliability. Therefore, the legislation being debated today represents a significant departure from the seventy years of public policy that created the most productive agricultural region in the world. Let me also say that I do not oppose the efforts of the settling parties to resolve the San Joaquin River dispute. I believe the restoration of the river is a noble goal.

The original lands my family began farming were once dry land barley fields. My father, uncles and grandfather developed this land into citrus because of the

availability of the new surface water from the Friant Dam and the micro climate that is ideal for citrus. The citrus industry in Tulare County is now a 500 million dollar business. Our original properties are still solely reliant on the surface water provided by Friant because the underground water is not available in sufficient quantities. My family and I felt confident in the federal government's implied promise to continue supplying water. We therefore have invested our future in farming. During the 1970's and 80's, with my father and brother, we purchased additional lands that had available underground water. Whatever shortfall in water delivery from the San Joaquin River Settlement, we will hopefully be able to make up the difference by pumping from the underground aquifer. Administration Building 2800 W. Burrel, Visalia, CA 93291 (559) 733-6271 FAX: (559) 733-6898

The previous statement is from my perspective as a farmer. My perspective as an elected official in one of the fastest growing regions in California and my experience in the commercial real estate profession is very different. I am very aware of the negative impact of pumping water from the under ground aquifer will have on the future development and quality of life in my county and neighboring counties. This settlement has a far greater impact on more than 400,000 Tulare County residents who were not direct participants to this settlement. Tulare County's population is projected to increase to over 600,000 in the next 20 years. The future of our county will depend on the quality and quantity of water available to our residents.

One of the main reasons for building the Friant Dam was to secure an additional water supply to address ground water depletion due to pumping water for agricultural and domestic uses, which resulted in the 1920' and 1930's. The new surface water provided by Friant reduced the depletion of our underground water. However, this situation is not static, and the demand for water to meet the growing demands of urban, agricultural and environmental uses in the San Joaquin Valley now means that the Valley currently experiences a water supply deficit of 1.1 million acre-feet in an average year, and 2.6 million acre feet in a drought year. This deficit will grow if the Settlement is adopted as proposed with out any mitigation plan for water supply losses. These numbers show that we need additional surface water, not less.

In fact, I call your attention to two studies from the Northwest Economic Associates and the University of California that came to the conclusion that ground water levels would nearly double in depth and pumping costs would significantly increase as a result of the water releases required in the Settlement. According to the studies, there would be serious economic impacts to the region due to the loss of jobs and the reduction of agricultural production.

"MADAME CHAIRWOMAN, I REQUEST THAT THESE TWO STUDIES BE PLACED IN THE HEARING RECORD"

Providing water in the quantity and quality to our communities is one of the major challenges we are currently facing in Tulare County. We have significant water quality issues with saline and nitrate levels above California State water quality standards. For example, the City of Lindsay (population 11,000), which receives approximately 60% of its water from Friant, had to locate its supplement water well 3 miles outside of the city limits because of water quality. We currently are looking for new well sites for several of our unincorporated communities whose water quality does not meet state standards. The result of these proposed water releases from the Settlement will have a significant negative environmental impact on our communities. The potential increase overdraft of our underground water table will further decrease our water quality.

"MADAME CHAIRWOMAN, I REQUEST THAT I MAY ADD 8 TULARE COUNTY CITY RESOLUTIONS, TULARE AND KERN COUNTY BOARD OF SUPERVISORS RESOLUTIONS, 1 NEWSPAPER ARTICLE AND 3 LETTERS FROM CONCERNED CITIZEN GROUPS TO BE PLACED IN THE RECORD."

In closing, I must emphasize that any changes to water deliveries from the Friant Dam, absent mitigation, will undermine the very foundation of economic success and prosperity in the Central Valley. A promise to mitigate the loss of surface water from the San Joaquin River Settlement is not adequate for my constituents. We are asking for concrete mitigation language in the implementation legislation.

Thank you for this opportunity to express our concerns.

[NOTE: Additional information submitted for the record by Mr. Ishida has been retained in the Committee's official files.]

**Response to questions submitted for the record by
Allen Ishida, Supervisor, County of Tulare**

Questions from Congressman Radanovich:

1. "In your testimony to the Water & Power Subcommittee on the House Resources Committee on March 1, 2007, you asked that two studies be introduced into the Record. The first such study was prepared by Northwest Economics Associates and the second by the University of California. Your testimony stated that the studies concluded that ground water levels would nearly double in depth and pumping costs would significantly increase as a result of water releases required by the Settlement. Please answer the following:"

- A. "What was the date each of the studies was prepared?"

I submitted two studies for the record. The first study by the University of California titled "Impacts of Water Reallocations on The Eastern San Joaquin Valley" was published on December 31, 1996. The second study, commissioned by Friant Water Users Authority, by the Northwest Economic Associates titled "Analysis of the Impacts of Surface Water Reductions on the Eastern San Joaquin Valley of California" was published on August 26, 1997.

- B. "Were the water releases contemplated by the studies you introduced into the record the same as those required by the Settlement that is the subject of H.R. 24? If not, what assumptions regarding water releases did the study assume?"

Yes, the parties to the Settlement have stated that "170,000 acre feet, plus 10% buffer flows," will be released to restore the river. In the past, Friant has stated that sixty percent of the time they operate in a Dry and Normal-Dry year. If you take the average releases between these two years identified in the Settlement, plus the buffer flows, expected releases will reach 237,600 acre feet (see below). Both the University of California and Northwest Economics Associates (NEA) studies analyzed the impacts of releasing 200,000 and 500,000 acre feet. While the studies were conducted ten years ago, the analysis was based on releases contemplated in the Settlement (see below).

On the issue of groundwater, I would like to quote from the NEA study:

... groundwater would be used to replace a significant portion of the reduced CVP supplies. Over time, though, the increased groundwater pumping would draw down an already over drafted groundwater basin—The higher costs of pumping from increasingly greater depths would cause more land to be removed from production. Ultimately, water quality problems associated with lower water tables and generally depleted aquifers would result in the idling of even more acreage.⁴⁵

Since 1996, the population in the San Joaquin Valley has grown and the reliance on surface water has increased. Therefore, it is reasonable to assume that if the studies were repeated in 2007, the economic impacts would simply increase.

Summary of the Two Studies

NEA Study on Supply Reductions (1997)				UC Study on Supply Reductions (1996)			
200,000 acre feet		500,000 acre feet		200,000 acre feet		500,000 acre feet	
Fallowed Land	172,855 ac.	Fallowed Land	371,000 ac.	Job Losses	17,925	Job Losses	19,430
Job Losses	10,420	Job Losses	17,130	Income Loss	\$687 mil/year	Income Loss	\$733 mil/year
Income Loss	\$363 mil/year	Income Loss	\$584 mil/year				

Settlement Releases

Releases	Critical-Low	Critical-Dry	Dry	Normal-Dry	Normal-Wet	Wet
Restoration Releases	0	71,000	184,000	248,000	356,000	556,000
Riparian Releases	117,000	117,000	117,000	117,000	117,000	117,000
Total	117,000	188,000	301,000	365,000	473,000	673,000

- C. "Are you aware if any subsequent studies have been prepared based upon dated information? If so, when?"

I am unaware of any subsequent studies on the impacts of water reductions to the San Joaquin Valley. However, numerous studies were conducted in the early 1990s on the impacts of the 1986-1992 drought—four of them were completed by RAND, the California Institute for Rural Studies, Inc., and the Northwest Economic Associates. These studies outlined the impacts to groundwater and the economic toll

it took on San Joaquin Valley community. I believe they are relevant because the Settlement would be a self imposed partial drought.

I have been informed that Congressman Nunes has asked Congressional Research Service (CRS) to conduct a complete review of the Settlement and its impacts on the San Joaquin Valley. Considering a feasibility study will not be completed on the Settlement, I am hoping that the CRS report will shed some light on the impacts to our community.

D. "If you are aware of more recent studies, can you explain what different assumptions were utilized by the more recent studies?"

See previous answer.

E. "If you are aware of more recent studies, can you explain what different conclusions were reached by the more recent studies?"

See previous answer.

2. "Has the County of Tulare prepared any independent analysis of the effects of the water releases required by the Settlement on the groundwater conditions within the County? If so, what did the studies conclude?"

The County has not prepared an independent analysis of the water releases proposed in the Settlement. The County was not part of the negotiations nor were they invited to participate in third party negotiations in Washington D.C. Therefore, the County was unaware of the releases called for in the Settlement until September 13, 2006. Considering the Settlement proposed the expenditure of millions of taxpayer dollars, the County believed that an independent feasibility study would be completed and more current data would be gathered on the impacts to cities and counties in the Friant service area. The County has since been made aware that a feasibility study will not be completed and the onus of doing such an independent study would be left to those impacted. The County already struggles to meet existing fiduciary responsibilities and cannot afford the outlays required to do an independent study. However, if we were to receive federal assistance to conduct a study of the impacts of this federally settled legal dispute, we would proceed with an independent study. Absent federal support, we are forced to rely on previously prepared studies funded by Friant and studies on the impacts of past droughts.

3. "Has the County of Tulare prepared any independent analysis of the economic impacts of the water releases required by the Settlement on the County? If so, what did the studies conclude?"

The County has not prepared an independent analysis of the economic impacts of the water releases required by the Settlement.

4. "Has the County of Tulare considered any specific programs or projects that would mitigate or avoid impacts on groundwater conditions and/or potential economic impacts? If so, what are the programs and projects?"

Considering the County of Tulare was only informed of the details of the Settlement late last year, the County has not had an opportunity to consider any programs or projects. If a feasibility study is done on the restoration of the river, it would provide cities and counties the opportunity to weigh in on a public process and the time to consider any mitigating factors.

Nevertheless, the County has requested that H.R. 24 be amended. Again, Tulare County did not participate in the negotiations that lead to the current form and content of H.R. 24, and we are concerned that significant water supply shortages could result from the release of restoration flows from Friant Dam, with concomitant impacts on our groundwater basin and local communities that support irrigated agricultural production in Tulare County.

For these reasons, the County of Tulare requested an amendment to H.R. 24 to authorize the Secretary of the Interior to construct facilities required to implement the recirculation, recapture and reuse elements of the Water Management Goal established by the Settlement Agreement. Specifically, we proposed adding a new Section 4(a)(5), which would provide:

"(5) STUDIES AND FACILITIES.-

(A) IN GENERAL. -The Secretary is authorized and directed to conduct feasibility studies for and to construct new pumping and conveyance facilities on the mainstem of the San Joaquin River above the town of Vernalis required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement.

(B) DEADLINE.-The study and construction of facilities under subparagraph (A) shall be completed prior to restoration of any flows other than Interim Flows."

The County is aware that Congress is generally reluctant to authorize under federal Reclamation law the construction of facilities prior to the preparation and a submission of a feasibility report that describes the estimated cost and potential benefit of the proposed facilities. Deviation from this principle is warranted in this

circumstance because H.R. 24 would authorize the Secretary to implement a massive fishery restoration program at unknown costs and without any analysis of the potential for restoring a naturally reproducing salmon fishery, which is the Settlement Agreement's Restoration Goal. Moreover, the Settlement Agreement provides that the Restoration Goal and the Water Management Goal shall have equal priority. In as much as H.R. 24 authorizes actions necessary to achieve the Restoration Goal, it only seems reasonable that the Act would also authorize the Secretary to take the actions necessary to achieve the Water Management Goal.

If this amendment were made to H.R. 24, Tulare County could be confident that the Secretary would have the means needed to avoid devastating water supply impacts, and Tulare County would be in a position to support H.R. 24.

5. "Your written testimony makes reference to a new well drilled by the City of Lindsay nearly 3 miles outside of the City limits. You stated that the distance outside the City limits was related to salinity and nitrate water quality issues. Are you aware of what caused the salinity and nitrate problems necessitating the drilling of a well so far outside the City limits?"

The City of Lindsay had to drill 3 miles outside of the City limits to find water that met water quality standards. Lindsay and other Eastside communities along the foothill have a high nitrate content in the under ground water supply. It appears that the high nitrate content may be naturally occurring. The State of California recently did a study involving domestic wells on the East side of Tulare County and found that many of the wells had high concentrations of nitrates even though they were located in areas without active farming. In a couple of years we may be able through technology to trace the origin of the nitrates. I believe that an environmental impact report on the loss of surface water would clear up a lot of the questions and concerns raised by this settlement.

Question from Congressman Nunes:

1. "If all of the other parties involved in the negotiations concerning the form of H.R. 24 were to agree, would your organization support an amendment of H.R. 24 authorizing the construction of pumping and conveyance facilities required to implement the recirculation, recapture, and reuse elements of the Water Management Goal of the Settlement?"

While we were not included in the negotiations or are we currently considered a third party, we would support any project that would bring back the lost water.

Mr. RADANOVICH. Thank you, Mr. Ishida, we appreciate your testimony.

Next I think we will open it up to questions.

Mrs. NAPOLITANO. Yes, but before we do that, I would like to receive into the record, Mr. Ranking Member, two pieces of testimony that have reached our attention. One is from the San Joaquin Water Authority, the Exchange Contractors, dated March 1, in support of the bill. And the second one a letter from Metropolitan Water District in Southern California dated February 27, the same support for H.R. 24. And without objection, I will enter them into the record.

Mr. RADANOVICH. Without objection, so ordered.

[NOTE: The letter submitted for the record by Jeffrey Kightlinger, General Manager, and Timothy F. Brick, Chairman, Board of Directors, Metropolitan Water District of Southern California, Los Angeles, California, and the letter submitted for the record by the San Joaquin River Exchange Contractors Water Authority, Los Banos, California, have been retained in the Committee's official files.]

Mr. RADANOVICH. If I may, I don't have any specific questions for this panel. I did want to express my appreciation to the third-party negotiators in this thing.

When this started quite a long time ago, the negotiations had to be only between the Friant Water District and the NRDC. But

those clearly were not the only agencies and water entities affected by what might result in some kind of agreement. And it ended up being very frustrating I think for a lot of people to have to sit on the sidelines for an awful long time while the government and NRDC and Friant hammered this thing out. And then it was only after a long time, and after that occurred, that the parties were able to negotiate with the third parties.

A lot of patience was displayed by you, Tom Birmingham, you, Ken Robbins, Steve Chedester in the back there, and a lot of other folks. And I just want to express my appreciation to every one of you for hanging on until the negotiations got done, and then for being willing participants at the time when we were able to actually bring third parties in and negotiate this. I think you guys did a great job, and we appreciate everything you did for it, and appreciated your patience in it, as well.

And that is really as much as I have to say right now. Grace?

Mrs. NAPOLITANO. Thank you. And our thanks to you, too, because of your effort on bringing it to the table and getting with Senator Feinstein, and being able to coordinate those parties that began to see the value of reaching an accord, rather than fighting each other in court.

And I take my hat off to you for that valiant effort. There are maybe some unintended consequences in the future; we don't know. We look forward to being able to find a solution for them as we move along, where there is future legislation that will take care of whatever little thing got left behind. Nothing is perfect, and we don't expect it to be, because things do change.

But in the meantime, the fact that all the parties were able to move in the same direction, giving way to some of the things that you felt were important to reach the accord is very admirable. And I think it will stand in the annals of this House, at least this committee, of how accords can be reached by bringing all the parties to the table, and sitting at the table, and maybe locking the door until you do reach an accord.

And with that, I would like to start off with a question to Mr. Ishida. In your testimony you referred to the rapid population growth in your area and your concerns about the growth, along with the water loss from the settlement, which raises concern about the water supplies. Other communities in the West have had to deal with this explosive population growth and been able to stabilize their water demands. And I can tell you that Southern California is a perfect example.

This happened also in the Tucson area of Arizona, and the MET in Los Angeles area—I have worked with them for many years—have managed to be able to have addressed the growth without harm.

Is it possible that those experiences of those communities in implementing water conservation can be applied to Tulare County?

Mr. ISHIDA. Part of the problem is one third of our residents do not live in incorporated cities; they live in hamlets. There must be about 17 hamlets in Tulare County. These housing tracts vary from 50 people to 300, or excuse me, 50 homes to 300 homes. They do not have the funds available to them to service their water quality issues without outside help.

Major cities like Los Angeles, even Vacaville, have resources available to help them with their water quality. These small communities do not. They were founded by the Oklahoma migrants that moved into California in the forties, and now they are populated by Hispanic populations to the extent they are probably 80 percent or more Hispanic.

Mrs. NAPOLITANO. Is the county and the state then able to step in and help those communities to be able to have access?

Mr. ISHIDA. We do not have the funds within our general fund to help those communities to a great extent.

A new domestic water well for one of these local water providers will cost about \$400,000 to drill. So if you divide that among the users, it gets pretty significant cost. In fact, they have the highest water rates in the county.

Mrs. NAPOLITANO. Thank you. Mr. Birmingham, how do you respond to the suggestion that this legislation should be linked to implementation of a drainage solution for the west side of the valley?

Mr. BIRMINGHAM. I am not aware that anyone has actually made that suggestion. I have read a statement from Mr. Nunes that discussed the potential, but I have not been made aware that anyone has specifically proposed linking this legislation to a potential settlement of issues related to drainage.

I will make some observations, however. But I do think that there are some, there is some connection between resolution of the drainage issue and this settlement, the settlement described in H.R. 24. And those are that implementation of the concepts that were described to Congress several weeks ago by Reclamation would result in the elimination of agricultural drainage discharges into the San Joaquin River, which would improve water quality, and would facilitate restoration of the river.

These are clearly two of the largest resource issues in the San Joaquin Valley. There is the potential that implementation of the concepts that were described by Reclamation would result in money that is currently in Reclamation's budget and being spent on drainage being made available to implementation of the settlement agreement.

As an example, the 2008, the budget request submitted by the President has in it approximately \$4.3 million that would be spent on implementation of drainage within the San Luis Unit, primarily the implementation of the West Side Regional Drainage program. If the concepts that we were talking about a few weeks ago with Congress were implemented, that \$4.3 million could be made available for the implementation of this program, and help with the pay-as-you-go rules that are being implemented by the House.

Now, having said all of that, I think that it is critically important that this legislation, H.R. 24, move ahead quickly, for reasons that other witnesses have described. And I am among the people who signed the blood oath, that we would not propose or support any amendment unless it were supported by all of the other participants in those discussions. And so we would not propose linking the two issues.

One other observation I would like to make, Madame Chairman, if I may, is that—

Mrs. NAPOLITANO. Chairwoman, if you please.

Mr. BIRMINGHAM. I beg your pardon, Madame Chairwoman.

Mrs. NAPOLITANO. No problem.

Mr. BIRMINGHAM. The opportunity to derive benefits from the resolution of the drainage issue won't evaporate if the two issues move ahead independently. If H.R. 24 is enacted, and ultimately there is a resolution of the drainage issues, the potential benefits that I have described in the linkages certainly would still exist.

Mrs. NAPOLITANO. Thank you. And I will take the priority of the Chair for two more questions, so I don't have to go to a second round, and let you nice folks go home.

What protections, Mr. Robbins, and consideration would the third parties receive if this settlement were not enacted and the litigation were settled in Federal Court? What would the effects be on the third parties in that scenario?

Mr. BIRMINGHAM. Obviously, that is a difficult question to answer because we don't really know what scenario the Judge would have.

Mrs. NAPOLITANO. Would you pull it closer, please?

Mr. BIRMINGHAM. One can easily speculate that the reintroduction of endangered species into the Upper San Joaquin River would have resulted in the straying of those fish into other streams and into other projects. When those projects were in need of change of relicensing, or when take began to happen, you could easily suggest that water supply losses, reliability losses, power generation losses, perhaps even flood control protection, could be impacted under those circumstances.

Now, there are mitigations available for those items. And the mitigations that are proposed in this bill could be separately enacted, but we are most grateful that the settlement is moving forward with these mitigations. We are very pleased to see that all of those potential issues go away, with respect to the adoption of this bill.

Mrs. NAPOLITANO. Thank you. You feel, then, they are confident that the settlement and the legislation will provide sufficient safeguards.

Mr. BIRMINGHAM. Yes. When enacted, 10[j] and 4[d] along with the Title 18 rules relative to FERC, will provide adequate safeguards for downstream project operators, to ensure that the reopening of the river and the reintroduction of spring-run salmon will not impact those projects. At least until 2026, when all the other projects have the potential for being looked at again under the settlement.

Mrs. NAPOLITANO. Do you have any idea of any unforeseen impacts? If they become apparent, what recourse would you have?

Mr. BIRMINGHAM. Such as endangered species issues? Well, in the event that we begin to see a success of this experiment, in that the spring run flourish, my suggestion is that we might not have a lot of the impacts that we are fearful of anyway.

In the event the experiment does not work, and some other form of salmon becomes the fishery of concern, my suggestion is that the experiment will not have worked as suggested, and that those impacts will not be hitting us on the San Joaquin, either.

So I think that this is a win-win, frankly. The opening of the river is a noble cause, and reintroducing salmon into the upper

river is a noble effort. And we will hope that the administrators of the program will be successful, and that the mitigations that we have set out here will cover us.

If they haven't, we obviously will be back to talk to you about what more we might be able to do in terms of mitigation.

Mrs. NAPOLITANO. We hope it will not be necessary.

Mr. BIRMINGHAM. Absolutely.

Mrs. NAPOLITANO. Mr. Radanovich.

Mr. RADANOVICH. Thank you, Madame Chair. Mr. Costa?

Mr. COSTA. Thank you. I have a question that I want to ask Mr. Birmingham and Mr. Robbins, and I will ask it and let you think about it. And then I want to make a comment.

Actually, it was a question that I was going to ask the previous panel. So think about what you believe being involved in all the details last fall of the negotiations, what are the key aspects for successful implementation, given your long history and background.

But first, I wanted to acknowledge, as you did, Madame Chairperson, Congressman Radanovich's hard work. I know this is a difficult time for him and his family, and our thoughts and prayers are with you, as well as Senator Feinstein and all the parties that have worked on this, even when we have at some point agreed to disagree on third-party impacts.

And this is the statement I want to make, and I want to put a fine point on it, to Mr. Ishida, who spoke very well on behalf of the citizens of Tulare County, as well as the farmer from Los Banos, Mr. Cannon Michael.

I think the context has to be looked at in the bigger picture. It is one of the reasons we are doing this regional water plan. We have over 4 million people living in the Valley. It is estimated by the year 2030, between Bakersfield and Yuba, we are going to have another three to five million more people in the Valley, and 70 percent of them are going to be between Sacramento and Bakersfield.

Now, this is the second time the Valley has been asked to give at the office, so to speak. In 1994, over 1.2 million acre-feet was reallocated for purposes of water quality and restoration of the environment. And that has had a lot of pluses. As a result of this agreement being enacted with the enabling legislation, over 160,000 acre-feet will go from the constituents primarily of Congressman Nunes, but some in my area and Congressman Radanovich's area, again to restore the river, to improve the environment, to improve water quality. All noble goals.

But it is important that our colleagues in California and throughout the Congress understand that we have our needs, and we have not been diligent, or we have not been unfocused on the necessity of water conservation.

In the last two decades, our water agencies in the agricultural areas, as well as our cities, have made the same sort of efforts that we have had in Southern California. You know why? Because I have been involved with them, and I have hammered them. Not just because of that, but it is sound water management policy.

When the cost of water went from \$10 an acre-foot to \$50 and to \$100 an acre-foot and to \$120 an acre-foot, guess what? People used that resource differently.

And so conservation in terms of alternative irrigation technologies, in terms of pipelining, in terms of land piping, all of those things, drip irrigation, have been dramatically implemented over the last 15 years. As a matter of fact, even George, our colleague, Congressman Miller, who has been a critic oftentimes of Westlands Water District, has acknowledged the fact that they are very good water conservators because of the preciousness of that resource.

In cities like Fresno we took the admonitions that my colleagues in Southern California talked about in terms of water meters. We have turned that thing around, and with the growth.

But Mr. Ishida points out, and I think it is very important, we have a lot of communities that just aren't cities. And even the cities that are cities are 5,000 to 10,000 people population. They don't have the resources to do this.

We haven't got, the country doesn't have, the resources in many of these cases, either. We have counties that are just trying to keep hospitals open, trying to keep county healthcare open, trying to build roads.

I fought my last term for \$1 million for the community of Alpaugh to improve their water system. You would think I was pulling teeth, because it was 300 residents. I mean, they are having to pipe water in. It is in Congressman Nunes's district.

So the fact is we need to understand that we can't keep reallocating water when we have—I mean, even if we are not going to grow food for our tables, for the state and for the nation, we are growing homes. And so we can't continue to just reallocate water from our constituents, from our citizens, and not believe and not understand that we need to not only do conservation. We are going to do more than conservation, absolutely. I am a strong advocate of water conservation, both municipal and agricultural.

But we are also going to need to improve our water supply. And it is important that everybody understand that. Because you can't make more with less in all cases, which we are being asked to do.

The questions to the two of you, my time has run out.

Mr. BIRMINGHAM. Well, I will try and, with permission of the Chair, try to respond to your question, Mr. Costa.

From our perspective, the key aspect for successful implementation of the settlement agreement and the restoration program is the parties moving forward in good faith, and with a continued respect for the interest of other parties.

The Chairwoman made reference to the value of resolving conflicts of this type through reaching an accord. And it is interesting that she would choose that word. Because in 1994, Westlands, along with other south of Delta agricultural water service contracts, entered into what we called the Bay Delta Accord. And we voluntarily gave up approximately 25 percent of our water supply for restoration of the Bay Delta.

And at the time, former Secretary Babbitt said—and this is a quote—a deal is a deal. If the Department of the Interior determines that we need additional water for the implementation of this restoration program, we will acquire it from willing sellers. Unfortunately, that didn't happen. And the program really has fallen apart, because different groups have said OK, we got what we

thought we were going to get out of the program; now the rest of it should stop.

This settlement has two goals: a restoration goal and a water management goal. And both of them are supposed to be of equal importance. And for this program to proceed successfully, the parties are going to need to continue to demonstrate their willingness to act in good faith, the same kind of willingness that resulted in the compromise language contained in H.R. 24.

Mr. ROBBINS. Mr. Costa, I would want to acknowledge, because it hasn't been done today, your support, and Congressman Cardoza's support, in holding open the curtains for the third parties to make sure that we actually had access to the table. And we are very much grateful for that.

I think the key issues for us, as third parties, revolve around two things. First is the implementation actually of the physical improvements that are necessary. Making sure, for instance, that the process for deciding about Reach 4[b] is open and clear and transparent, and that the parties that are affected have access to that process. And I believe that the legislation, combined with the MOU, makes that happen.

And the second, of course, is issues having to do with the reintroduction of salmon; making sure that the Secretary of Commerce's process, which is set out in the Endangered Species Act relative to harvesting spring run from other tributaries and bringing them to the San Joaquin, and their reintroduction, is done in a timely and orderly and transparent fashion, so that we may also participate in that process, and be ready for it when it occurs.

I did want to also offer maybe a piece of hope as well, because the water management goals of the Friant settlement process is something I think that impacts the third parties as well. And I think we are prepared to assist in that.

There are times in which those of us that are downstream can assist in both water supply reliability and in mitigation requirements. And so I think we stand ready to participate, as well. But we have a longstanding relationship in what is known as the San Joaquin River Group Authority. We actually all belong to that same agency. And I think it was the relationships that we had in that agency and in our prior dealings with one another on the other big settlement on the San Joaquin River Settlement Agreement that was, that led us to the confidence we had in each other, and in the process to make this settlement happen.

So the endangered species issue, the implementation of the physical plant issue, and the transparency; those are the three big things, I think, for us.

Mr. COSTA. Thank you.

Mr. RADANOVICH. Thank you, Mr. Costa. I would like to comment. I thought your remarks were excellent, and I want to associate myself with those remarks. The need for water reliability and inadequate supply is something that cannot be left, and projects like the Westlands Drainage Proposal I think are projects, incredible projects, I think, that are worth taking a serious look at and supporting.

Mr. COSTA. It is the Bureau's proposal.

Mr. RADANOVICH. It is the Bureau's proposal, forgive me. Yes. Mr. Nunes.

Mr. NUNES. Thank you, Mr. Radanovich. I want to talk a little bit about Mr. Costa, your comments about Alpaugh I think were very fitting being that the million dollars that you got them was not enough, and then we had to go back through rule development and get them another \$2.5 million for their water supply.

And Mrs. Napolitano, I think it is important not to gloss over this; that Mr. Ishida brought up in his testimony that there are very, very poor populations, entirely Latino basically, that are living off of this water supply. And I think Mr. Dooley said it very honestly in his testimony, that they have made a business decision. But the constituents that Mr. Ishida has and that I have don't have the ability to make business decisions.

You are looking at \$3.5 million that has been spent for one little community of 300 people. And that water quality is diminishing as we speak. So when you take, it always goes back to the same point. If you are going to take the 200,000 acre-feet out of that basin, and not put it back, there are going to be, since the communities weren't considered third-party impacts—we will call them fourth-party impacts, since they were never involved in the settlement—the fourth parties to this agreement are going to be severely, severely hurt. And that is what, without changes.

You know, I have said all along, why don't we just put some concrete ways, teeth to this legislation, to bring the water back. I don't think that is a very hard request. But it is unfortunate that we didn't have more time to ask the first panel. But NRDC continues to oppose any types of real teeth, real mitigation measures to this settlement. And that is all these people are asking for is mitigation.

Mr. Birmingham and Mr. Michael and Mr. Robbins, they were third parties. They were taken care of. My constituents were not. The farmers made a business decision, so they have been taken care of, at least to what they feel that they have been taken care of in this settlement, other than I do believe—and I know Friant is not up here any longer—but there are farmers that have requested, Friant farmers that requested for mitigation.

Now, Mr. Dooley, I don't know if they brought that to your attention or not, but there are farmers within my district that have requested mitigation through their boards. And their boards are trying to come up with mitigation measures that will work, that are more than this. They have asked for something in addition to these proposals that are here.

So I just think that we have to be serious about what we are going to do to mitigate in this legislation. I hope, Mrs. Napolitano, that we can do it. I mean, it needs to be done. Maybe we don't change the settlement, but at least try to, on the same vehicle that this is going to go under, try to put some kind of mitigation in here to protect these communities that Mr. Ishida is talking about. I think it makes a lot of sense.

And one of the ways, and I wish that we could have asked this of NRDC and Friant, is that Westlands—and you kind of talked about it in your first question to Mr. Birmingham—the Bureau of Reclamation and Westlands agreement on the settlement, they are

coming out to your committee to ask you to aid in this implementation of the settlement, I think it clearly provides about 100,000 acre-feet of water, on average, that would meet half the goal.

Now, I would really like to know what NRDC thinks of that. Would they support that water, if you could work out the settlement, would they support that water being used to mitigate for my constituents to meet the water management goal?

Mr. RADANOVICH. Excuse me, Madame Chairman. As I recall, though—may I? If you have written questions of previous, if you have questions of a previous panel, I would ask the Chair to allow time for written statements and written answers to be allowed, and be part of the record.

I mean, I don't see where their approval of a proposal out there by the Bureau has anything to do with this legislation. I mean, things that are relevant—

Mr. NUNES. Because there is water available that could go to meet the water management goal, and I think it is important in these discussions to—

Mr. RADANOVICH. It is not relevant to this bill.

Mrs. NAPOLITANO. It has not been agreed to, so it is not part of the bill. And I think that—

Mr. NUNES. I don't disagree. But there are severe consequences to this legislation.

Mrs. NAPOLITANO. Then that is something that—

Mr. NUNES. And if you guys want to ignore that—

Mrs. NAPOLITANO. Excuse me, sir.

Mr. NUNES. Yes, Madame Chairwoman.

Mrs. NAPOLITANO. Thank you. You and I have discussed the ability to be able to bring it up. You have brought it out. Now, since it is not part of this legislation, I think we need to either submit for the record those questions, and maybe put into the minds of the people who may be able to consider addressing that specific issue—and I agree with you in terms that some areas do not get into the agreement, for whatever reason. But the major parties that are going to make things happen and hopefully be able to help address some of these unintended consequences can be part of what this is all about. Or am I wrong?

Mr. RADANOVICH. No, I think the gentlelady is right. I do remember, during the time when this issue was being negotiated over in Senator Feinstein's office, that everybody who is here was there. And everybody was asked, at the time everybody agreed, did they have any other ideas or input that should go into this agreement. And nobody spoke. And I think—

Mr. NUNES. That is not true, Mr. Radanovich.

Mr. RADANOVICH.—this is probably the appropriate time—

Mr. NUNES. That is absolutely, that is absolutely false.

Mr. RADANOVICH. No. Sorry.

Mr. NUNES. Mr. Costa was there. Mr. Costa said that there were other concerns.

Mr. RADANOVICH. No.

Mrs. NAPOLITANO. OK, I think we need to move forward. I will take the chair back. I will take the time. I believe—

Mr. BIRMINGHAM. Excuse me, Madame. I just wanted to make sure that the record is clear, because Mr. Nunes has made ref-

erence to a settlement agreement between Reclamation and Westlands Water—

Mrs. NAPOLITANO. You know, you are—

Mr. BIRMINGHAM. Thank you. I just want to make sure that the record is clear. Reclamation, working with Westlands and a number of other contractors, have come up with some concepts. But I would not want the Subcommittee to be left with the impression that there is a final settlement agreement.

The concepts are continuing to be developed. And, as I indicated in my response to your question earlier, Madame Chairwoman, there are potentially some linkages. I am not suggesting that the two settlements should be linked together, but there potentially are some benefits. But there is not a settlement agreement.

The concepts were disclosed to Members of Congress, because Reclamation, as well as the contractors, thought that it would be an appropriate time to expand the group of participants in those discussions.

And so we are a ways from reaching conclusion, and in part, that is why I think it would be inappropriate to specifically link the two. Because, as I said earlier, it is our impression that H.R. 24 needs to move quickly.

Mrs. NAPOLITANO. Thank you, sir. And I would like to be able to echo those remarks, because I believe that you don't want to lose the momentum; nor the longer this continues to drag, the more there are other possible issues that could come up that should be considered by the people that are part of the agreement and the accord. I look forward to that.

Mr. Costa.

Mr. COSTA. Yes, thank you, Madame Chair, I am glad you clarified that.

Just for the point of clarification here, because I know we are closing, we are finishing up here, and you and I have another meeting to go to.

The reference that was cited and the comment that I made, and some of the parties that are testifying here were there, I think it was one of the fifth or sixth—it was the last meeting, and Senator Feinstein went around the room and asked were there any other issues there. And three of the Members who were participating weren't there.

And I said well—and of course that is why I brought up the other issue earlier about the holding contracts, because I didn't know about it at the time. But I said as far as Westlands, which is in my district, and some of the other third parties that I had been helping, trying to help to negotiate, I believed we had resolved the issues. But I said I cannot speak—and I did a bit of euphemism humor that I am known for on occasion—I did not pretend to speak on behalf of the Portuguese caucus. Nonetheless, I knew my colleague, Congressman Nunes, still had concerns as it related to his constituents in his area. But that as far as the folks that I had worked with, that I felt we had an agreement.

But I did not, just for clarification purposes, I acknowledge that I believe that there were still some outstanding concerns or issues.

Mrs. NAPOLITANO. Thank you, Mr. Costa. With that, I will conclude this hearing, and thank the panel for being with us. It has been very fruitful, and thank you for your participation.

Under Committee Rule 4[h], additional material for the record should be submitted by Members or witnesses within 10 days after this date. I would appreciate the cooperation of all the witnesses in responding promptly to any questions submitted to you in writing, and look forward to continuing this great work you have done.

With that, this meeting is adjourned.

[Whereupon, at 1:00 p.m., the Subcommittee was adjourned.]

NOTE: Additional information submitted for the record has been retained in the Committee's official files. These include:

- Letter from Hamilton Candee, Natural Resources Defense Council, dated March 15, 2007, with two attachments—a document from Professor Michael Hanemann entitled “Comments on ‘Analysis of the Impacts of Surface Water Reductions on the Eastern San Joaquin Valley of California’ by the Northwest Economic Associates and ‘Impacts of Water Reallocations on the Eastern San Joaquin Valley’ by the University of California” and a copy of the March 7, 2007, *Bakersfield Californian* editorial “Water, peace to flow soon.”
- “The Cost of Reducing Friant’s Surface Water Supply” by the Friant Water Users Authority submitted for the record by The Honorable Devin Nunes
- Supplemental Expert Report of Daniel B. Steiner submitted for the record by The Honorable Devin Nunes
- Letter submitted for the record by Allen Ishida from Peter Carey, President/CEO, Self-Help Enterprises, Visalia, California
- Letter submitted for the record by Allen Ishida from Laurel Firestone, Co-Director and Attorney at Law, Community Water Center, and Martha Guzman, Legislative Analyst, California Rural Legal Assistance
- Letter submitted for the record by Allen Ishida from Francisco Martinez, President, Plainview Mutual Water Company, Strathmore, California
- Article submitted for the record by Allen Ishida from the Fresno Bee entitled “Many in Tulare Co. can’t count on clean water” dated February 11, 2007

