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CREATING JOBS BY OVERCOMING MANMADE DROUGHT: TIME FOR CONGRESS TO LISTEN AND ACT

OVERSIGHT FIELD HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON NATURAL RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

FIRST SESSION

Monday, April 11, 2011, in Fresno, California

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OVERSIGHT HEARING ON "CREATING JOBS BY OVERCOMING MANMADE DROUGHT: TIME FOR CONGRESS TO LISTEN AND ACT."

Monday, April 11, 2011
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Natural Resources
Fresno, California

The Subcommittee met, pursuant to call, at 10:00 a.m., at the Fresno City Council Chambers, 2600 Fresno Street, Fresno, California, Hon. Tom McClintock [Chairman of the Subcommittee] presiding.

Present: Representatives McClintock, Denham, Hastings (ex officio), Napolitano, Costa, and Garamendi.

Also Present: Representative Nunes.

Mr. MCCLINTOCK. The House Subcommittee on Water and Power will now come to order. The Chair notes the presence of a quorum, which under Committee Rule 3(e) is two Members. The House Water and Power Subcommittee meets today to hear testimony on a hearing entitled "Creating Jobs by Overcoming Manmade Drought: Time for Congress to Listen and Act." To begin today's hearing, I would like to refer to my distinguished colleague, Congressman Jeff Denham, for a few introductions.

Mr. DENHAM. Thank you, Mr. Chairman. We are privileged to have VFW Post 559 to present colors. It is now my honor to introduce an American hero, Sergeant Ray Ramos. Sergeant Ramos, would you do us the honor by leading us in the flag.

[Flag salute.]

STATEMENT OF HON. TOM McCLINTOCK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. MCCLINTOCK. I'll begin by asking unanimous consent that the gentleman from California, Mr. Nunes, be allowed to sit with the Subcommittee and participate in the hearing. Hearing no objections, so ordered. We'll begin with the five-minute opening statements beginning with myself and then the Ranking Member.

I want to thank all of you for coming here today. During the last session of Congress, Republicans unsuccessfully attempted for two years to get the Water and Power Subcommittee to come to Fresno to hear firsthand from the communities that have endured the devastating financial, social and environmental damage done by the

government's decision to deny this region well over 200 billion gallons of water in order to indulge the pet causes of the environmental Left.

A little over a year ago, Republicans held an informal listening session, at which time we heard riveting testimony of the human suffering caused by this misguided policy. We heard stories of food lines in communities that once prided themselves on supplying American grocery shelves. We heard about the frustration of seeing the same produce once grown in the Central Valley of California instead imported from China, handed out at those Central Valley food lines.

And we saw the anger as the absent Secretary's testimony to the Natural Resources Committee in 2009 was played back, in which he admitted that the Obama Administration had the authority to restore water deliveries, but that it chose not to do so because that would be, "like admitting failure." Even now with the snowpack at 165 percent of normal for the season, the wettest year in the last 16, the San Joaquin Valley has been guaranteed only 75 percent of its contracted allotments. In this discussion, the Left has attempted to pit fishermen against farmers. What they ignore, of course, is the actual science.

They ignore the findings of the Northwest Fisheries Science Center that determined the Pacific Decadal Oscillation is the principal reason for changes in salmon migration, that these changes are not unique to Delta fisheries, but have been observed throughout the Pacific Coast, and as conditions improved, salmon populations are rebounding. They ignore the California Department of Water Resources analysis of pumping flows that determined that their influence on salmon and smelt migration is negligible compared to natural tidal flows. They ignore the overwhelming impact of natural predation in the Delta that alone is responsible for some 90 percent of salmon smolt mortality. They ignore the tremendous contribution of fish hatcheries to supporting fish population. They ignore—indeed, they actively oppose—the construction of new reservoirs and other water projects that could dramatically increase year-round supplies of fresh cold water throughout the Delta. They ignore the findings of the Federal District Court that the U.S. Interior Department's biological opinion on Delta smelt to be "arbitrary, capricious and contrary to law." And worst of all, they ignore the plight of the tens of thousands of farm families needlessly thrown into unemployment by these policies.

For too long our government policies have been misguided by politically motivated junk science instead of the sober, dispassionate and accurate application of real science. For too long our government policies have focused on rationing of shortages rather than on providing abundance.

Today we will hear testimony about what these policies have done to harm the economy of the Central Valley and the cornucopia of fruits, nuts and vegetables it once produced for the entire world. And we will hear suggestions on the changes in Federal law that need to be made to restore abundance and plenty to all of those who rely on the Delta.

I know that people are feeling powerless and disregarded by Washington, but the fact is that the debates inside the Capitol are

merely a reflection of a much larger debate going on all across the country.

The public is rapidly engaging, becoming aware of these past policies and demanding change. As this occurs, I can assure you public policy will follow.

Chairman Hastings has made it very clear that he wants priority given to this issue, and from this hearing today, the House Majority will craft legislation to restore abundance as the principal objective of Federal water and power policy, and with it, an era of abundant water, clean and cheap electricity, new recreational centers, desperately needed flood protection, burgeoning fisheries, re-invigorated farms, not to mention lower electricity, water and flood insurance bills for American families.

It is toward this brighter and more prosperous future that the Majority seeks to proceed. It is my hope that the testimony today will assist the House in identifying those changes in law that are necessary to get there.

And with that I will now recognize the Ranking Member of the Subcommittee, California Congresswoman Grace Napolitano.

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

Ms. NAPOLITANO. Thank you, Mr. Chair. It's a pleasure to be back to this area. I have been here several times for similar hearings on subjects very much similar to this.

Last week the American people sent a message that was very clear, we do not want a shutdown, we want a compromise. The same message can be said about a water crisis. We do not want to shut down farms, our cities, our fishing industries or our businesses. We do not want to shut down our environmental landscape. Water is a shared resource all of us in California rely on. Farmers, communities, homeowners, manufacturers and fishermen all need our water supply to be protected.

And, believe me, from Southern California, I can attest to that, because we only get about 20 percent of that water. Instead of promoting interests that pit us against each other, we should be promoting a balanced approach that helps us all in California. But to suggest that a solution to our water crisis is as easy as repeating or amending a law is misleading to everybody. The real solution is complicated and requires compromise, communication and a very high level of trust. Insisting on extreme positions with no intention of compromise will only lead to more costly litigation and sure uncertainty benefiting only attorneys.

This year Reclamation will make full allocation deliveries to over 80 percent of its contractors. It's a very welcome change to everybody from the last years of drought. And I want to thank Congressman Costa for his continued effort on this area, for twisting my arm and talking to me about the area, so thank you, Jim.

According to the California Department of Food and Agriculture, California ag experienced a nine percent drop in the sales value of its product in 2009 at the height of the drought. The same year 81,500 farms and ranches received $34.8 billion for their output. The output, an all time high of $38.4 billion, was reached in 2008. Despite the water supply shortages and regulatory restrictions, the

State's agricultural sales in 2009 were the third highest recorded behind only 2008 and 2007. The three highest agricultural sales for the State coincide with the three consecutive years of drought. The same success cannot be attributed to commercial and recreational fishermen during those three years of drought. Commercial and recreational fisheries were completely closed in 2008, 2009 and a majority of 2010. This translated into a complete total loss of revenue and 100 percent loss of jobs. This is not a balanced approach. We do need to talk about a solution.

Earlier this week I asked our witnesses to come prepared to ask the following questions regarding the best ideas in developing new, not faithful water, new water supplies. What is your recommendation, was my first one, to create new water. Second, how much will it cost. Third, who will pay for this water.

And most important, when will the first drop be on line. In other words, how long will it take to design, build, construct and then get to day one of operations.

I am a firm believer in all California approach, conservation, water recycling, education, storage anywhere. While the drought may be over, now is not the time to stop our efforts to develop local water supplies through water recycling and possible salvaging. California prides itself as a state where the whole is stronger than the sum of its parts. The whole includes the most effective farmland in the country, hard-working fisherman, the best cities and industries, the most beautiful environmental landscapes in California. The American people have spoken and our constituents have spoken, no shut down, let's work together to try to come up with a solution to heal that.

Mr. MCCLINTOCK. Next, we are very honored to have the Chairman of the House Natural Resources Committee, Congressman Doc Hastings of Oregon, who sits on all of the Subcommittees as an ex officio member.

STATEMENT OF HON. DOC HASTINGS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WASHINGTON

Mr. HASTINGS. Thank you very much, Mr. Chairman. I am from Washington. It is a pleasure for me to be here and I hope that today marks a turning point in reversing the drought to the—(Inaudible.)

The COURT REPORTER. I can't hear him.

Mr. HASTINGS. I am from Central Washington. My district includes two of the largest Federal irrigation projects in the nation—the Yakima Project and the Columbia Basin Project. It derives these benefits because of irrigating water. Without the irrigation, those two areas would not be as diverse as they are. But we too are locked up in litigation. Right now the management plan for the river has been locked up in court for eight years. Principally, they are driven by exactly the same issues that are being discussed here today. So I'm particularly sensitive about this, because if this can happen here, then it certainly can happen elsewhere throughout the country—certainly in my district and certainly in other areas in the West that rely on water.

So the real question, what this hearing is all about today, is to try to find a solution to this issue. The question is whether

Congress ultimately will let this—(Inaudible) that we are going through continue on.

Republicans, over the past two years, have tried to resolve this situation, but unfortunately we were not even able to bring an issue to essentially this whole debate and vote on the Floor of the House. When I became Chairman of this Committee talking to my colleagues and having read what everybody has read across the country and certainly what you have experienced here in the central part of California, I felt first—(Inaudible.)

The COURT REPORTER. I can't hear anything.

Mr. HASTINGS.—to have a field hearing here, hear what the people on the ground felt, how it affected them and work from there to get solutions. So I believe that this hearing today, as Chairman McClintock says, is the first step in a process that can result in legislation, legislation that I will push as hard as I can to get through the House and get through the normal process and we can get a long-term predictable resolution to the problems that you are going through. So I look forward to hearing from the witnesses today and I look forward to working with all of my colleagues to try and come up with legislation that will resolve this issue. I yield back to the Chairman. Thank you.

[The prepared statement of Mr. Hastings follows:]

Statement of The Honorable Doc Hastings, Chairman, Committee on Natural Resources

Thank you for holding today's hearing. Today marks a turning point in reversing the man-made plight of the San Joaquin Valley.

For those of you who don't know me, I'm Doc Hastings. I'm privileged to chair the House Natural Resources Committee. My congressional district contains two of the largest federal irrigation projects in the nation—the Yakima Project and the Columbia Basin Project. These projects literally turned the desert into some of the most productive farmland in the world. The dams that impounded the water for these projects helped power the Manhattan Project that enabled our nation to win World War II and the Cold War. To this day, they continue to generate renewable and emissions-free hydropower for millions. These multi-purpose projects—like the visionary Central Valley Project—formed the foundation for the western United States.

Despite their successes, these projects have been under constant assault from those with extreme political agendas. Litigation and regulation have hi-jacked these projects to the point where their purposes have been compromised. The water and power ratepayers in my region have literally watched as never-ending litigation and a federal judge determine how a river flows. I understand that it's a very similar situation here when it comes to putting the needs of a three-inch fish over the needs of people.

If it can happen here, it can happen anywhere. The San Joaquin Valley situation of the last two years should be a warning to us all that we cannot stand by for history to repeat itself. While Mother Nature has helped temporarily rescue this region with historic precipitation, a regulatory drought could re-appear all too quickly.

The question is whether this Congress will let that happen. Republicans tried over the last two years to resolve this situation, but were not even allowed to debate the merits of proposals aimed at turning the pumps back on to historic levels. Democrat leaders wouldn't even hold an official field hearing on this topic.

All of that changes today. Today's hearing is a first step to right the regulatory wrongs of the past, to end future man-made droughts and to give farm families and workers long-term economic prosperity and jobs. The time to act is now. Let's make it happen.

Mr. MCCLINTOCK. Thank you, Mr. Chairman. I apologize. Chairman Hastings is from Washington, not Oregon. Our next Member is Jim Costa, in whose district I believe we are currently seated.

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

Mr. COSTA. Thank you very much, Mr. Chairman. And Chairman Doc Hastings, we thank you and the Ranking Member—and the other Members for coming and holding this important hearing here.

The families that you see here at the hearing this morning really reflect the best of hard-working men and women that have for generations made this Valley a great place to live in. Their families, like mine, have been farming for many years, in my case for three generations. This hearing will continue to look at the issues of the water prices and the regulatory framework that many of us believe is flawed. I'd like to point out that this hearing obviously is paid through taxpayer dollars demonstrated through regulations that have been put forth by the biological opinions, have had harmful effects not only to our farmers and farm community, but have shown really no improvement to the environment.

My colleagues have already touched on many of these hardships. Since the drought began in 2007 and throughout my career, I have been working every day to try to bring more water to this Valley, both in Sacramento and now in Washington. My efforts—and Senator Feinstein and Congressman Cardoza and all the water agencies will testify—have brought real water and dollars to our Valley, but more needs to be done.

In 2009 we held the first workshop at Fresno State with fish biologist from western states and Canada to the peer review. They looked and determined that there was a consensus the best science was not being used.

The Court and the National Academy of Sciences in the last year have confirmed it. In addition, we worked in the middle of the drought and provided 200,000 acre-feet of transferred water to the westside, people's permanent crops growing in the height of the drought. But we didn't stop there. The energy and the Water Appropriations bill that Congressman Cardoza and I worked on passed legislation that allowed for transfers throughout the entire Valley. That's been an important stop gap measure. In addition to that, we provided 32 million dollars in stimulus funds in the San Joaquin Valley for relief. I spoke with John Marsal last week. He said that they'll help to provide airtight connections for the lower Tule.

We pushed security and more flexibility on allied-operated projects which resulted in higher allocation from the first allocation of zero, then to 10 percent to in 2010 45 percent by exercising greater flexibility. That also reduced the impact on the overdraft of the groundwater. In 2010 we developed a list of projects for the Department of the Interior, this is that list, working together with, again, Congressman Cardoza and Senator Feinstein to boost west side water supply south of the Delta. As a result of our efforts, the Department of the Interior, Department of Water Resources continues to put on a list of interim projects that are stop gap measures to try to deal with the current status quo. Many of these tools are still in place irrespective of the hydrology given this year's current wet year. They are included, but not limited to, money from the airtight project, which we broke ground last year in Reno, an

additional 35,000 acre-feet of water to San Luis water usage. In addition to that, This year I introduced legislation to bring more water to our Valley, The Water Act of 2011 will help restore the balance of our water supply situation. Taking into account the serious questions raised by Judge Wanger and by the National Academy of Sciences on the biological opinions that are now in place, if this becomes law, it would provide, depending on hydrology, 200,000 to 500,000 acre-feet of additional water.

In closing, for decades the policies of water politics have played out between fish and farmers and between different regions of California. That fight is well known. I think they are false choices. As the Chairman and the Ranking Member have said, the truth is we have a broken water system designed for 20 million people in California. We now have 38 million people.

By the year 2030, we are going to have 50 million people. The last 20 years have proven that the regulatory framework is not helping produce more food that we need in our nation and throughout the world, nor is it saving fish. The Court has stated and the National Academy of Sciences has written that the best science is not being used during this regulatory drought and our witnesses will confirm that.

We have two choices, in closing, we can discuss with our witnesses today. We can continue to play the politics, the blame game, we know it well, blaming how Democrats or Republicans are responsible for the water shortfalls. That may make some feel better or score political points, but that strategy, in my view, will not get a bill out of the Senate nor signed by the President nor will it bring any more water to our Valley that we desperately need or to California, which we should be doing. The second choice is we can use this hearing to work together to find bipartisan solutions. That is what former Republican State Senator Ken Maddy and I used to do all the time, for years always trying to find the art of possible.

Mr. Chairman, I want to thank you and the Ranking Member and Members of this Committee for holding, once again, a hearing here in the heart of the richest agricultural region in the entire country so that we can try to find solutions to these problems.

Mr. MCCLINTOCK. Thank you. I am now pleased to introduce another—both a Member of Congress and also a Member of the Subcommittee, Congressman Jeff Denham.

STATEMENT OF HON. JEFF DENHAM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. DENHAM. Thank you, Chairman McClintock. Chairman Hastings, thank you for holding the first field hearing right here in our area. And that's critical. It is a critical issue to hear from local friends, farmers, those that are affected here most, those that are out of work due to this current water crisis. Sure, absolutely, we need to focus on a long-term adjustment. We need to focus on long-term water storage. But make no mistake, this crisis has been created by current regulation and can be fixed by Congress and the President today. The fact that we got such a huge amount of precipitation and snowfall this year and still only have a percentage of the current contracted water allotment is a travesty to the entire process. We are here today to give local input, to give local under-

standing of how we can change the laws to make the Central Valley whole again. The bread basket of the world right here locally needs to have the local job, the local resource, the local water to be able to stay in business.

As the President continues to talk about the unemployment levels reducing across the nation, the economic development across the nation, he is yet to visit or see the devastation here locally being caused by regulation. We want to hear from you today on how we can fix this, but don't let anybody make an excuse about past, current or political promises that could have been made before or not. We have an obligation to fix this on a bipartisan level, working together to come up with a solution that will fix our current situation immediately. Now, I have worked with my colleagues on solutions, including NEPA, on San Joaquin River restoration and Delta power flood control impacts here locally, but ultimately you need a Valley delegation and a California delegation to come together to solve our current water crisis needs. I yield with that.

Mr. MCCLINTOCK. I'm next pleased to introduce Congressman John Garamendi.

STATEMENT OF HON. JOHN GARAMENDI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. GARAMENDI. Thank you, Mr. Chairman. For all of you that are here, this is certainly not a new issue to all of us. We are going to have to find a middle ground here. There clearly is an issue in the Delta. There clearly is an issue for the fish, the salmon, an ecological issue, and there's also an issue to the south. We have been fighting for a long, long time about these issues and we still have to search for a solution.

Here in the heart of the San Joaquin Valley, it's easy enough to say just send more water. If this hearing were to be in Stockton, it would probably be just the opposite, don't send water, it's needed there. The reality is, as Jim Costa said, we are going to have to find a compromise. The Ranking Member, Grace Napolitano, said it also, no one is going to get everything they want as the pressures from the population and the demands grow.

No one is going to get everything that they could want. And that's both the fish, salmon, other species north of the Delta as well as south of the Delta.

There are solutions that are available. And for many of you in this room that I have had the opportunity to work with over the last 30—almost four decades now, we know, we know the game. We also know the politics of this. And it's always good to ring the political bell. The reality is that's not where the compromise will be found. I think those of you that are in the water business know and understand that. There are solutions. Those who want to change the ESA and say it doesn't work, well, in fact it can work.

Section 10 of the ESA can work. It's an adaptive management program. And I see in this audience about a half dozen of you that have worked with me and others to figure out how to make an adaptive management program work in areas other than the Delta. And there's no reason it cannot work in the Delta. We don't need to destroy. What we really need to do is to find the answers, use the very best science possible.

And from time to time we'll find a science that's objected to by one group or another, but forge ahead. Don't throw the science out, just keep working to improve upon it. And in doing so, we may find some solutions.

And I know there's been enormous efforts made here in this Valley for water conservation. Some of the environmental forensics say it doesn't happen. Well, it does happen. In fact, extraordinary steps have been taken on conservation here in this area. But the rest of the State's also going to have to conserve and that's the folks north of Sacramento. That's probably a bull's-eye for most of you here in this area. They too will have to do their share. So it's the winner take all mentality that will destroy this and it will simply set it back. I know that some of you remember 1998 when we came very close to an agreement. It didn't quite happen. But if everyone works together, there are solutions that are available and perhaps this hearing will lay some of them out. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you. Finally, I'd like to introduce, to make an opening statement, someone who needs no introduction, Congressman Devin Nunes.

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

Mr. NUNES. Thank you, Mr. Chairman. I want to thank Chairman McClintock and Chairman Hastings for holding this hearing today.

As many of you may remember, we tried to hold hearings here for the past four years and we were unable to because of the neglect that we face on behalf of the Democrats in this state, in this country.

When you hear the words middle ground, dialogue, compromise, studies, what that means is sell your farms, because the water is not coming back, OK. So for 25 years this has been going on. When the Central Valley Project Improvement Act was passed in 1992, the leaders that were in the Valley at that time had assurances from Senators and Congressmen and the Congress that that was going to be the last time that they came after our water and what did they continue to do? They continue to come after our water and they don't stop. And they use words like dialogue, compromise and studies. Why? Because then it makes you think that everything will be OK.

The fact is it's not going to be OK unless, as Congressman Denham said, unless this Congress acts.

And this whole business of Senator Feinstein thinking that she's going to bring water to this area, let me tell you folks, she has lied to me twice, in private has given promises to me twice about water coming back to this region. And don't be silly here, don't be fooled, there is nothing that Senator Feinstein or Senator Boxer or President Obama are going to do for this area. Why? Because they are beholden to the radical environmental element that exists in this country that is essentially headquartered out of the Bay Area. And you can say that's partisan rhetoric, but you know what, the track record is pretty clear. There's no water.

And the water is not coming back anytime soon, because of the failure and the inaction and the greed by the Democrats in this

state and this country. And you are going to hear a lot of phony nonsense that's going to come from this fisherman argument. And I have a video that I'd like to play for you guys right now if we can start the video, please.

[Video played.]

Mr. NUNES. With that, Mr. Chairman, I pass.

Mr. MCCLINTOCK. Thank you. That concludes the opening statements by Members. We'll now hear from the witnesses that have been invited to testify before the Committee. Each witness has written testimony we'll hear in full on the record here and so I ask the witnesses to keep their oral statements to five minutes each as outlined in our invitation letter and also under Committee Board A. I also want to put it on a time system here. When you begin to speak, our clerk will start a timer. After four minutes a bell will signal that indicates one minute is left. At the conclusion of five minutes, the second bell will sound. That's your signal to wrap up. So with that I want to thank you, all of our witnesses, for coming today. And I'll begin with first Ms. Dayatra Latin, Director of Programs and Development, Community Food Bank in Fresno, California.

STATEMENT OF DAYATRA LATIN, DIRECTOR OF PROGRAMS AND DEVELOPMENT, COMMUNITY FOOD BANK, FRESNO, CALIFORNIA

Ms. LATIN. Thank you. Once again, thank everyone for a chance to invite the community to hear this story from the front lines of the Community Food Bank. You do have a written statement that is there and you can see the people that are here and many of whom we served over the last couple of years because of the drought, who showed up at drought distributions.

But July of 2009 is forever etched in my memory, only because prior to that the Food Bank was distributing about 300,000 to 500,000 pounds of food.

We started our first drought distribution at the end of July of 2009. I'll never forget. We sent out three trucks. And to the more than 680 people that stood in line, that was three trucks of hope. And so we handed out and distributed so much food that day, but it's the stories that stick with me that I hope to be able to leave with you. We started our first drought distribution in Mendota and that was a powerful day to be able to do that. And we had volunteers take time to put together bags of food and people just showed up and the lines were endless.

That same summer we went to Huron. The drive out to Huron was different, because fields were kind of bare for me and that was unusual for me to see. In line that day I met a young lady named Maria. And I wish I could bring the smell of her with me, because she held a little baby in her hands. And in her arms she had her son and he was about three months old, but she was full of vomit and she was full of diarrhea, because her baby was severely sick. And he had this heart-wrenching cry that as a mom, I kind of stood there and wept with her. And I didn't know what to do. And I found somebody to translate for me to ask her to please go home, because with the amount of people who were in line, it was a hot

day, it was going to be four hours before she ever got to the front of the line.

And eventually she told me she couldn't leave. Her husband had lost his job. He was the sole provider. They had kids at home and the only way they were going to eat is if she stayed in that line. And I'm a mom of three amazing kids and I would never, ever have to think about having to stand in line with a baby sick and crying because she didn't know where her dinner was coming from that night. And she knew it would be two weeks later before the Food Bank would come back out for another distribution. That shouldn't happen. It was sad, it was horrible, and Maria stays with me.

Months later—because we still continue to bring out massive amounts of foods to folks. Like I say, we wound up serving 500,000 pounds of food to nearly 3 million pounds of food at the start of the drought.

But I met a man named Richard who stood in line. He had lost his job six months earlier and was happy that Community Food Bank was there. But the thing that was missing for him was he was so proud when he had a job, because with that job he was able to come home and put food on the table. And what he said to me is now I stand in line to be able to put food on the table for my family, because I have no work. So I can tell you all about the amount of pounds that Community Food Bank distributed to them and that there are 285,000 people that need our services, but I hope that the picture that you see of Maria and Richard and all those who stand in this room who have used Community Food Bank services—there is a reason why we are there. And I hope that this testimony has meant something and has made a difference. And so I thank you on behalf of Community Food Bank for allowing us to paint a picture. Thank you.

Mr. MCCLINTOCK. Thank you so much for coming today.

[The prepared statement of Ms. Latin follows:]

Statement of Dayatra A. Latin, Director of Programs and Development, Community Food Bank

The end of July 2009 is forever etched into my memory. After a couple of weeks of planning, Community Food Bank held the first Disaster Drought Distribution, during the last week of that month. We were in the City of Mendota, it was above 100 degrees Fahrenheit and the line of people seeking food assistance seemed endless. We had three truckloads deliver food that day, but it was three truckloads of *hope* for more than 680 families. With every food box assembled by caring volunteers and hard-working staff, we offered a little bit of peace so that the worried mom and the out-of-work dad did not have to think about where the next meal would come from.

That same summer we held another Drought Distribution in Huron. In line that day was a young mother named Maria, whose husband (and sole provider) had been laid off in May 2009 from his job working in the fields in the area and he was struggling to find work in order to pay bills and feed their three young children. Maria was holding her 3-month-old child who was severely sick. Her clothes were soaked with vomit and diarrhea, the baby was crying that heart-breaking cry that is familiar to every mother. Through a co-worker, who was able to translate for me, Maria explained that her son had been sick for days, not eating, constantly crying, and late that night he began vomiting and having severe diarrhea. Judging by the amount of people in line it would be at least four hours before we could serve her, I asked her to go home and we would serve her later. Maria looked at me with tears in her eyes and said "No! If I go home we will not eat tonight and you won't be back for two weeks!" Her fear of not knowing where dinner was coming from kept her in line that day despite the condition of her child. Her story is forever with me.

On a cold day in Firebaugh, I met a man named Richard who had been out of work for nearly six months. He showed up at Disaster Drought Distributions every two weeks for three months because this was the sole source of food for his wife and four children ages two through nine. He told me how thankful he was for Community Food Bank doing this, "but I only want to work, I was proud to work and feed my family and now I stand in line to do it."

There are countless untold stories of lives that were touched by the lack of water in the Central Valley. They are people who want to work in order to provide the most basic human necessity of food.

Mr. MCCLINTOCK. I'd next like to introduce The Honorable Phil Larson, Chairman of the Fresno County Board of Supervisors of Kerman, California.

STATEMENT OF HON. PHIL LARSON, CHAIRMAN, FRESNO COUNTY BOARD, KERMAN, CALIFORNIA

Mr. LARSON. Thank you, Mr. Chairman and Members of the Subcommittee. My name is Phil Larson and I am the elected representative of District One and the Chairman of the Fresno County Board of Supervisors. I appreciate the opportunity to testify today regarding the economic impacts on the agricultural industry and families in the Central Valley as the result of multiple years of Federal water allocations.

My district includes the western portion of the City of Fresno and the westside agricultural region of our county all the way to the San Benito County line.

As a farmer and businessman, I study water issues because they are vital to my economic survival. As a past farm bureau president, I advocated for additional water storage for our region, because our organization saw the need to establish safe, clean and reliable water supplies for our industry and community in the future.

As a Fresno County Supervisor, I continue to fight for safe and secure water supplies in our region, because I know without additional water supplies the social, cultural and economic impacts to our region could be devastating.

Over the past eight years, Fresno County's west side agriculture has been paralyzed because of water shortages due to environmental regulations. The economic reality was never more real than in 2008, when the Fresno County Board of Supervisors were forced to declare a local emergency, request a Presidential Declaration and request for state and Federal assistance to deal with statewide drought and water restrictions.

In 2009, the reduction of water supply deliveries continued the severity of the economic hardship. Fallowed farmland caused severe unemployment. Those restrictions caused the idling of thousands of acres of cropland and resulted in substantial economic impact to agricultural crops, the industries that support agriculture and the people who work within the agricultural industry. An estimate 24 percent of the entire farmland in Fresno County was fallowed or farmed in low productive crops. Our estimated loss was over 74 million resulted in job losses and significant loss of direct and indirect revenues. The impacts of those devastating losses have created deep issues with our economic recovery.

We are indeed an area of excessive government regulation that has been underserved because of government inaction in recognizing the economic issues created by Federal water decisions.

There is an irony that one of the world's most productive farm areas and the leading agricultural county in the State of California has as many as 51 percent of its population in need of food assistance.

In 2009, our Community Food Bank needed 3.3 million per month for local food assistance to purchase, store and distribute food to those in need.

It is unfair that citizens of smaller communities and lesser populated areas are discriminated against by not receiving the same attention and support received by larger population centers like the Bay Area and Southern California. It is intolerable that governmental decisions have created over 40 percent unemployment in western Fresno County. The communities of Firebaugh, Mendota, Tranquility, San Joaquin and Huron continue to be impacted by onerous government regulations and have placed critters above human needs. The result is that once vital communities are simply trying to survive.

Where is the parity when a wildlife area in western Fresno County over the last eight years has been given 100 percent water allocation when the adjacent bureau contract will receive only 75 percent, which was just raised this last week—I wonder if that can be political—in one of the wettest years in history?

This is even more questionable when you ask how many people the wildlife area will put to work. Contrast this to the agricultural operation as a bureau contractor who with 100 percent allocation would put hundreds of people to work. Add to this the multiplier impact of the idle land that could have produced a crop that would have supplied food and economic stimulus to our valley, the state and the country. That cost becomes significant. Often overlooked is the collateral impact on jobs in the area created by small businesses like the hardware store, grocery stores, mini marts, the fuel suppliers, parts stores and the list goes on.

Another water issue not usually considered is the loss of ADA, average daily attendance, funding in our local schools. The region school districts whose funding has been most significantly impacted are Golden Plains Unified, Mendota Unified, Firebaugh-Los Deltas Unified, Riverdale Unified, and the north portion of West Hills College. As jobs leave the area, so do families and the students that once populated schools. This translates to multiple job losses, including teachers, support staff, and maintenance workers. In 2005, the biggest concern for those school districts was where they would be housing the growing student populations. By 2008 with water supplies being impacted, instead of planning for growth, they were preparing for layoffs and reductions in curriculum.

Those job losses then were passed on to retail businesses and down the food chain to the Federal taxes.

I believe it's time for the Federal Government to return to the table and give full consideration to the economic impacts past governmental decisions and practices have created in our large geographical area. Our residents deserve the same considerations and assistance received by those in more populated areas.

The solution is simple. The Federal Government needs to honor what was agreed on back in the 1960s when the water agreements first began. Allow our farmers to do what they do best, create jobs, economic growth, and produce food and fiber to feed and clothe the world. It is time to reconsider past decisions and take corrective action to match the reality of today.

Thank you for the opportunity to testify. I would be honored to accept questions from you at this time.

Mr. McCLINTOCK. Thank you. Again, I would like to remind folks that you are guests at the House of Representatives today, that the demonstrations are not permitted in the hearing.

[The prepared statement of Mr. Larson follows:]

Statement of The Honorable John P. (Phil) Larson, Fresno County Board of Supervisors

Mr. Chairman and members of the Subcommittee, my name is Phil Larson, and I am the elected representative of District One and the Chairman of the Fresno County Board of Supervisors. I appreciate the opportunity to testify today regarding the economic impacts on the agricultural industry and families in the Central Valley as the result of multiple years of federal water allocations.

My district includes the western portion of the City of Fresno and the westside agricultural region of our county all the way to the San Benito County line. As a farmer and businessman, I study water issues because they are vital to my economic survival. As a past farm bureau president, I advocated for additional water storage for our region because our organization saw the need to establish safe, clean and reliable water supplies for our industry and community in the future.

As a Fresno County Supervisor, I continue to fight for safe and secure water supplies in our region because I know without additional water supplies the social, cultural and economic impacts to our region could be devastating.

Over the past eight years, Fresno County's westside agriculture has been paralyzed because of water shortages due to environmental regulations. The economic reality was never more real than in 2008, when the Fresno County Board of Supervisors were forced to declare a local emergency, request a Presidential Declaration and request for State and Federal Assistance to deal with statewide drought and water restrictions.

In 2009, the reduction of water supply deliveries continued the severity of the economic hardship. Fallowed farmland caused severe unemployment. Those restrictions caused the idling of thousands of acres of crop land and resulted in substantial economic impact to agricultural crops, the industries that support agriculture and the people who work within the agricultural industry. An estimate 24% of the entire farmland in Fresno County was fallowed or farmed in low productive dry crops. Our estimated loss of $74 million resulted in loss of jobs and significant loss of direct and indirect crop revenues. The impacts of those devastating losses have created deep issues with our economic recovery.

We are indeed an area of excessive governmental regulation that has been underserved because of government inaction in recognizing the economic issues created by federal water decisions. There is an irony that one of the World's most productive farm areas and the leading agricultural County in the State of California has as many as 51% of its population in need of food assistance. In 2009, our Community Food Bank needed $3.352 million per month for local food assistance to purchase, store and distribute food to those in need.

It is unfair that citizens of smaller communities and lesser populated areas are discriminated against by not receiving the same attention or support received by larger population centers like the Bay Area or Southern California. It is intolerable that governmental decisions have created over 40% unemployed in western Fresno County. The communities of Firebaugh, Mendota, Tranquillity, San Joaquin, and Huron continue to be impacted by onerous governmental regulations that have place "critters" above human needs. The result is that once vital communities are simply trying to survive.

Where is the parity when a wildlife area in western Fresno County is given 100% water allocation when the adjacent bureau contractor will only receive 65% in one of the wettest years in history? This is even more questionable when you ask how many people the wildlife area will put to work. Contrast this to the agricultural operation as a bureau contractor who with a 100% allocation would put hundreds of

people to work. Add to this the multiplier impact of the idle land that could have produced a crop that would have supplied food and economic stimulus to our valley, the state and the country. The cost becomes significant. Often overlooked is the collateral impact on jobs in the area created by small businesses like the hardware store, grocery stores, mini marts, fuel suppliers, parts stores and the list goes on.

Another water issue not usually considered is the loss of public ADA (Average Daily Attendance) funding in our local schools. The region school districts whose funding is most significantly impacted are Golden Plains Unified, Mendota Unified, Firebaugh-Los Deltas Unified, Riverdale Unified, and the north portion of West Hills College. As jobs leave the area, so do families and the students that once populated the schools. This translates to multiple job losses including teachers, support staff, and maintenance workers. In 2005, the biggest concern for those school districts was where they would be housing the growing student populations. By 2008 with water supplies being impacted, instead of planning for growth they were preparing for layoffs and reductions in curriculum. Those job losses then are passed on to retail businesses and down the food chain to local, state and federal taxes.

I believe its time for the Federal Government to return to the table and give full consideration to the economic impacts past governmental decisions and practices have created in our large geographical area. Our residents deserve the same considerations and assistance received by those in more populated areas.

The solution is simple; the Federal Government needs to honor what was agreed on back in the 1960's when the water agreements first began. Allow our farmers to do what they do best—create jobs, economic growth, and produce food and fiber to feed and clothes the World. It is time to reconsider past decisions and take corrective action to match the reality of today.

Thank you for the opportunity to testify. I would be honored to accept questions from you at this time.

Mr. MCCLINTOCK. The next witness is The Honorable Mark Watte here as a farmer in Tulare County, California.

STATEMENT OF HON. MARK WATTE, COUNCILMAN, CITY OF TULARE, CALIFORNIA

Mr. WATTE. Good morning. Thank you Chairman McClintock, Chairman Hastings, Ranking Member Napolitano and other Members of the Committee for the opportunity to testify today.

I appreciate your interest in solving the California water crisis. I hope this hearing will result in some action rather than just an exercise in listening.

Let me take a moment to introduce myself. I am Mark Watte, a third generation farmer, with a fourth generation learning the ropes. We have 4,000 acres in production that include a mixture of permanent and row crops. We also operate two dairies and two calf-raising facilities. I also sit on four different water boards, including the Friant Board of Directors, two cotton boards, and I am an elected member of the Tulare City Council.

The San Joaquin Valley has been blessed with good soil, a long growing season, and in the past an abundance of water. Together they created the most dynamic ag economy in the world. San Joaquin Valley is the first in the world in dairy, pistachios, almonds, processing tomatoes, asparagus, navel oranges, lettuce, garlic, and many more specialty crops. The products of the valley are truly American-made—the cheapest, safest, and most reliable food in the world. However, if Congress does not change the direction of water policy in California, we will have cantaloupes grown in Mexicali rather than in Mendota.

Our farm is located near Tulare, in the central portion of the San Joaquin Valley, where we have historically sourced 50 percent of our water from surface supplies through Friant and the Kaweah

River and 50 percent from a significantly over-drafted aquifer. As the years pass, the reliability of our water supply dwindles. Other than an over-prescribed groundwater source, our major challenge to our water future is the surface water reductions associated with the San Joaquin River Settlement.

After fighting for nearly two decades and saddled with millions of dollars in legal fees, the farmers were left with no other option but to settle. During this legal struggle, Congress stood by and refused to take legislative action to resolve the legal dispute. This unwillingness to get involved resulted in a flawed solution, a solution that will not bring back a long-dead salmon fishery, nor will it bring back all of our lost water.

Promises were made during the negotiations that are not being fulfilled. For example, there continues to be a lack of substantive action on the water management goals. The farmers were promised that restoration and water management would be co-equal goals. While restoration moves full steam ahead, with significant water releases down the river, the water management goals are stuck in neutral. Another example is that third parties were promised they will not be impacted. Yet, the interim flows are damaging farmland of third parties and no action is being taken to provide relief. The future of the settlement is at risk if all parties do not hold up to their part of the deal, including the Federal Government.

A more commonsense solution would be to extend the existing San Joaquin River warm water fishery and connect it at Sack Dam. This will restore the river in a more fiscally responsible and environmentally sustainable way. It also provides Friant the ability to recover its water and use it twice—once for the environmental purposes, once for raising food and fiber for our fellow citizens.

For years, our livelihood in the San Joaquin Valley has been under threat by drive-by tourists from the Bay Area who don't understand or care about our way of life. They have filed lawsuit after lawsuit to ensure that the government enacts water policy largely based on junk science. This has resulted in a 65 percent water allocation in a year of record rainfall and snowpack. While this is much better than the past two years, it remains disturbing in a year in which we will most likely see flood damage. We have done better in the past.

There are two ways to solve most of the economic problems in the San Joaquin Valley. First, Congress must take action on the water issue. For the past four years we heard a lot of talk about the problem while Congress did absolutely nothing. Quite honestly, we are tired of talk. We want action. Congress needs to fix the situation in the Delta, revisit CVPIA and streamline a number of troublesome provisions, and we need to make sure that restoration of the San Joaquin River can actually be accomplished in a sustainable way with the least amount of impact.

Second, we need the government to get out of the way. The regulatory process of trying to get a water project approved in the Valley is a nightmare. The problem is we have a bureaucracy that is imbedded with activists who have their own agenda. We no longer see the Bureau of Reclamation as a partner in solving our water problems. They have taken on the role of obstructionist. We are willing to follow the rules and pay our own way, but we need a

good faith partner in the process. This is certainly not what we have today.

Thank you for your time and effort in addressing our California water issues. You have heard and will hear from many experts that know more specifics about the ills and cures of our issues than I do. But make no mistake, I am the face of an average person who uses the wonderful resources that God has given us here in California. Through hard work and risk taking, California farms have created a bounty that benefits a nation. We understand and respect the risk-reward associated with Mother Nature. I would hope that you assist us with lessening our risk burden with regard to our water supply.

What we need is inspired leadership from Congress to provide a balance to the unrealistic demands of environmental zealots who have no sympathy or compassion for the economic devastation that resulted from the starving valley of water.

Again, thank you for the opportunity to testify.

Mr. MCCLINTOCK. Thank you for your testimony.

[The prepared statement of Mr. Watte follows:]

Statement of The Honorable Mark Watte, Councilman, City of Tulare, California

Thank you Chairman McClintock, Chairman Hastings, Ranking Member Napolitano and other members of the committee for the opportunity to testify today. I appreciate your interest in solving the California water crisis. I hope this hearing will result in action rather than just an exercise in listening.

Let me take a moment to introduce myself. I am Mark Watte, a third generation farmer (with a fourth generation learning the ropes). We have 4,000 acres in production that include a mixture of permanent and row crops. We also operate two dairies and two calf-raising facilities. I also sit on four different water boards, including the Friant Board of Directors, two cotton boards, and I am an elected member of the Tulare City Council.

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After fighting for nearly two decades and saddled with millions of dollars in legal fees, the farmers were left with no other option but to settle. During this legal struggle, Congress stood by and refused to take legislative action to resolve the legal dispute. This unwillingness to get involved resulted in a flawed solution—a solution that will not bring back a long-dead salmon fishery, nor will it bring back all of our lost water.

Promises were made during the negotiations that are not being fulfilled. For example, there continues to be a lack of substantive action on the water management goals. The farmers were promised that restoration and water management would be "co-equal goals". While restoration moves full steam ahead, with significant water releases down the river yet the water management goals are stuck in neutral. Another example is that third parties were promised they will not be impacted. Yet, the interim flows are damaging farmland of third parties and no action is being taken to provide relief. The future of the settlement is at risk if all parties do not hold up to their part of the deal, including the federal government.

A more commonsense solution would be to extend the existing San Joaquin River warm water fishery and connect it at Sack Dam. This will restore the river in a more fiscally responsible and environmentally sustainable way. It also provides Friant the ability to recover its water and use it twice—once for the environmental purposes, and once for raising food and fiber for our fellow citizens.

For years, our livelihood in the San Joaquin Valley has been under threat by drive-by tourists from the Bay Area, who don't understand or care about our way of life. They have filed lawsuit after lawsuit to ensure the government enacts water policy based on junk science. This has resulted in a 65% water allocation in a year of record rainfall and snow pack. While this is much better than the past two years, it remains disturbing in a year in which we will most likely see flood damage. We have done better in the past. The proof is in the numbers.

I call your attention to this chart which shows CVP storage versus Ag Service Allocation since 1952. Initial allocations are signified with a red square and final allocations with a green triangle. You can clearly see that chaos ensued after the enactment of the Central Valley Project Improvement Act in 1992; and only became worse. Even with the strangling impacts of CVPIA, the Westside still received 90% of their allocation in 1997—a water year that could easily mirror this one.

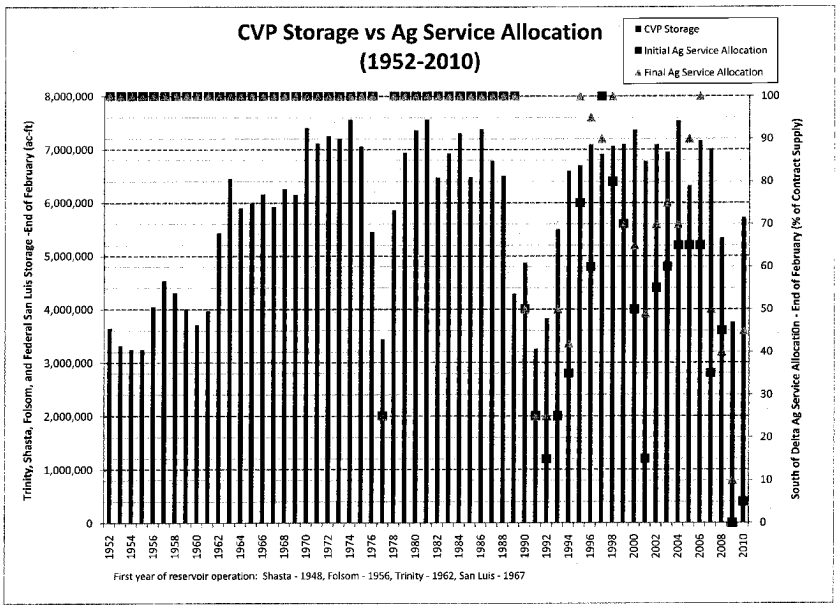
There are two ways to solve most of the economic problems in the San Joaquin Valley. First, Congress must take action on the water issue. For the past four years, we heard a lot of talk about the problem while Congress did absolutely nothing. Quite honestly, we are tired of talk. We want action. Congress needs to fix the situation in the delta, it needs to revisit CVPIA and streamline a number of troublesome provisions, and we need to make sure that restoration of the San Joaquin River can actually be accomplished in a sustainable way with the least amount of impact.

Second, we need the government to get out of the way. The regulatory process of trying to get a water project approved in the valley is a nightmare. A good example was the raising of Terminus Dam. It took 25 years and $50 million—$20 million going to environmental mitigation—to get the permits to raise the dam 21 feet. The problem we have is a bureaucracy that is imbedded with activists who have their own agenda. We no longer see the Bureau of Reclamation as a partner in solving our water problems. They have taken on the roll of obstructionist. We are willing to follow the rules and even pay our own way; but we need a good faith partner in the process. That is certainly not what we have today.

Thank you for your time and effort in addressing our California water issues. You have heard, and will hear from, many "experts" that know more specifics about the ills and cures for our issues than I do. But make no mistake: I am the face of an average person, who uses the wonderful resources that God has given us here in California. Through hard work and risk taking Californian's created a bounty that benefits a nation. We understand and respect the risk-reward associated with Mother Nature. I would hope that you will assist us with lessening our risk burden with regards to our water supply.

What we need is inspired leadership from Congress to provide a balance to the unrealistic demands of environmental zealots who have no sympathy or compassion for the economic devastation that resulted from the starving the valley of water.

Again, thank you for the opportunity to testify and I look forward to answering any questions you may have.



T. Boardman, SLDMWA
6/17/2010

Mr. MCCLINTOCK. Our next witness is Mr. Kole Upton. He's the Chairman of the Madera-Chowchilla Water and Power Authority, Madera, California.

STATEMENT OF KOLE UPTON, CHAIRMAN, MADERA-CHOWCHILLA WATER AND POWER AUTHORITY, MADERA, CALIFORNIA

Mr. UPTON. Thank you, Mr. Chairman, Members of the Committee. Yes, I'm a farmer. I'm also here as the Chairman of the Madera-Chowchilla Water and Power Authority. We supply water and power for about 200,000 acres in Merced and Madera Counties. I'd first like to start by giving a couple of attaboys—one to Congressman Denham, who has assembled a great staff, Jason Larrabee and Mr. Rucker and Mr. Kirk here locally, also to the Committee as a whole and Congress as a whole that came together on a program in Merced to increase the spillway and give us 70,000 more acre-feet, Democrats and Republicans, and that's the kind of cooperation that we need and I commend you for that.

The hearing today is what I want to focus on. It's about jobs. It's not about just creating jobs, it's about protecting the jobs that we have now. And there are five areas that I recommend be addressed. Number one is environmental water releases. When I use water or another person uses water, we are held to a standard of reasonable and beneficial use, and that's good, and we ought to have the same standard for environmental uses. And there is no better example then the Delta. Since 1991 there have been millions of acre-feet taken from folks that were using it to help the Delta. What do we have today? We have fishermen out of business.

We have farmers out of business. We have the species still near extinction. We have the estuary still in bad shape. What have we done? We haven't accomplished anything. So we need to have a standard. And what I recommend that before judges or agencies have water taken from somebody for an environmental reason, there has to be a standard there that it's actually going to work, it's going to do something, and it should be reviewed occasionally for accuracy to make sure it's actually doing what it's supposed to do.

The second area I would say is authorize and fund Temperance Flat. We need to keep—quit diddling around about this. The flood control benefits alone would pay for it. But, in addition, you would increase the amount of surface storage so that the Bureau could actually fulfill the contracts that Friant has now. They are unable to do that, because Friant Dam's too small.

The third thing is to adopt the water banking program. Water banking is a good thing, but it needs the component of storage. Why? Because you cannot put 80,000 cfs into a water bank during a flood. It goes too fast. So you need to store it so you can percolate it into the ground. This would help our overdraft here in the San Joaquin Valley. There's something simple, I would think, about society investing in its own infrastructure. It's for the future.

The third area I would say is we need to amend or replace the San Joaquin River Settlement Act. When they went into this, and I was one of the negotiators, everybody went into it with good faith, we are going to restore the salmon on the main stem of the river and the farmers were going to get their water back, hallelujah, OK. But what has happened since that time is that we have environmental studies and we have government studies and if you believe global warming, then since the San Joaquin River is a wide flat river it's going to be a very big challenge to get a significant number of fish back into that river. And the water management goal, we know we can't get that now and one of the reasons is because of lawsuits filed by the environmentalists, the very same ones that promised to help us get our water back, over Delta issues. So let's cut to the chase here. What we need, just like Mr. Watte just said, extend the current fishery to the Sack Dam and get our water back. You'll have a robust fishery 24/7, 365 days a year. What you won't get is salmon. Then you have to take the money you were going to invest in that, invest it in one of these northern rivers that already has salmon so you have exponentially more salmon for the fishermen to fish.

The fourth item is the Corps of Engineers. They have come up with some new ideas to bring conveyances, canals, to the standards of the New Orleans levees and they also are extending their jurisdiction for the Clean Water Act. They need to be reined in, OK. For the safety, that's fine. They do not need to overextend their authority here and cost us a lot of money.

The last point I want to make is that I commend you here for coming to create jobs, to protect jobs, but it seems a little bit counterproductive to have another agency in the Federal Government that is going to destroy the same jobs. Now, I'm talking about high speed rail. Farmers from Merced to Bakersfield, there are hundreds of them that I have talked to and worked with, and this au-

thority has not listened to the farmers. They are supposed to minimize the impact of farmland, use existing corridors, and I can tell you that it's not happening. I commend them for hiring a handicap, because they almost seem hard of hearing, but the fact is that they are going to destroy the infrastructure that we have in this valley that's taken decades to develop. In my water district alone, they have taken out an entire canal, scaling systems, canal pumps. On the farmers' land they are taking out deep wells which take them a year and a half to replace. We need some help on this. There's some Congressmen here that are espousing high speed rail. You need to talk to those folks and say get with the program and do what you promised in the bond and in the law.

Thank you for allowing me to participate in this hearing. I'll be glad to answer questions at will.

[The prepared statement of Mr. Upton follows:]

Statement of Kole Upton, Chairman,
Madera-Chowchilla Water and Power Authority

Mr. Chairman and Members of the Subcommittee

It is an honor and privilege to appear before the Water and Power Subcommittee. I appreciate the opportunity to recommend actions concerning the subject of the Hearing, "Creating Jobs by Overcoming Man-Made Drought: Time for Congress to Listen and act."

I, Kole Upton, am a farmer in Merced and Madera Counties living on the same farm started by my father after he returned for World War II. With my brother and sons, I grow wheat, corn, oats, cotton, almonds, and pistachios. The water essential to growing these crops comes from four sources: Friant Dam, Buchanan Dam, Merced Irrigation District, and groundwater. None of these sources by itself can provide enough water to sustain our area for the long term.

I am appearing as the Chairman of the Madera-Chowchilla Water and Power Authority (MCPWA). This organization is a joint powers authority made up of the Madera Irrigation District (MID) and the Chowchilla Water District (CWD). It is responsible for the operation of the Madera Canal (which transports water from Friant Dam to MID and CWD) and MCPWA's four power plants.

The subject of this Hearing is jobs. It is important not only that we create jobs but that we protect the ones we have. It is counterproductive for one part of the government to act to create jobs in the San Joaquin Valley while another part advocates programs, projects, and policies that threaten existing jobs. Thus, I want to focus on several areas in which Congress can "Listen and Act" to create jobs but also "Listen and Act" to amend or eliminate government actions that threaten existing jobs.

The subject topic areas are listed first, and then followed by a more detailed explanation of each one.

1. Congressional action to require judges and government agencies to hold environmental water releases to the same standards as required of the urban and agricultural users.
2. Authorize and fund the building of Temperance Flat Dam.
3. Amend the San Joaquin River Settlement Act to restore the River while ensuring job protection and creation.
4. US Army Corps of Engineers (USACE) Issues
5. High Speed Rail's Adverse Impact to Farmers, Water Facilities, and Jobs.

Environmental Water Releases

No one disputes the need for all living species to have water. Nor, is there much dispute about the fact that decades ago water diversions did not adequately address the environmental needs of society. But, the pendulum has swung too far in the other direction. Now, there are many examples of environmental diversions that have not resulted in any improvement to the situation for which the water was taken from other users that were beneficially using the water.

There is no better example that the Delta. Millions of acre-feet have been diverted from their historical beneficial use to ostensibly save the Delta and several endangered and/or threatened species. Yet, the Delta is in worse shape than ever.

It is time that water used for environmental purposes be held to the same standard required of other users. If environmental water that is diverted is not accom-

plishing the task for which it was taken, it should be declared a "waste and unreasonable use" of water. That water could then be returned to other water users who could use the water in a manner to benefit society. This equates directly to job restoration and creation! How many thousands of jobs have been lost in the Valley due to environmental diversions that have accomplished nothing?

The California Constitution and commons sense forbid the wasteful uses of water. Congress should require current environmental releases to be regularly reviewed for efficacy. Congress should also set forth requirements that prohibit actions by agencies or judges from ordering environmental water releases until such actions are deemed to be prudent, feasible, scientifically justified, and have a reasonable chance for success.

Authorize and Fund Temperance Flat Dam

There is nothing immoral or unethical about a society investing in its own future. A dam at Temperance Flat would be such an investment, one which would have filled with up to 750,000 acre-feet of water four times in the last seven years. That is more than enough water to supply the entire one million plus acres in the Friant service for one year. That would have been an immense benefit to the overdrafted underground aquifers in the San Joaquin Valley.

In the past, such leaders as President Kennedy and Governor Pat Brown led the way with dams and other water infrastructure projects that turned this area from a desert to a garden. For decades now, however, society and its leaders have abandoned major improvements to our water infrastructure. Much of this attitude comes from the desire by society to be environmentally sensitive and ensure the survival of as many species as possible. Although some espousing this continued course of action are well intentioned, it is time for elected officials to bring some balance back to the situation. Our future depends on it.

The economy in the San Jaoquin Valley is agriculturally based because we are blessed with some of the most fertile soil in the world. The one essential requirement for production and the associated JOBS is water. Without water, this land becomes a paradise for tumbleweed and jack rabbits.

It is obvious to anyone living in the San Joaquin Valley that a dam at Temperance Flat would provide multiple benefits to society. Flood control, surface storage, and construction jobs are just a few of the obvious benefits. The flood control and increased surface storage components would dovetail perfectly with the increased need to utilize groundwater banking to mitigate the overdraft of the underground aquifers. Groundwater banking by itself is limited because it cannot absorb the current high flood flows that must be released due to the small capacity of Friant Dam. Temperance Flat Dam would solve that problem.

Unfortunately, the existing regulatory environment at both the state and federal levels makes development of even simple water banking projects unnecessarily time consuming and expensive. For instance, it has taken seven years and millions of dollars to get the permits for Madera Irrigation District's water banking project.

Congress needs to act and authorize and fund Temperance Flat Dam.

Amend the San Joaquin River Settlement Act

The San Joaquin River Settlement was made in faith by the farmers in the Friant service area. There were two co-equals goals: 1.An attempt to revive the 60 year old dead salmon fishery on the main stem of the River, and 2. The Water Management Goal, to mitigate the water losses to the Friant service area. The Bureau of Reclamation is responsible for the implementation of both goals.

The Bureau's task to mitigate our water losses has been made much more difficult by the increasing number of lawsuits involving the Delta. Ironically, some of these lawsuits have been initiated by some of the same environmental groups who pledged to help mitigate the farm water losses as part of the Settlement.

Regarding the return of salmon, if global warming is as claimed by some environmental groups, then the return of a cold species like salmon to the San Joaquin River which is already on the periphery of salmon viability is highly problematic. Indeed, even studies by the federal government suggest that is a futile exercise.

No one argues with the concept of a restored River, but at what cost? Without the mitigation of farm water losses, many jobs will be lost and the overdraft of the underground aquifers will increase. We will find ourselves in the same predicament as the West Side with only the idling of hundreds of thousands of acres as the means to balance our needs with the water available.

We need Congress to declare that the extension of the current fishery below Friant Dam to Sack Dam fulfills society's obligation to restore the River. Such an action would allow all the farm water losses to be mitigated, restore the River, and protect and create JOBS.

The U.S. Army Corps of Engineers (USACE) Issues

Throughout the West and especially in California, there are thousands of miles of earthen canals, mostly unlined, that have safely and efficiently delivering water to farms for over a century with few major problems. These facilities were built to convey irrigation water, not to be flood control levees or provide any other flood control function other than to occasionally distribute requested flood waters. Recently, USACE has initiated an effort to create regulations that such canals be built or rebuilt to flood control levee standards.

In addition, the USACE is trying to assert Clean Water Act (CWA) jurisdictional controls over constructed conveyances such as canals. This will impede operations, and drive up the costs of maintenance and repairs without any demonstrable public benefit. This USACE effort is far outside the scope of CWA, lacks legal foundation, and needs to be brought to a halt.

Although it may be well intentioned, the last thing we need is another government agency (e.g., EPA) expanding its power and jurisdiction over our water operations without any benefit to society.

High Speed Rail and its Adverse Impact to Jobs

Although the concept of High Speed Rail (HSR) may be admirable, the current HSR project through the San Joaquin Valley as planned will be devastating to agriculture. Despite the intent of the language in the law and the bond authorizing HSR in California to use existing transportation corridors and minimize impacts to farmland, the current route options through the Valley do the opposite.

In my area alone, the HSR routes adversely impacts thousands of acres of farm land. For individual farmers, it takes out deep wells, canal pumps, pipelines, the other water infrastructure facilities of individual farmers. For public agencies such as water districts, it takes out entire canals, water facilities for inter-district transfers, and sophisticated and expensive monitoring systems installed for the purpose of ensuring that the water is used efficiently.

The agriculture industry in the Valley has a multiplier effect providing jobs all the way up the food chain from farm to market. It has taken decades to develop the economic infrastructure that supports the agriculture industry. High Speed Rail should integrate its infrastructure with the Valley's existing situation, and drop the approach that HSR is so important that it must supersede all other activities in the Valley.

Congress should aggressively review the HSR project in California. A poorly planned and over budget project that adversely affects our #1 industry will cost the Valley jobs. High Speed Rail should be done right or not at all.

For inclusion with my testimony, I am offering a study just released titled, "Will the High-Speed Train Benefit California's Middle Class?"

Thank you for the opportunity to offer oral and written testimony.

Mr. MCCLINTOCK. Again, I want to request to keep demonstrations to a minimum. Our next witness is The Honorable Mary Piepho, Supervisor for Contra Costa County, Discovery Bay, California.

STATEMENT OF HON. MARY PIEPHO, SUPERVISOR, CONTRA COSTA COUNTY, DISCOVERY BAY, CALIFORNIA

Ms. PIEPHO. Good morning, Mr. Chairman and Members of the Subcommittee and attending guests. My name is Mary Nejedly Piepho and I'm a member of the Contra Costa County Board of Supervisors. I greatly appreciate the opportunity to appear before you today and share some important views from another part of the state, the five counties that the Sacramento-San Joaquin Delta runs through. I'm here on behalf of the Delta County Board of Supervisors that encompass the Delta: Sacramento, Yolo, Solano, San Joaquin and Contra Costa counties. Together we represent more than four million Californians that live and work in the Delta region. We are fully aware that two-thirds of our state relies on water that flows through the Delta and that it is an ecosystem of national significance and the center of our state's economy.

The Delta supports an economy of state and national significance and the Delta supports not only our state and nation food supply, but that of the world. Like you, we feel strongly that we should have an integral role in addressing the multitude of complex Delta issues that directly affect us in every way. I'm here today to encourage you to work together with us in solving the very serious water challenges facing our regions and the state and support our economy rather than solutions that might benefit one region of California at the expense of others, our economy at the expense of others. To be clear, we are very concerned about certain provisions included in HR-1. The Delta County Coalition is opposed to any such efforts that would arbitrarily block legal protections for the Sacramento-San Joaquin Delta and its fisheries. Such an effort, if enacted into law, would, in our view, undermine the fragile collaborative approaches that are just beginning to work to solve California's immense and historical water problems.

In California, as you are aware, we have a new Governor, a new administration and a new approach to our state water complex challenges, an approach that we believe needs to be given a chance to succeed. And the Delta County Coalition has been constructively engaged in these efforts. We are most concerned by the HR-1 provisions that would threaten Delta communities that rely on a healthy Delta environment and clean water to support a regional economy dependent on farming, fishing and recreation. Rather than building trust among state holders, collaboration among state and Federal agencies and balance science-based solutions that benefit all Californians, this proposal would lead water policy discussions back to gridlock and litigation. Long lasting solutions to Delta issues calls for us not to move backward, but to move forward. And the best way forward, in our opinions, is to continue to support efforts that work through existing laws and to work together.

An example of such an effort currently underway is the second phase of the National Academy of Sciences' study on Sustainable Water and Environmental Management in the Delta. Due in approximately November of this year, this report will discuss how to most effectively incorporate science and adaptive management concepts into holistic programs for management and restoration of the Bay-Delta in a way that should best inform the Bay-Delta Conservation Plan Development process. At a time when the NAS is completing its important work, Congress should not undercut these efforts by eliminating important legal protections for the Delta today. The Delta County Coalition strongly supports the scientifically based approach to solving water issues for the state and restoring the Delta ecosystem and that we would all benefit from it.

We encourage Congress to support the recent state and legislative actions contained in the Delta reformat in the existing body of state law. Additionally, we hope that Congress will fund as a priority scientific expertise and help us to address these problems. The Delta, at 1300 square miles, is the largest estuary and wetland ecosystem on the west coasts of both North and South America. It includes over 500,000 acres of agricultural land and 200,000 jobs. The five-county Delta region has consistently contributed more than 2 billion dollars annually in agricultural gross value. California has a very diverse economy, up and down the state, with no

single sector dominating our total state economy. Our state's economic health depends on a healthy Bay-Delta system and a comprehensive water program. We would encourage you to look for solutions that include practical solutions, short and long term.

First among these is additional storage south of the Delta. Until the critical issue of south Delta storage is addressed and implemented, there is little or no benefit for removing pump restrictions. There simply is no place to store any additionally gained water. Since December of last year there have been several extended periods when the export pumps were not constrained by the biological opinions, but rather by their own inability to pump water or deliver it. Most recently, the pumps shut down completely and they are still not delivering as much water as they could, because there's no place to store the water. Second is the adoption of a solutions-oriented approach, beginning with immediate actions we know will be required now and in the long-term that will put people to work today. These include emergency planning, protection of key infrastructure and levee improvements. An additional and absolutely critical investment we need in order to ensure reliable, high-quality water supply for all users everywhere in the State, is in the improvement of the Delta levee system. The Delta Vision project, completed by the State of California, arrived at the same conclusion.

In closing, let me reference the Principles of Agreement, adopted by the Delta Counties Coalition, which describe our joint interest on the Bay-Delta Estuary and are attached to our written testimony. I won't address them, but we believe the Bay-Delta must be protected and restored or it will not be available as a resource that is reliably available to help meet the various and legitimate needs of all of those around the state, 23 million Californians. Thank you, Mr. Chairman.

[The prepared statement of Ms. Piepho follows:]

Statement of The Honorable Mary Nejedly Piepho, Supervisor, Contra Costa County Board of Supervisors, Representing the CA Sacramento-San Joaquin Delta Counties Coalition (DCC)

Good morning

My name is Mary Nejedly Piepho and I am a member of the Contra Costa County Board of Supervisors. I appreciate the opportunity to appear before you today. I am here on behalf of the Delta County Boards of Supervisors that represent the five counties encompassing the Delta: Sacramento, Yolo, Solano, San Joaquin and Contra Costa. Together, we represent more than four million Californians that live and work in the Delta. I am here today to encourage you to work together with us in solving the very serious water challenges facing our regions and the state, rather than solutions that might benefit one region at the expense of others.

The five Delta Counties joined together to articulate a common vision and voice for the Delta, advocating on behalf of local government and the 4 million people in the Delta. We are fully aware that two-thirds of our state relies on water that flows through the Delta and that it is an ecosystem of national significance. We feel strongly that we should have an integral role in addressing the multitude of complex Delta issues that directly affect us in every way. "Nothing about us without us".

The DCC strongly supports a scientifically-based approach to solving water issues for the state, and restoring the Delta ecosystem. We encourage Congress to support the recent state legislative actions contained in the Delta Reform Act and the existing body of state law. Additionally, we hope that Congress will fund as a priority scientific expertise in helping to address these problems. In particular, Congress should rely on the considerable expertise of the federal and state biologists who have studied the Delta and its fish populations to determine actions to protect and

restore the Delta ecosystem, rather than imposing conditions through legislation that would further contribute to the decline of the Delta smelt and other at-risk species.

The Delta is a unique and critically important natural resource to the state and the nation, above and beyond its clear value to the residents, families, farms and those that depend upon its fishery. The Delta as a place supports 4 million people and I am one of them. The Delta, at 1,300 square miles, is the largest estuary and wetland ecosystem on the west coasts of both North and South America, and includes over 500,000 acres of agricultural land and 200,000 jobs. The five-county Delta region has consistently contributed more than $2 billion annually in agricultural gross value.

California has a very diverse economy, up and down the state, with no single sector dominating our total state economy. Our state's economic health depends on a healthy Bay-Delta and comprehensive water program that balances the needs of all sectors and all users—agricultural, recreational and tourism, commercial, industrial and residential water provision alike. Each is vital.

We recognize the serious economic problems facing the Central Valley and the importance of Central Valley agriculture to the state and nation. We have similar economic impacts and values in our area as well. Surely, there must be a close examination of the diverse factors which contribute to these problems, and solutions to these contributing factors must be jointly crafted. All who care about the Valley and California water issues should acknowledge that there is a body of data prepared by respected individuals and institutions suggesting that some problems in the Central Valley have relatively little to do with reductions at the south delta export pumps.

There have been a number of official letters and reports during and since 2009 that confirm that most of the recent reductions in water supplies were due to drought conditions and not simply Endangered Species Act restrictions.[1] . It is crucial that the examination of the complex and at times interrelated problem areas is comprehensive so that real and sustainable solutions to these problems can be achieved. For both short and long-term benefits to the state.

It is also important to note that additional impacts to the Delta fishery will continue to create economic hardship in other areas of the state, for example, to the salmon and recreational fishing industries. We must be very careful in implementing supposed 'solutions' that benefit one area of the state while adversely affecting another.

There are several items that the Subcommittee should consider as priorities for resolution, which we think will help move the state toward real and comprehensive solutions

First among these is additional storage south of the Delta. Until the critical issue of south Delta storage is addressed and implemented, there is little or no benefit to removing pump restrictions; there is simply no place to store any additionally gained water. Since December, there have been several extended periods when the export pumps were not constrained by the biological opinions, but rather by their own ability to pump water or deliver it. Most recently, the pumps shut down completely and they are still not delivering as much as they could because there is no place to store the water. If agencies are not getting their full amounts this year, it is because investments have not been made for storage to enable more water to be pumped in wet years (which would also help in dry years).

Second is the adoption of a solutions-oriented approach, beginning with immediate actions we know will be required now and in the long term. These include emergency planning, protection of key infrastructure with levee improvements, fish screening and actions to promote a healthy ecosystem that will enhance water supplies and improvement of water quality for all.

An additional and absolutely critical investment we need to make in order to ensure reliable, high-quality water supply for all users everywhere, is in the improvement of the Delta levee system. The Delta Vision project, completed by the State of California, arrived at the same conclusion. Levees are a critical part of water supply and quality. They are not "only" for flood control or for the protection of local privately owned lands. Levees protect water quality and important infrastructure that keeps California running and will for the foreseeable future. We must protect levees today in order to protect existing water supplies and maintain operational flexibility even with any proposed isolated conveyance facility.

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[1] (Lester Snow letter to Sen. Feinstein 5/09, Congressional Research Service Report on CA Drought 12/09, and University of the Pacific—Eberhardt School of Business, Unemployment in the San Joaquin Valley in 2009: Fish or Foreclosure, 8/09)

In your deliberations we hope that you will consider these and other solutions that benefit the Central Valley with consideration of the state as a whole. We believe that ensuring the continued health and reliability of the Delta is key to the health of the other regions that depend upon it. We look forward to working with you on comprehensive solutions that benefit us all rather than pitting us one against another.

In closing, let me reference the *Principles of Agreement* adopted by the Delta Counties Coalition, which describe our joint interests on the Bay Delta Estuary and are attached to our written testimony. I will not address these Principles in detail, but hope you can find time to review them. The Delta Counties Coalition believes the Bay-Delta must be protected and restored or it will not be available as a resource that is reliably available to help meet the various and legitimate needs of those around the state who must surely share our interest in protecting this precious and valuable resource.

Thank you for considering our testimony today.

Delta Counties Coalition Principles of Agreement

The Coalition adopted a set of founding principles of agreement by resolution for the purpose of articulating mutual interests on Delta issues and formulating the foundation for a strategic program of action to further the directives of the Coalition. Furthermore, the Coalition has resolved to work together and with other agencies to better understand Delta-related issues from a regional perspective and to use their unified voice to advocate on behalf of local government in available forums at the federal and state levels. The following includes those principles regarding the management of the Sacramento-San Joaquin River Delta and greater Bay/Delta Estuary:

1. Protect and improve water quality and water quantity in the Delta region and maintain appropriate Delta outflow for a healthy estuary;
2. Protect the existing water right priority system and legislative protections established for the Delta;
3. Respect and safeguard Delta Counties' responsibilities related to land use, water resources, flood management, tax revenues, public health and safety, economic development, agricultural stability, recreation, and environmental protection in any new Delta governance structures;
4. Represent and include local government in any new governance structures for the Delta;
5. Protect the economic viability of agriculture and the ongoing vitality of communities in the Delta;
6. Support rehabilitation, improvement and maintenance of levees throughout the Delta;
7. Support the Delta pool concept; in which the common resource provides quality freshwater supply to all Delta users, requiring mutual responsibility to maintain, restore and protect the common resource;
8. Support immediate improvements to through-Delta conveyance;
9. Require that any water conveyance plan for the Delta be aligned with the principles established by this resolution and supported by clearly demonstrated improvement the entire state's water management;
10. Protect and restore the Delta ecosystem including adequate water supply and quality to support it in perpetuity;
11. Include the study of storage options and implementation of conservation, recycling, reuse, regional self-sufficiency as part of a statewide improved flood management and water supply system; and
12. Support those conservation actions that are aligned with the principles established by this resolution and that are in accordance with habitat plans and programs of the Delta Counties.

Mr. McCLINTOCK. Our next witness is Mr. Larry Collins. He's the President of the San Francisco Crab Boat Owners Association, San Francisco, California.

STATEMENT OF LARRY COLLINS, PRESIDENT, SAN FRANCISCO CRAB BOAT OWNERS ASSOCIATION, SAN FRANCISCO, CALIFORNIA

Mr. COLLINS. Good morning, Mr. Chairman and Members of the Council. I have the fun job of being the salmon fisherman representative here today. You are all pretty cavalier about telling me that my job is over and there's no more work for me. We depend on salmon for 70 percent of our income. My wife and I have been fishing salmon out of San Francisco for the last 27—25-27 years. I represent thousands of fishing families up and down the coast of Oregon and California. I'm an angry man. We have been fishing salmon for 25 years. We bought a house and raised two kids. We are currently paying off our third and final boat. Unfortunately for us and the thousands of families like ours, which are all small business owners, the backbone of this country, we haven't been able to fish for the last three years. And it's been pretty tough for coastal towns from Santa Barbara all the way to Astoria.

The problem started about ten years ago when the pumping levels out of the Delta jumped from 4.5 million acre-feet to almost 7 million acre-feet. You can see the corresponding downward spiral of the salmon fishermen who are losing their houses, their boats and their hope for the future and the remaining belief in their government. And still people are crying down here for more water. The rhetoric coming out of the westside of this valley is almost as toxic as the agricultural wastewater polluting our Delta and Bay.

It isn't much fun being downstream of the corporate millionaire agribusinesses. There is no more water. Every drop is spoken for. You can't keep planting permanent crops. You have gotten way more than your share of the water and you have to give some back. I know that these are hard realities, but any politician or lobbyist that tells you any different isn't telling you the truth, because they are trying to keep their job.

Farmers and fishermen are a lot alike. We are both food providers. The weather can make us or break us. Mother Nature can be a cruel business partner. But the more water you take out of the system to smooth out your ups and downs, the more you guaranty the death spiral of my industry. It is an unfair distribution of public trust resource.

You know, I go into the schools and I do a Fisherman in the Classroom program and I tell the kids public trust resources, that's the water, that's the fish in the ocean, they are owned by all of us and you should care about them, because there's always people trying to take them from you because they are valuable.

In the fishing industry we have textures right now where people are killing the fish in the ocean before they go catch them, which I'm very against it and doing everything I can to stop. But these public trust resources, we need to have them equitably distributed and we have to keep the salmon in the river, you know. And on bad years when there's not much water, it's tough down here in the Valley, it's tough on the coast. There's more fish now. We are finally going to get a salmon season, I think. Not a full season, but some salmon season this year. We got eight days in front of my house last year. The first four days it blew 35 knots, so we couldn't go out. The next four days I caught one and I lost one. So I had

one salmon, which most of it's still in my freezer, because my wife won't let me eat it. It's been tough for the industry and I know you guys have tough times here too. We need to work together. We need to get that balance back that we used to have. We used to have a balance where we were able to go fishing, you guys were able to go farming, you know. You have to remember, salmon is—that's the main course and the veggies, they are the side dishes. Thank you. Any questions, I'll be glad to answer them.

[The prepared statement of Mr. Collins follows:]

Statement of Larry Collins, President,
San Francisco Crab Boat Owners Association

Members of the Subcommittee, I am Larry Collins. I am president of the San Francisco Crab Boat Owners Association. I am appearing on behalf of our Association today.

Our Association is a member of the Pacific Coast Federation of Fishermen's Associations, the largest organization of working fishermen and women on the West coast. I serve, as well, as vice-president of PCFFA's board of directors. PCFFA member associations are found from San Diego to Alaska.

My wife Barbara and I fish for salmon and crab out of San Francisco on our vessel, the 'Autumn Gale'.

I first got involved with water issues around the time of the Central Valley Project Improvement Act 20 years ago and I have been involved ever since.

Salmon fishing was 70 percent of my income so, clearly, if the resource wasn't healthy I didn't work.

We have a duty to appear before you today to provide the fisherman's perspective on California's water resources, the ways in which these resources are being managed and abused, and the assistance which Congress might provide to assure a more equitable and sustainable distribution of the state's water resources among food producers—both fishermen and irrigators—and the state's urban communities.

We were forced out of work altogether—no salmon fishing—beginning in 2008.

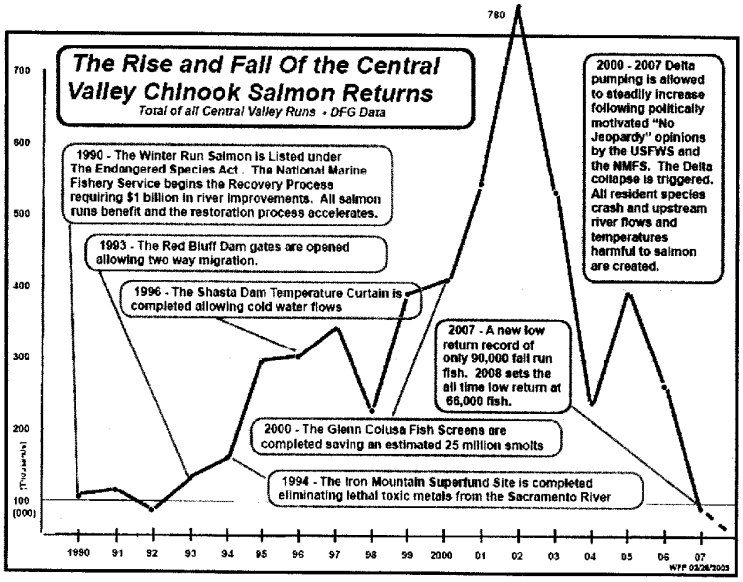
Barbara and I were successful fishermen for 25 years. During those years we bought our home, raised our two kids, and paid our bills—all from the income earned from our fishing.

California's salmon fisheries were shut down altogether, under the regulations of the Federal Magnuson-Stevens Fishery Conservation and Management Act, in 2008 and 2009. There was a meager ocean salmon fishery allowed last year—fewer than 20 percent of our fleet participated in it. It looks as though we might be able to get back to work, to catch up a bit on the bills, this year.

Following the closure of our fishery in 2008 the National Marine Fisheries Service—the Service's scientists headquartered at their Santa Cruz, California laboratory—prepared an assessment of the reasons for the poor condition of Central Valley salmon stocks. The lead investigator of that NMFS panel, Dr. Steven Lindley told the press "Poor ocean conditions triggered the collapse. **But what primed it is the degradation of the estuary and river habitats** and the heavy reliance on hatcheries over the years[1] (Hatcheries are created, of course, to mitigate for salmon habitat lost to water developments.)

This chart documents the dramatic decline of the Central Valley Chinook salmon.

[1] Dr Lindley's statement may be found at http://articles.sfgate.com/2009–03–19/bay-area/17215271_1_chinook-salmon-pacific-fishery-management-council-national-marine-fisheries-service; his report 'What caused the Sacramento River fall Chinook stock collapse' at http://swr.nmfs.noaa.gov/media/SalmonDeclineReport.pdf



We are not talking about just any estuary here.

We are talking about the San Francisco Bay Estuary, the most important estuary on the Pacific Coast of North or South America

The San Francisco Bay-Delta Estuary ecosystem has been declared, time and again, by the California Legislature—most recently in its November, 2009 'historic Bay-Delta water deal' legislation—to be a resource area of both state and national significance, held in trust for the public by the State government.

Given the nexus among State and Federal water quality, environmental policy and endangered species acts, we assume that such public trust responsibility extends to Congress and Federal agencies, as well.

To say that the San Francisco Bay-Delta Estuary is a national treasure doesn't really do it justice. It is a planetary treasure and its health or sickness has grave consequences for all of us. The responsibility for its safekeeping lies primarily in the hands of State and federal governments.

So how has the safekeeping of the Estuary and the river habitats by their State and federal stewards been going lately?

There's been a lot of hand-ringing, of course, because there are supposedly high protection standards in place for the Estuary. When the Governor declared a drought emergency three years ago, many of those Delta protections—including those necessary to address the degradation pointed out by Dr Lindley—were suspended.

And, of course, there have been those controversial federal court decisions, back and forth, about how much water can be taken from the Delta before harm is done to its public trust resources.

How bad was that last drought?

It would have been hard to tell from the news the past three years how bad—or not—the 'drought crisis' was. What is clear is the subject supported a two-year media circus in the Fresno area.

Precipitation in the San Joaquin Valley was 80 to 90 percent normal for most stations in 2009.

Last year precipitation was 100 percent or better for most San Joaquin Valley locations.

The Central Valley Project's Friant and Eastside division customers received 100 percent of their contract allocations in 2010.

It was the San Joaquin Valley's west-side irrigators that were doing all the hollering. It was they who were claiming to be in such a world of hurt. It was they who staged the media circus with clowns like Sean Hannity and posed *60 Minutes*'

Diane Sawyers in front of uprooted almond trees without bothering to tell her that they tear those trees out every 20- to 25 years anyway.

It's the San Joaquin Valley's west-side growers, those with the poisoned soil, that did all the yowling during those two dry years. And you know what? At the same time that our guys were put totally out of work the San Joaquin Valley's west-side irrigators did better than ever.

What about unemployment in the San Joaquin Valley?

The suffering of the farm community of Mendota, California played on the pages of every major newspaper in the country, on Fox 'News' repeatedly, and in a *60 Minutes* broadcast.

How bad was unemployment in Mendota? Really bad—not only in 2008 and 2009, but in virtually every year for which there are records.

Unemployment peaked in Mendota in 2009 at 42 percent. It hit 38 percent eight years ago and got below 20 percent, thanks to the construction boom, for the first time in 2005–2007.

The Berkeley-based Pacific Institute noted in 2009:

"...the drought has had very little overall impact on agricultural employment, compared to the much larger impacts of the recession. In fact, in the last three years, while State Water Project allocations have decreased statewide, California's agricultural job sector has grown. Further, according to Professor Jeffrey Michael, director of the Business Forecasting Center at the University of the Pacific in Stockton, rising unemployment in the Central Valley is largely the result of the bad economy, not a lack of water."[2]

How bad was unemployment in California's salmon fisheries?

Unemployment in the California salmon fisheries, the result in major part, as Dr Lindley said, of the degradation of the Estuary and river habitats, was 100 percent—total—in 2008 and 2009, by order of the U.S Secretary of Commerce.

A study conducted by our industry two years ago, using 2006 National Marine Fisheries Service survey data, indicates that the shut-down of salmon fishing in California—both commercial and sports fishing—delivered a $1.4 billion annual loss, and the loss of 23,000 jobs to our state. The study found that the recovery of California's salmon fisheries to their good, pre-drought condition would provide California a $5.6 billion annual economic gain and the creation of 94,000 new jobs.

Two quite-different San Joaquin Valleys

Because some of you may be new to the San Joaquin Valley I would like to point out that there are great differences between irrigation on the east side of the Valley, where you are sitting today, and irrigation on the west side of the Valley.

Irrigated agriculture on the east side of the Valley began in earnest in the 1870s.

It draws on the streams that flow off the Sierra Nevada and the groundwater basins that those streams recharge.

As you drive down the east side of the San Joaquin Valley you'll see a landscape filled with orchards and vineyards and farmhouses every quarter of a mile and small towns every few miles.

Friant Dam was built on the San Joaquin River during the Great Depression as an economic recovery project.

That was its political reason-for-being. Its principal technical reason was to help recharge the groundwater basins that had been over-drawn in 60 years of east-side agricultural pumping.

Irrigators in the Bureau of Reclamation's Friant Division receive 100 percent of their Central Valley Project water allocation, as do the Bureau's 'Eastside water contractors'—the Central San Joaquin Water Conservancy District and Stockton East Water District.

Irrigating the 'Badlands' of the Valley's west-side—a government step too far

Unlike the east side of the San Joaquin Valley, with its Sierra Nevada run-off water supply, the west side of the Valley is desert-like. Small creeks flow there, but only seasonally.

The first deep wells were sunk on the west side by large landowners during World War I to grow cotton, a salt-tolerant crop in demand by the military.

By 1942 the west-side irrigators were running out of groundwater. They formed the Westside Landowers Association to lobby the federal government for Northern California water for their side of the Valley.

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[2] See Professor Michael's report at http://forecast.pacific.edu/articles/PacificBFC_Fish%20or%20Foreclosure.pdf

In 1952 they formed the Westlands Water District.

One of Westlands' strongest allies was Congressman Bernice—'Bernie'—Sisk of Fresno who pushed for congressional authorization of the CVP's San Luis Unit.

Here's what Mr Sisk had to say about the proposal when it was up for House action in 1960:

> "If San Luis is built, according to careful studies, the present population of the area will almost quadruple. There will be 27,000 farm residents, 30,700 rural nonfarm residents, and 29,800 city dwellers; in all, 87,500 people sharing the productivity and the bounty of fertile lands blossoming with an ample supply of San Luis water."
>
> "Recent surveys show that the land proposed to be irrigated is now in 1,050 ownerships. These studies show that with San Luis built, there will be 6,100 farms, nearly a sixfold increase. And in the breaking up of farms to family-size units, anti-speculation and other provisions of the reclamation laws will assure fair prices."

It's hard to say how many ownerships there are in Westlands. That's information the Bureau of Reclamation is supposed to have in hand ever since Congress 'reformed' Westlands in 1982—but Westlands is, after all, a Reclamation constituent.

There are probably about a thousand ownerships in the Westlands Water District– about the same number as there were 50 years ago. And those thousand may be held by as few as 200 families and corporations according to a University of California assessment.

What we do know is that roughly about the time Congress 'reformed' the Westlands Water District, more than a dozen years after they began spreading Trinity River water onto Westlands' soils, district landowners included the Standard Oil Company—a principal organizer of the 1940s lobbying effort—at 10,474 acres; the Southern Pacific Railroad at 106,000 acres; the Boston Ranch (owned then by cotton billionaire J.G. Boswell) at 26,485 acres; and the Harris Ranch, operator of the world's largest cattle feedlot, at 18,393 acres

Not exactly the kind of 'family farmers' that Congress had in mind when it passed the Reclamation Act of 1902—nor which Bernie Sisk promised the nation in his 1960 San Luis Unit authorization floor speech.

Westland's biggest town is Huron, population 6,000, 98 percent Hispanic.

There is no high school within the boundaries of the 1,000 square-mile Westlands Water District.

What does irrigating the west side of the San Joaquin Valley have to do with salmon fishing?

What does irrigating the west side of the San Joaquin Valley have to do with salmon? A lot—a tremendous amount. And the situation appears to be getting more dire every year.

Even as Westlands was lobbying Congress for the San Luis Unit, more than 50 years ago, to bring Trinity River water down to the west side (water, incidentally, intended for years for the CVP's 'Sacramento Canals Unit', in what is now Congressman Herger's district) it was well understood by all there would have to an accompanying drainage system.

The soils on the west side of the San Joaquin Valley are high in toxics, like selenium, boron and arsenic, that would gradually destroy irrigated agriculture unless it was drained away to the rivers, the Bay-Delta estuary and the coastal ocean.

And, of course, there hasn't been any such comprehensive drainage system created for Westlands and their 'badlands' water district neighbors.

The Bay area community successfully fended off the so-called 'San Luis Drain' from reaching to the San Francisco Bay estuary. There was a lame attempt to promote draining this stuff into Monterey Bay 20 years ago—but that was another nonstarter.

Reclamation tried to puddle the San Luis Unit drainage up at Kesterson Reservoir—and call it a national wildlife refuge. Birds began to die there in large numbers about 30 years ago, about the same time that a neighbor, Jim Claus' cows began to die.

This toxic pathway—from old sea-floor sediments, to irrigation drainage, to disastrous release into the aquatic environment—has been widely reported in the scientific literature as the 'Kesterson effect'.

Selenium levels in the San Joaquin River are unfit for salmon

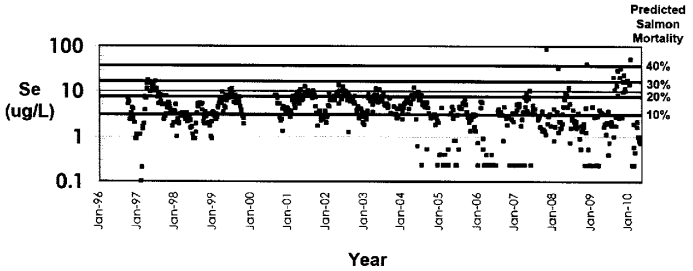


Figure 3. Selenium concentrations in the San Joaquin River at Hills Ferry (from the U.S Bureau of Reclamation)

The toxic irrigation drainage from the west-side finds its way to the San Joaquin River, the San Francisco Bay estuary and California's coastal ocean—at concentrations lethal to juvenile chinook salmon.

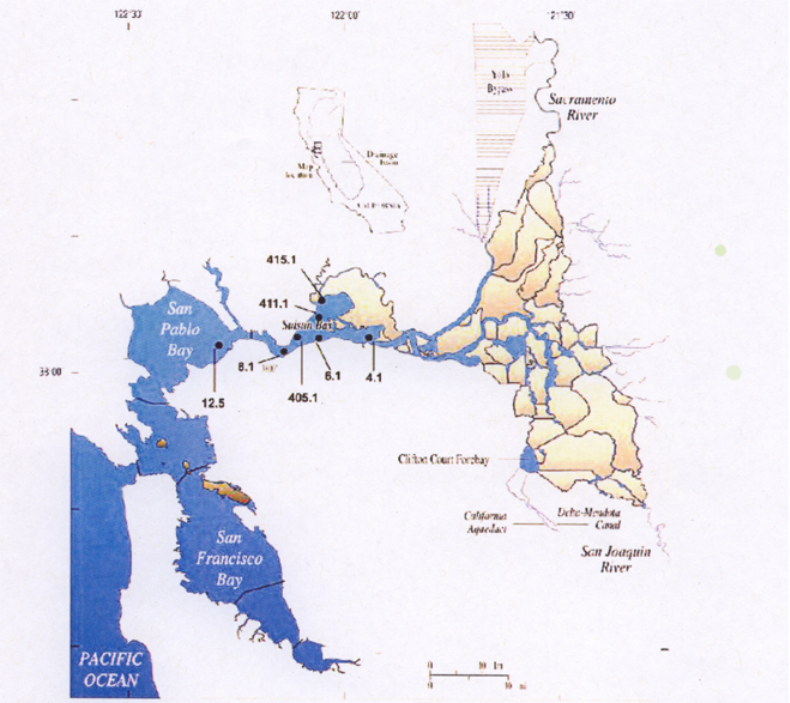


Figure 4. Unsafe levels of selenium concentrations (2 to 22 parts per billion) found in Suisun Bay and northern San Francisco Bay. Selenium loads per day from San Joaquin Valley west-side irrigators contribute from 10 to 30 times the daily selenium load of the Sacramento River and all Bay Area oil refineries combined.

Westlands' free ride

As I mentioned above, the CVP's San Luis Unit was supposed to operate off water from the Trinity River—the 'Trinity Diversion Project'—water that was always intended for the Sacramento Valley until Westlands muscled itself to the front of the line in the 1950s.

The Bureau of Reclamation contracted to deliver up to 90 percent of the natural flow of the Trinity River water to the west-side irrigators on the same basis as they did the rest of their customers—'when and as available'.

The 1970s diversions from the Trinity proved disastrous for Trinity River salmon and the Native Americans who had depended on them for thousands of years for food.

In the 1980s the Department of the Interior began a re-evaluation of the salmon flow needs of the Trinity River.

The findings of the re-evaluation were that much of the water Reclamation had been delivering to Westlands had to be left in the Trinity. It wasn't just about salmon. It was about American law dating back to the very early 1800s—the United States' trust responsibilities to the Tribes.

So Reclamation is delivering to Westlands as much water as it can—that which is available. And if that represents 'only' 65 percent of Westlands' contract maximum is that a raw deal?

If Congress thinks that's a raw deal, then who does it want to deliver the raw deal to? The Tribes?

What's the answer?

The federal government has been delivering water that it should not have—at least from a salmon and Tribal perspective—to Westlands. Westlands has been running toxic drainage from its irrigated 'badlands' into the river, Bay and coastal ocean, poisoning the salmon our members depend on for a living, in violation of law.

In the process Westlands has run up a $500 million federal government tab at U.S taxpayers' expense. And they have received hundreds of millions of dollars in agricultural price supports—subsidies.

They have retired 100,000 acres of toxic lands—lands that salted up from irrigation just like everyone knew they would before they ever began. And that land retirement was done at public expense.

There are another 300, 000 acres of toxic badlands on the west-side in need of retirement—before the last Central Valley salmon tank—and the U.S taxpayers with them.

Retirement of that 300,000 acres of west-side badlands would free up enough water to take care of dry spells like the last one in California for another 20 to 25 years.

For the sake of the salmon—and for the sake of the U.S taxpayers—we urge the Subcommittee to get behind west-side San Joaquin Valley badlands retirement.

We urge you to listen to the facts. We have all had enough of the media circus.

PCFFA's executive director, Zeke Grader, is with me here to today to help me answer questions, if you have any.

Thank you.

Mr. McCLINTOCK. Our next witness is Mr. Tom Birmingham, General Manager of the Westlands Water District, Fresno, California.

STATEMENT OF TOM BIRMINGHAM, GENERAL MANAGER, WESTLANDS WATER DISTRICT, FRESNO, CALIFORNIA

Mr. BIRMINGHAM. Mr. Chairman, Members of the Committee, you have my written testimony and I will try to summarize it as briefly as I can. It is, indeed, ironic and I don't think the irony has been missed on any of you. We are here to talk about the impact of drought on jobs at a time when California's reservoirs are full, our streams are running bank to bank, our flood control bypasses are running bank to bank. The wet hydrologic conditions that exist today could make it beyond reasonable doubt that the water supply for farmers from Tracy to Kettleman City, indeed from Tracy to Kern County, is not a product of hydrology, whether it's wet or dry, it's a product of how much water we can move through the Delta to supply those farmers.

Unfortunately, for the last 20 years—Mr. Garamendi is well aware of this—for the last 20 years we have been dealing with

Federal regulations that have restricted our ability to move that water. A lot of attention has been paid to the two most recent biological opinions with good cause. As an example, last year those two biological opinions cost our two water projects by themselves in excess of a million acre-feet of water. But those impacts are in addition to the impacts that extend back to 1992 when the Federal Government began implementing the Endangered Species Act and began implementing the Central Valley Project Improvement Act. Together those regulations have reduced our reliability from a point of 92 percent in the early 1990s to a point today where in an average water year we can expect to receive between 35 and 40 percent of our contract supplies.

Now, the most devastating year resulting from these regulations was 2009. And I have heard comments that, well, in 2009 the farm economy of the State of California was doing very well and in 2009 most of the farmers south of the Delta got 100 percent, exchange contractors, most farmers that operate under managed levels. Well, Mr. Larson had suggested that in a year like this when water service contractors are getting 75 percent and the refuge is getting 100 percent, that suggests some imbalance. It was worse than that. In 2009 refuges got 100 percent of their contract supply and we got 10 percent. Let me say that again. The refuges got 100 percent of their contract supply under Central Valley Project Improvement Act and we got 10 percent. When I hear the comments about the agricultural economy in 2009 and the fact that most of the farmers got their water, it reminds me of a joke that a recession is when your neighbor is unemployed, a depression is when you are unemployed. Well, this is not a joke and it is not a game. The comments that dismiss the impasse associated with the regulations or resulting from the regulations that we have experienced for the last 20 years are offensive. They are offensive. And the worst part is that these regulations have done absolutely no good for the fish.

And Mr. Garamendi says that we shouldn't abandon science and he's absolutely right, we should not abandon science. And that's precisely why the California Department of Water Resources and the water agencies that you see represented here are in court fighting the biological opinions, because they are not based on science. The Court has found that. The National Academy of Sciences has found that. The panel that Mr. Costa convened has found that if we are going to pursue the long-term solutions that are necessary to sustain the economy in the State of California, we have to figure out a way for the farmers and for the fishermen to survive.

Judge Wanger, when he found that the biological opinions were invalid, related the sloppy science on which they were based. And he made a point which is absolutely correct, that everyone who's interested in the subject, whether it's the water agencies, the farmers, the communities on the westside of the San Joaquin Valley, the fishermen, the Native Americans, the environmental groups, they all deserve better. And if you are going to do anything, Mr. Chairman, I would request that you conduct oversight and then look at ways not to amend the Endangered Species Act, but to provide direction on how that act is going to be implemented so that we can survive over the course of the next five to ten years while we are pursuing long-term solutions.

Mr. McCLINTOCK. Thank you very much.

[The prepared statement of Mr. Birmingham follows:]

Statement of Thomas Birmingham, General Manager, Westlands Water District

Mr. Chairman and Members of the Subcommittee, my name is Thomas W. Birmingham, and I am the General Manager of Westlands Water District ("Westlands" or "District"). Thank you for the opportunity to appear before you today to testify today on the opportunity to create jobs by overcoming man-made drought.

Westlands is a California water district that serves irrigation water to an area of approximately 600,000 acres on the west side of the San Joaquin Valley in Fresno and Kings counties. The District averages 15 miles in width and is 70 miles long. Historically, the demand for irrigation water in Westlands was 1.4 million acre-feet per year, and that demand has been satisfied through the use of groundwater, water made available to the District from the Central Valley Project under contracts with the United States for the delivery of 1.19 million acre-feet, and annual transfers of water from other water agencies.

Westlands is one of the most fertile, productive and diversified farming regions in the nation. Rich soil, a good climate, and innovative farm management have helped make the area served by Westlands one of the most productive farming areas in the San Joaquin Valley and the nation. Westlands farmers produce over 50 commercial fiber and food crops sold for the fresh, dry, and canned or frozen food markets; domestic and export. These crops have a value in excess of $1 billion.

It is ironic that you are here to hear about drought and the impact of drought on jobs at a time when California's reservoirs are full and rivers, streams, and flood control by-passes are running high. However, the current hydrologic conditions are not an anomaly. Floods and drought, the continual alteration between these two extremes is part of the natural cycle of life in California. In terms of water supply for the people who live and work on the westside of the San Joaquin Valley, it used to be you could tell the difference between the two quite easily. Today that is not the case.

If any proposition should be made inarguable by the current situation, it would be that the water supply for the numerous south-of-Delta Central Valley Project ("CVP") agricultural water service contractors is not dependent on hydrology. Exhibit 1 to my testimony, a graph of the current California Northern Sierra Precipitation, 8–Station Index, dated April 8, 2011, illustrates that the precipitation, the snowpack, and the run-off in the current, 2010–11 water year will be exceptionable; however, the allocation for south-of-Delta Central Valley Project agricultural water service contractors is 75%. This anomaly is a product of the fact that today we are living under a federal regulatory regime that has made droughts more frequent and their impacts more severe. And those same regulations are reducing many of the natural benefits we used to derive from periods of high precipitation.

This is not a recent problem. Limitations on CVP operations that created this circumstance date back to 1992, when restrictions began to be imposed on operations of the W.C. "Bill" Jones Pumping Plant under the Endangered Species Act to protect listed species and to implement the fish, wildlife, and habitat restoration measures of the Central Valley Project Improvement Act, (Pub. Law 102–575). In fact, the CVPIA has been implemented by the Department of the Interior in a manner that has reallocated more than 1,000,000 acre-feet of CVP water away from farms, ranches and business that relied upon this water for decades to the environment—for the restoration and enhancement of fish and wildlife. Virtually all of the water supply reductions that have resulted from implementation of the CVPIA have been imposed on south-of-Delta Central Valley Project agricultural water service contractors.[1] As depicted in the graph attached to my testimony as Exhibit 2, these restrictions have resulted in reduced contract allocations to south-of-Delta irrigation contractors in many years when Reclamation spilled water from Project storage to meet flood criteria.

[1] The disproportionate impacts of these regulatory requirements on the water supplies of west side farmers were recognized by former Governor Gray Davis and former Secretary of the Interior Bruce Babbitt as early as June 2000, when they signed the CALFED document entitled "California's Water Future, A Framework for Action." In that document then Governor Davis and then Secretary Babbitt correctly noted that Westlands and other San Joaquin Valley agricultural water contractors had been "disproportionately affected by recent regulatory actions," and they described a number of actions that would restore, over the short-term and the long-term, these contractors' water supplies. Unfortunately, those actions have not been successful in restoring our water supplies.

The most severe impact of the restrictions imposed under the CVPIA and the ESA occurred in 2009, the first year in which the CVP was operated under the Delta smelt biological opinion for the operations of the Central Valley Project and State Water Project issued by the United States Fish and Wildlife Service and dated December 15, 2008. As a result of the combined effects of dry hydrologic conditions and regulatory restrictions, the final allocation for south-of-Delta agricultural water service contractors was 10%. Hundreds of thousands of acres of productive farmlands had to be fallowed and millions of dollars worth of permanent crops were destroyed, simply because there was not sufficient water to sustain them. The most tragic consequence of the 2009 crisis was that thousands of people who live and work on the westside of the Valley lost their jobs; unemployment rates in the City of Mendota and the City of San Joaquin soared to more than 40%. Small, local businesses were plunged into an economic crisis. And tragically, many people went hungry.

At the time, there was much debate about whether the human disaster experienced in 2009 was the result of natural drought, rather than regulatory restrictions on operations of the CVP. (In fact, that debate continues today.) It was also observed that the communities on the westside of the San Joaquin Valley that were experiencing unprecedented levels of unemployment historically had high levels of unemployment, and it was asserted that the 2009 levels were a consequence of the nation-wide economic recession. The reality is that there was some truth on both sides of these debates.

In 2009, dry conditions did contribute to reduced water supplies; however, restrictions imposed on CVP operations under the 2008, Delta smelt biological opinion exacerbated the impact of those dry conditions. The 2008 Delta smelt biological opinion reduced south-of-Delta CVP water supplies by nearly 250,000 acre-feet. (The impact of this biological opinion on the combined water supplies of the CVP and the California State Water Project was 620,000 acre-feet.) Moreover, the restrictions on CVP operations imposed under the 2008 Delta smelt biological opinion were in addition to other restrictions imposed by earlier biological opinions and the CVPIA. There cannot any doubt that had none of these regulatory restrictions been in place, the allocation for south-of-Delta CVP contractors would have been significantly higher than 10%. Indeed, when compared to allocations in similar water years that occurred prior to 1992, the 2009 allocation for south-of-Delta CVP contractors could have been as high as 90%. This is made evident by Exhibit 3 to my testimony, a chart depicting allocations for south-of-Delta agricultural water service contractors since 1952.

In addition, the communities on the westside of the San Joaquin Valley that had unemployment rates in excess of 40% in 2009 have historically had high unemployment rates, and the nation-wide economic malaise that occurred in 2009 undoubtedly contributed to unemployment on the westside of the San Joaquin Valley. But equally true is that hundreds-of-thousands of fallowed acres and the destruction of permanent crops contributed to higher than average unemployment. The graph attached to my testimony as Exhibit 4 helps to illustrate each of these points.

Admittedly, Exhibit 4 is not based on a robust economic analysis. However, in 2009, more than 200,000 acres in Westlands that otherwise would have been cultivated were fallowed. No one can dispute that had these lands been irrigated, some farm workers in the immediately adjacent communities who were without work would have been employed. A very conservative assumption is that every 800 acres under irrigated cultivation will produce three farm worker jobs. This means that had these 200,000 fallowed acres in Westlands been irrigated, an additional 750 farm workers would have been employed.

In 2011, the harm that these restrictions are doing to the human environment is not as dramatic as the crisis in 2009. However, in 2011 these same regulations reduced the initial allocation for south-of-Delta CVP agricultural water service contractors to 50%. And although that allocation has incrementally increased, so that today our farmers can expect to receive 75% of the water we have contracted for, so long as farmers cannot predicatively rely on receiving an adequate supply of water, they are unable efficiently plan their annual operations and are unable to secure crop loans until very late in the growing season.

The harm these regulations have done to our communities, our economy, and the environment would be bad enough, but what is worse, they have produced no demonstrable benefits for at risk species. And as the United States District Court has consistently found, many of these regulation lack any basis in science.

Over the last three years, Westlands has joined with the California Department of Water Resources and other public water agencies that serve more than two-thirds of California's people in litigation that challenges the most recent biological opinions for operations of the CVP and California State Water Project. We have been trying

to ensure that the biological opinions meet the standards for scientific integrity that the Endangered Species Act requires. And time after time, the District Court has found that the federal fish agencies used what the court called "sloppy science" or, in many instances, no science at all in preparing these biologic opinions.

They failed to prepare even the most basic quantitative analysis to support their regulations. They ignored scientific reports that did not fit their preconceived notions and cherry-picked from others only the findings that they agreed with. In addition to failing the Endangered Species Act's standard of "best available science," the court found Reclamation violated the National Environmental Policy Act as well.

California's water system was designed to enable us to live within the extremes of flood and drought. In the past it gave us the flexibility to adjust to these changing conditions and move our water supplies around to the places where and when they are needed most. That flexibility is what the current federal regulatory regime has taken away. To restore it, we need to begin now building the new facilities that are needed for the twenty first century.

According to Merriam-Webster, the word "drought" has two principal meanings: (1) a period of dryness, especially when prolonged, that causes extensive damage to crops or prevents their successful growth; and (2) a prolonged or chronic shortage or lack of something expected or desired. We certainly are not in a period of dryness this year, but people who live and work on the westside continue to suffer from a prolonged and chronic shortage of the water they expected under their contracts with the United States.

I hope my testimony has made it clear that this prolonged and chronic shortage is the result of policy choices made by the federal government, not by dry hydrologic conditions. Plain and simple, this is a man-made drought. It is Westlands' view that these policy choices must be changed to better reflect the natural system, human needs and good science. I hope your Subcommittee will help to make that happen. I would welcome any questions from members of the Subcommittee.

Exhibit 1

California Northern Sierra Precipitation

8-Station Index, April 08, 2011

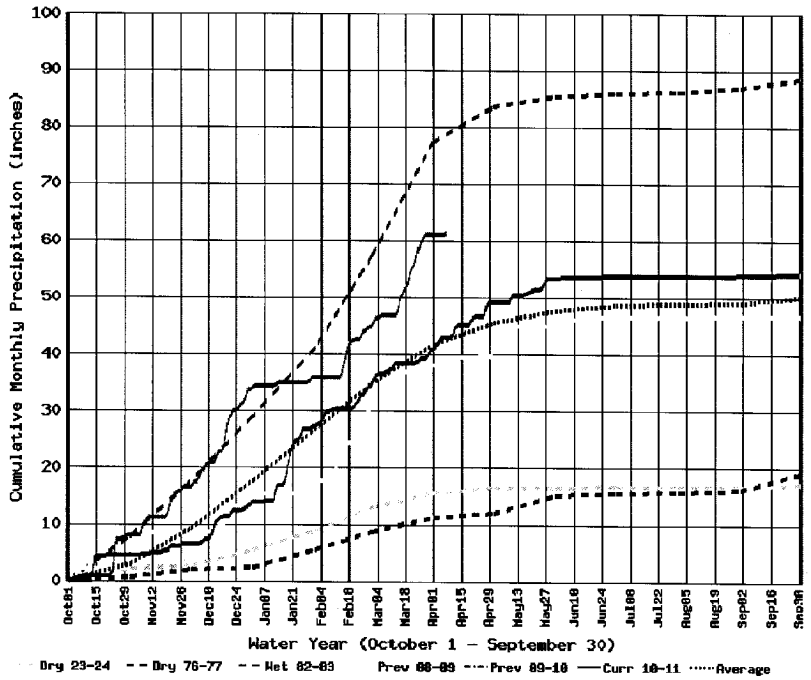


Exhibit 2

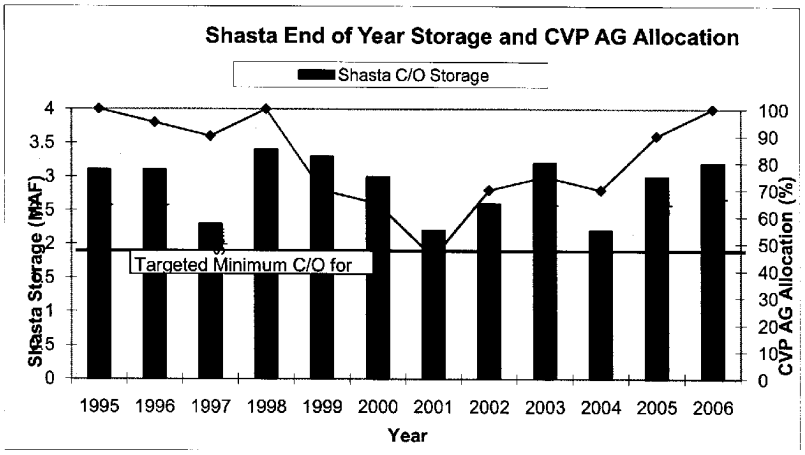


Exhibit 3

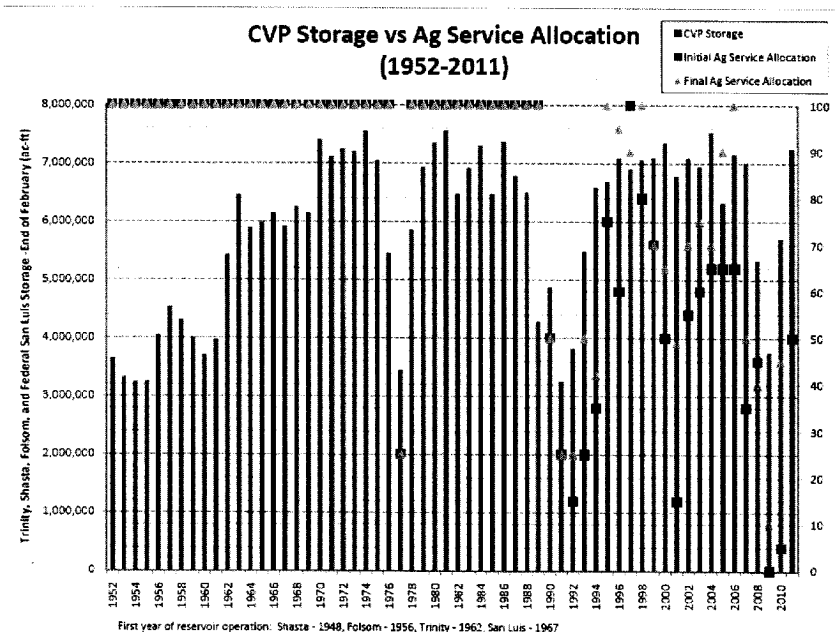
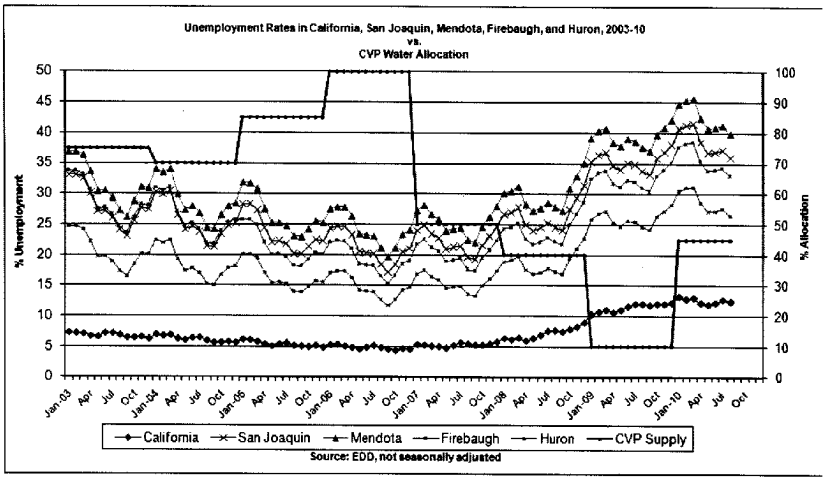


Exhibit 4



Mr. MCCLINTOCK. Our next witness is Mr. Jim Beck, who is the General Manager of the Kern County Water District from Bakersfield, California.

STATEMENT OF JIM BECK, GENERAL MANAGER, KERN COUNTY WATER DISTRICT, BAKERSFIELD, CALIFORNIA

Mr. BECK. Thank you, Mr. Chairman. It is a privilege to be here today. I represent Kern County Water Agency. I had to get a special visa to come to Fresno today. It expires at noon, so I'll be hurrying out of the building.

What ESA has done to us I think is indicative of what's going on in the State. In 1961 our growers signed a contract with the State of California to receive one million acre-feet of water from the state water project. As a result of a number of decisions that included the implementation of Federal and state environmental regulations, by 2005 growers in our area could depend on the State Water Project to deliver about 68 percent of what they had signed up for. So they lost 32 percent of their water supply. Now, it wasn't all endangered species regulations, but a large portion of that in fact was directly related to that.

So, in the last five years, we have seen a more dramatic drop of that reliability. As a result of the biological opinions, we lost another 8 percent. So right now our growers are sitting on a 60 percent reliability on a contract that they executed in 1961 for five million acre-feet—or one million acre-feet of water. Also, the ESA has cost the state water project 1.5 million acre-feet of water lost in the last three years. During those three years our growers had to continue to pay for water that they did not receive. That's the nature of the state water contract and that meant that we paid for over 120 million dollars for that water, to get the privilege of seeing it go out to the ocean.

So to combat this, we have one of the world's greatest groundwater banking programs, if you have water, we can store it. We have done that. We have invested half a billion dollars in infrastructure and water supplies that have allowed us to combat the drought that we saw over the last three years. Even with those tremendous assets, we did see a decline in farm and ag values. In 2008 they were at 880,000 acres of production, land production. We saw 40,000 acres go out of production in one year and we also saw the value of our agriculture and economy drop by 400 million dollars in one year. That's an 11 percent drop in one year. Most of the westside of our portion of the San Joaquin Valley is suffering the same consequences that the rest of the Valley is. There's high unemployment rate. We are talking 35 to 40 percent unemployment in towns like Lost Hills, Delano and Shafter. So it's really a difficult time for much of our agricultural community. Their way of life is really at stake in ground zero of this crisis and our success and failure means whether they continue to exist in any form that they are today.

So what do we do? First of all, we need to update the ESA. Tom Birmingham, myself and many state and Federal regulators are involved in a plan called BDCP. This is an effort to permit an isolated facility as well as deal with the overall ecosystem collapse in the Delta. That program is moving along. On my good days I'm very optimistic. On my bad days it's a tough, tough battle. It's our best and only hope and we have to stay focused on that. One of the hindrances in that effort is part of the regulatory process of the ESA. There's people in the room who are better equipped to explain this to you, but I'll give you a 30-second update. Section 10 of the ESA requires that non-Federal agencies are allowed to work ecosystems on a global basis. That's a smart way to do it. I'm a scientist. I get it. You look at everything that's going in the ecosystem to figure out what's best for it. Unfortunately, Federal participants in the process, like the Bureau of Reclamation, fall under Section 7. They have to do a species-by-species review of what goes on. It doesn't make sense. Sometimes that's in conflict with Section 10 and it's really hampering the process. We recommend that you look at modifying the Bureau of Reclamation's particular requirement for the Section 7 consultation.

Next, we'd like you to make sure, like the other cries we've heard, we need to have better science. It's a crime that we had to throw a fit and sue to get people to understand that dumping 15 tons of ammonia into the Sacramento River on a daily basis might have an effect on the ecosystem. That gives you an example of the type of paradigm we have been in where logical science that doesn't match with the existing paradigm is rejected and you have to fight and battle, you have to plant a porthole making sure legitimate science gets into the equation. There are a lot of other examples of that in my testimony.

I want to thank you for this effort and I really appreciate the opportunity to speak to you today. Thank you.

[The prepared statement of Mr. Beck follows:]

Statement of Jim Beck, General Manager,
Kern County Water Agency, Bakersfield, California

Good afternoon, Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. My name is Jim Beck. I am the General Manager of the Kern County Water Agency.

Introduction

The Kern County Water Agency (KCWA) is located in Bakersfield, California and serves the urban and agricultural areas in the surrounding region. KCWA's mission is: "To ensure that adequate, reliable and affordable water supplies are available for beneficial use by the people and economy of Kern County."

KCWA participates in a wide range of water management activities including protecting water quality, providing domestic, municipal and industrial water supplies, and constructing and managing groundwater banking facilities. KCWA is the second largest participant in the State Water Project (SWP), a water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants.

KCWA holds a contract for one million acre-feet (af) of SWP water and is delivered to 14 public water agencies that serve domestic and irrigation supplies to the farms, families and businesses in Kern County.

Since 1987, KCWA and the local water districts it serves have been faced with extreme variations in water supply from its local and SWP sources due to drought, but also in major part due to regulations imposed under the Endangered Species Act (ESA). These reductions in deliveries have resulted in significant reductions in agricultural production, and significant adverse impacts on Kern County's economy.

In 1961, when KCWA contracted with the State of California for water from the SWP, we expected that KCWA would receive nearly 100 percent of the water contracted for each and every year (about one million af). However, between 1960 and 2005 that expectation had to change because the SWP was not completed, additional criteria were imposed on SWP operations, and because of federally imposed restrictions to protect Chinook salmon and Delta smelt. By 2005, we were forced to expect only 68 percent of our total contract amount, or about 680 thousand af on average. After new biological opinions were issued by the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) (collectively, the Services) in 2008, the SWP delivery capability dropped to 60 percent, or about 600 thousand af on average.

While federal officials have pointed to a hydrologic drought as the major impact to water supplies over the past three years, the federal endangered species act has accounted for over 1.5 million af of water loss to the SWP since the beginning of 2008. Because the SWP was not able to deliver as much water to Kern County, farmers in Kern County paid more than $120 million for water that was not delivered. In addition to that amount, farmers had to pump additional groundwater and acquire very expensive surface water from other sources to make up for the losses.

Under these conditions, making the best possible use of our existing surface and groundwater supplies has become our most important objective. But if we are to do that effectively, the State and federal governments must do a better job of balancing ecosystem and water supply needs in the Sacramento-San Joaquin Delta (Delta).

Balancing the Delta

The Delta is a valuable ecosystem and the hub of California's water supply. It must serve both purposes equally. In the recent past, State and federal agencies have proposed and implemented measures in the Delta based on the presumption that ecosystem needs are paramount and water supply needs are incidental. To effectively manage the Delta to meet the co-equal goals of ecosystem protection and enhancement and water supply reliability, federal agencies that exercise regulatory authority in the Delta must: (1) adapt the regulatory regime to new realities; (2) significantly improve the quality of scientific information that is used by federal agencies in making regulatory decisions in the Delta; and (3) improve coordination among federal agencies and high-level federal government leadership.

In addition, Congress should amend the ESA to streamline federal involvement in the Bay Delta Conservation Plan (BDCP) and to help achieve the co-equal goals of ecosystem protection and enhancement and water supply reliability consistent with State law.

Adapt the Regulatory Scheme to New Realities

The ESA was passed by Congress almost 38 years ago. It was designed to protect both species and the ecosystems upon which they depend, but generally the ESA reflects a species-by-species and project-by-project approach to protecting species and ecosystems. In 1982, Congress amended the ESA to encourage non-federal par-

ties to undertake conservation planning. Coupled with regulatory changes adopted in the 1990s, the 1982 amendments facilitated multi-species, regional conservation planning. In contrast, the basic structure of Section 7 of the Act which governs federal agency actions has remained largely unchanged over the last four decades.

The 1982 amendments to Section 10 of the ESA led to the development of landscape-level conservation plans in many parts of California and on the lower Colorado River. In lieu of conservation planning, the federal government and State of California opted to pursue ecosystem and water supply management in the Delta through the development of CALFED. But the CALFED experiment came up short as the number of listed species in the Delta continued to grow, their status worsened, and the State and federal wildlife agencies imposed species-specific measures intended to halt the declines of the growing number of listed species. It is now clear that conservation planning shows promise as an established regulatory tool to realize the goal of long-term water supply reliability coupled with protection of multiple aquatic and terrestrial species and the ecosystems upon which those species depend.

The BDCP is an effort to marshal conservation planning to realize these co-equal goals. The BDCP is intended to fulfill the conservation planning requirements established in the 1982 amendments to the ESA and the natural communities conservation planning requirements set forth in the State of California's Natural Communities Conservation Planning Act. Those two regimes allow regulatory agencies to take a more comprehensive approach to addressing the needs of the Delta's native, at-risk species.

Unfortunately, the Services have approached the BDCP process as if it were a consultation on operation of the Central Valley Project (CVP) and SWP under Section 7(a)(2) of the ESA rather than a conservation plan under Section 10(a)(1)(B) of the ESA. As a result, the Services' work on the BDCP lacks the kind of regulatory flexibility necessary to really look comprehensively at the full suite of activities in the Delta that affect listed species and their respective habitats. While controlling the operations of the CVP and the SWP remain a central focal point of the Services, other components of the BDCP designed to address activities that likely influence the survival and potential recovery of listed species are given less attention.

Emerging scientific information regarding the Delta and its native species illustrates the need for a comprehensive approach that focuses on, among other things, habitat restoration and projects to address other stressors on the listed species in a manner that is equal to the Services' focus on CVP and SWP operations. But, unfortunately, the species-by-species, project-by-project focus of Section 7 of the ESA is in conflict with the regional conservation planning approach reflected in Section 10 and with the co-equal goals of water supply and ecosystem restoration established by the State of California for the Delta. For this reason, as I previously mentioned, Congress should amend the ESA to facilitate development and implementation of the BDCP.

Specific Suggestions to Improve ESA Regulations in the Delta

A recent idea that we would like to explore with the subcommittee staff following this hearing is the possibility of allowing the U.S. Bureau of Reclamation (USBR) to receive Section 10 coverage under the ESA. Currently, all federal agencies are prohibited from seeking coverage under Section 10 of the ESA, which is broader than the take coverage available under Section 7. In the Delta this circumstance creates the problem of State and local agencies receiving Section 10 coverage, but USBR only being able to receive Section 7 coverage. It is likely that this does not present a problem in most areas of the nation.

But in the Delta, where the confluence of stressors that affect the species are complex and highly interrelated, the species-by-species, project-by-project approach of Section 7 is inadequate. In developing the BDCP, the Services are forced to analyze the proposed actions based on Section 7's jeopardy standard. They don't have the flexibility to look more broadly at the suite of conservation measures being taken to restore habitat or address the long list of other stressors, and instead are required to look at the specific action being taken, in this case the operations of a new conveyance facility. As a result, they must impose limits on CVP and SWP water supplies as their main approach to Delta environmental protection.

However, if the Services were able to issue permits to USBR under Section 10, they could look more broadly at the entire suite of actions being taken to protect the Delta ecosystem and include all of those actions in their analysis. The Services could be less restrictive in how they regulate water supply because they could rely on the boarder suite of environmental actions being implemented to support a finding that the project as a whole provides benefits to the Delta ecosystem.

This more comprehensive approach releases the Services from the narrowly focused Section 7 approach and increases the suite of conservation measures the Serv-

ices can consider in making their determinations about the net benefit of the BDCP to the Delta ecosystem.

Under the current ESA regulations, economic impacts also receive short shrift. The long term goals of water supply protection and endangered species protection can best be served by modifications to Section 10 of the ESA that ensure adequate consideration of the economic impacts of plans developed under that section. The goal should be to foster economically efficient multi-species plans that provide adequate protection to the ecosystem, but also provide protection of water supplies to avoid the economic disruptions that have occurred in recent years. We believe that flexibility to achieve these goals currently exists, but amendment of the statute to require such consideration would stabilize the regulatory environment and avoid undue protracted litigation in defense of such plans.

In the immediate future, however, the coordinated operations of the State and federal projects must rely on Section 7 take authorizations (under biological opinions) to avoid the take prohibitions of Section 9 of the act. A reasonable biological opinion was overturned by litigation in the mid-2000s and now water users have overturned an adverse biological opinion that is under reconsultation. Targeted statutory guidance for reasonable and prudent alternatives that protect water supplies and our economy would help to stabilize the current situation and reduce litigation while long term solutions are developed. Due to the significant effect on interstate commerce and the economy of the nation, those reasonable and prudent alternatives allowing take of species should govern the operations of both the CVP and the SWP without additional regulation by the State of California.

Significantly Improve Delta Science

Science in the Delta has grown myopic. For decades, State and federal agencies, as well as scientists that obtain funding from those agencies through CALFED and the Interagency Ecological Program, have focused an inordinate amount of time and attention on CVP and SWP pumping operations in the south Delta. The CVP and SWP collect reams of data regarding water quality, fish entrainment, tides and water flows, and fish salvage and release every day at their facilities. It is not surprising that, in studying the Delta and its declining fish populations, agency personnel and scientists assumed that CVP and SWP pumping operations pose a threat to listed fish, even though empirical research is contrary to this assumption.

The focus on collecting data regarding impacts of the CVP and SWP contributed to a paucity of data on other factors that could affect the survival and potential recovery of the listed species. Factors like toxics, food web deficiencies, predation, in-Delta diversions, habitat loss due to continuing development, ocean conditions, ocean harvest, and invasive species received relatively little attention compared to operations of the CVP and SWP pumps. Recent work in a number of these areas has shown surprising results; but the results are surprising only because agency personnel and scientists didn't spend the time and effort necessary to understand these factors years ago. New studies undertaken or supported by the water agencies, show that food web deficiencies and predation may be two of the most significant factors among several factors in the decline of some Delta species.

For example, Dr. Patricia Glibert of the University of Maryland focused on the changing forms and ratios of nitrogen and phosphorous caused by increasing concentrations of ammonia from wastewater treatment plants that discharge their effluent to the Delta. In one published study, she noted that the changes in these constituents are related to the changes in species composition and abundance from the smallest organisms all the way up the food web. Dr. Glibert theorizes that much of the Delta's ecologic struggle may be traceable to changes to the food web caused by nutrient discharges from wastewater treatment plants.

Predation by non-native species in the Delta is also a new focus of study that is showing significant promise. Sport fishing trade journals often remark about the "heavy losses" of out-migrating juvenile salmon to predation by the non-native striped bass. A March 2009 story in Western Outdoors described predation by the invasive striped bass this way:

> "The peak of the baby salmon's downstream journey corresponds with the spring spawning run of striped bass. Somewhere along the line, the two migrations crash headlong into one another.". . .. "It's a one-sided blood bath, and when the spray and foam settles, stripers emerge fat and happy while Chinook suffer heavy losses."

While the effects of predation are well known by sport fishermen, it has been of little interest in the Delta scientific community until very recently. A 2010, Sacramento Bee article notes that a supervising biologist for the California Department of Fish and Game worries because in his words "Last night a chill ran down my spine imagining that Delta smelt go extinct—while we have done nothing proactive

to address predation by striped bass." The same state biologist also stated that: "I'm again thinking we should propose revising the striped bass policy to consider them a 'weed' like pigs or a similar pest." Slowly this lack of scientific attention to "common sense" factors like predation that affect the Delta's endangered fish species is changing, but it needs to change faster.

The most recent volley of litigation in the Delta is a ruling by Judge Wagner finding that significant aspects of the current delta smelt biological opinion for the CVP and SWP were arbitrary and capricious. In making his findings Judge Wagner didn't lightly skip over the inappropriate application of scientific information about the delta smelt, and the effect of continued operations of the CVP and SWP on the species. In his conclusion of the case Judge Wanger notes that ". . .the public cannot afford sloppy science and uni-directional prescriptions that ignore California's water needs." The Judge is correct; balancing the Delta's water supply purpose with its environmental value will require a sea change among agency personnel and scientists.

Actively Engage the Federal Administration

The primary federal agencies with regulatory authority over various components of the Delta ecosystem are the Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U.S. Army Corps of Engineers, and Federal Emergency Management Agency. While each of these agencies has the potential to make a significant contribution toward efforts to protect and restore the Delta ecosystem, the Fish and Wildlife Service and National Marine Fisheries Service (collectively, the Services) are the agencies that implement the ESA, which is the statutory program that most severely restricts CVP and SWP operations.

For two decades, California's major public water agencies have tried to work with the federal regulatory agencies to find a balance between the needs of species in the Delta and the provision of water to the State's population. Most recently those efforts included the 1994 Bay Delta Accord and the CALFED Bay Delta Program. Both of those efforts failed both to contribute to conservation of listed species in the Delta and to assure water supply reliability.

As a result, the public water agencies initiated the BDCP as a way to secure take permits under the ESA from federal and state agencies for up to 50 years. To be successful, the BDCP requires the full engagement of the CVP and SWP water contractors, environmental groups, state agencies and federal agencies. Unfortunately, the engagement of the federal agencies has been sporadic.

At the regional level, in California, the Fish and Wildlife Service, National Marine Fisheries Service and Bureau of Reclamation have worked hard to participate constructively and to help move the BDCP forward. But their efforts are compromised by a lack of decision-making above the regional level. Progress toward the completion of the BDCP was substantial when new leadership was appointed to the Departments of the Interior and Commerce to oversee the work of the Services. Since that time the federal agencies have struggled to find direction, commit to decisions, or advance solutions in negotiations regarding the BDCP.

The federal agency staff at the regional level in California is capable of making decisions and moving the BDCP forward. However, the connection between the regional staff and the policy-makers in Washington D.C. must be strengthened to facilitate timely decision-making. If development of the BDCP comes to a standstill every time an issue is sent to Washington D.C. it will fail just like the Bay Delta Accord and the CALFED Bay Delta Program failed.

Conclusion

In conclusion, on behalf of the Kern County Water Agency, I want to again thank the Subcommittee for investing their time and energy to bring this hearing to California's Central Valley. The opportunity to meet face-to-face and constructively work toward better collaboration is appreciated and, we believe, can lead to new progress. Thank you for considering our input and for your service on what are critical issues to our state and country.

Mr. McCLINTOCK. Our final witness is Mr. Mike Connor, Commissioner of the Bureau of Reclamation, Washington, D.C.

STATEMENT OF HON. MIKE CONNOR, COMMISSIONER, BUREAU OF RECLAMATION, WASHINGTON, D.C.

Mr. CONNOR. Thank you, Mr. Chairman, Members of the Subcommittee. I'm Mike Connor, Commissioner of the Bureau of

Reclamation. I'm pleased to provide the views of the Department of the Interior on these very important California water issues. The testimony today compels action without a doubt. It compels an accurate assessment of the facts and the formulation of appropriate policies and I'm happy to participate in that process.

California has been experiencing a twofold crisis over the past several years—one related to water supply and the other to the collapsing Bay-Delta ecosystem. Acres of land have been fallowed, fisheries have been shut down and communities within the Delta are concerned about their long-term survival. In today's testimony I'll focus on positive developments for near-term water supplies as well as efforts made to improve the situation for the long term.

In 2011, California's water supply conditions have improved significantly. Healthy snow and rainfall totals resulted in a 100 percent water supply to most of the Central Valley Project. As a result of biological opinions from the U.S. Fish and Wildlife Service and the National Marine Fisheries Service that apply to CVP, operations are expected to have little impact on this year's water supply. As of this time, the biological opinion for Delta smelt has not resulted in any pumping restrictions. The NMFS biological opinion for salmon and other species has caused some restrictions on pumping, but only about 10,000 acre-feet or 0.3 percent of the total South-of-Delta contractual quantities. And those impacts will probably be offset this coming April.

In view of this year's hydrology and the fact that the ESA restrictions have had little impact to water operations, it's understandable that the Subcommittee and some of our customers are asking why South-of-Delta agricultural water contracts are only at 75 percent. Some context is in order.

First, Reclamation will deliver 100 percent of the contractual water supplies for most CVP contractors, including agricultural, refuge and M&I contracts. We have annual CVP contracts for approximately 9 million acre-feet and currently we have allocated over 7 million acre-feet in 2011.

Second, the 75 percent allocation figure is specific to sub-set CVP contract, known as South-of-Delta agricultural water service contracts.

As designed, the CVP pumps must operate at full capacity all the time to meet 100 percent of the contract quantity South-of-Delta. Since 1999, however, these contracts have been allocated 100 percent only three times. This situation simply did not develop overnight. It's been driven by many factors over the last 20 years that have affected the quantity and reliability of South-of-Delta supplies, including drought conditions, listing of species under the ESA, state-imposed flow and water quality requirements, state water rights priorities, and enactment of the Central Valley Project Improvement Act.

Third, the delivery of water for the 2011 contract year only began on March 1st. The State recently completed it's fourth 2011 snow survey and runoff forecasts. Reclamation has been updating its forecasts and increasing the South-of-Delta allocation as conditions warrant as we did this past Friday.

Fourth, South-of-Delta agricultural and M&I water users are dependent on the movement of water via the state and Federal export

pumps in the Delta. These exports are subject to the water quality standards set forth in the State Water Resources Control Board's Decision 1641. Water quality requirements for salinity and Delta outflow govern operation of the export pumps in order to protect the environment and communities within the Delta.

Fifth, many factors in addition to the export pumps affect species health in the Delta, including toxic substances, non-native species, hatchery management, illegal fishing and local water diversions. As a result of all the factors just cited, the Delta's biologically diverse ecosystem is in serious decline. Water exports through the Delta have been modified to protect at-risk fish species and enhance Delta outflows which affects water deliveries.

Hopefully, this context helps explain the factors that over time influence the South-of-Delta allocation. As stated earlier, this past Friday the allocation was 75 percent, substantially higher than a 20-year average allocation of 62 percent. We expect there may be opportunity to further increase that allocation. Nonetheless, we understand that reliability of South-of-Delta water is not what it once was. We therefore remain committed to working with our partners to develop short and long-term solutions. There are many projects to fund and there are also big picture activities of the Bay-Delta Conservation Plan, or BDCP. Through our water recycling program we invested substantial resources and produced 240,000 acre-feet per year in California. Over the last two years we have also provided 15 million in funding to develop groundwater banking conjunctive use projects. Under CALFED we are studying ways to increase water storage in California. We just issued a record decision with Contra Costa Water District for the expansion of Vaqueros Reservoir. In addition, we are completing construction of the canal that was mentioned earlier with an additional 35,000 acre-feet on average for the project. And we have also prepared, as Congressman Costa referenced, the CVP water plan to be used in the allocations of those. Long-term requires a long-term and confident solution and the best office to do that is the BDCP. It will serve as the basis for providing new water to main facilities and also incorporate Delta restoration projects.

In closing, I'd like to summarize that Reclamation has a broad set of actions underway to develop solutions for the short and long term. We look forward to working with everybody to address all the issues at hand in order to construct that long-term solution.

I'll answer questions at the appropriate time.

Mr. McCLINTOCK. Thank you very much.

[The prepared statement of Mr. Connor follows:]

Statement of Michael L. Connor, Commissioner, Bureau of Reclamation, U.S. Department of the Interior

Chairman McClintock, Ranking Member Napolitano and members of the Subcommittee, I am Michael Connor, Commissioner of the Bureau of Reclamation (Reclamation). I am pleased to provide the views of the Department of the Interior (Department) on challenges and opportunities associated with California's water supply.

The title of this hearing is "Creating Jobs by Overcoming Man-Made Drought." The Administration strongly supports the idea of protecting and creating jobs through water and environmental policies intended to promote certainty, sustainability, and balance in the use of our finite water resources. California has been experiencing a two-fold crisis over the past several years—one related to water supply, and the other related to the collapsing Bay-Delta ecosystem. The issues, of course,

are inextricably linked, and the 3-year drought that recently ended made painfully evident the unsustainability of California's present water supply system. Acres of land have been fallowed, once productive fisheries have been shut down, and many communities within the Delta itself and in coastal California are concerned about their long-term survival. In today's testimony, I'll focus on near-term water supplies, as well as efforts being made to improve the situation for the long-term.

Fortunately, the Obama Administration, together with the State of California, water users, community leaders, and members of the NGO community, are not relying on the status quo—but are seeking to bring back certainty, sustainability, and balance to all those relying on California's Bay-Delta. In September 2009, the Department entered into an MOU with the Departments of Agriculture and Commerce, the Environmental Protection Agency, the U.S. Army Corps of Engineers, and the Council on Environmental Quality to coordinate the federal response to the California water supply crisis and to facilitate a partnership with the State of California in addressing California's water supply and environmental challenges. In December of that year, these same agencies released an Interim Federal Action Plan for the California Bay-Delta which outlines priority actions being taken by these agencies to work closely with the State and local authorities, promote science-based decisions, and ensure effective performance.

In 2011, California's water supply conditions have improved significantly, and improved even more markedly since the Subcommittee last conducted a field hearing in the state in January 2010. Federal Central Valley Project (CVP) reservoirs are at or near capacity for this point in the water year. The state's most recent snow surveys reported statewide snow water equivalents to be 160% of normal statewide as of this date, with snow water equivalents in the Northern Sierras at 172% of normal for this date [1]. As a result of the large amount of precipitation over the winter, projected run-off, and other factors, the U.S. Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) biological opinions that apply to CVP operations are expected to have little impact on this year's water supply. As of March 31 this year, the FWS biological opinion for delta smelt has not resulted in any restrictions on pumping. With respect to the NMFS biological opinion for salmon and other species, to date it has caused some restrictions on pumping, but only in an amount of approximately 10,000 acre-feet—or 0.3% of total south-of-Delta contractual quantities, and because of the flexibility offered by the wet conditions those impacts will most likely be offset in April and May.

In view of this year's hydrology and the fact that the Endangered Species Act (ESA) restrictions have had little impact to water operations, the Subcommittee and some of our customers are asking a very reasonable question: how can Reclamation announce agricultural water supply allocations south of the Delta of only 75%?

Reclamation appreciates the opportunity to address these issues and answer questions of the Subcommittee. The question of allocations goes to the heart of many of our activities underway in California, from planning activities to daily operations to ongoing construction projects. Before speaking to this year's allocations, some context is in order regarding CVP operations and the factors affecting the allocation.

First, it is important to understand that this year, Reclamation will deliver 100% of the contractual water supplies for most CVP contractors, including agricultural contracts and refuge level 2 water, as well as municipal and industrial (M&I) water. We have contracts for a total of about 9 million acre-feet of water from the CVP each year. And, as of this date, we have allocated over 7 million acre-feet for delivery in 2011, with the potential for higher South-of-Delta allocations before a final allocation is made in June.

Second, the 75% figure is specific to a sub-set of the CVP's contracts, known as South-of-Delta agricultural water service contracts. The volume of South-of-Delta contracts is roughly 1.965 million acre-feet, or about 20% of the CVP's total contracted amount. Prior to 1990, South-of-Delta agricultural water service contractors received a 100% allocation in most years. As designed, the CVP pumps must essentially operate at full capacity all the time, to meet 100% of the contracted South-of-Delta quantity. Since 1990, however, these contracts have been allocated 100% only three times. This phenomenon did not develop overnight. It has been driven by a host of factors over the last 20 years that have affected the quantity and reliability of South-of-Delta supplies, including drought conditions, listing of numerous fish species under the ESA, state imposed flow and water quality requirements, state water rights priorities, and enactment and implementation of the Central Valley Project Improvement Act (CVPIA).

[1] http://cdec.water.ca.gov/cgi-progs/snow/DLYSWEQ

Third, the delivery of water for the 2011 contract year began on March 1. The state recently completed its fourth snow survey and runoff forecasts[2]. Reclamation made its initial allocation of water on February 18, 2011, and since that time has been updating its operations forecasts based upon the survey results and continuous monitoring of conditions, including precipitation, timing of snowmelt, and water demands, to determine if additional increases to the allocation can be made.

Fourth, South-of-Delta agricultural and M&I water users are dependent on the movement of water via the state and Federal export pumps in the Delta, and these exports are subject to the water quality standards under the California State Water Resources Control Board's (SWRCB) Water Right Decision 1641. The Delta is home to people and wildlife reliant on a safe and dependable water supply. Urban areas like Alameda and Contra Costa County draw drinking water from the Delta, and agricultural water districts like the North, Central, and South Delta Water Agencies draw water for crops directly from the Delta. People also fish and recreate there. Commercial fisheries in the area are dependent on adequate water quality. Water quality is a significant factor in Reclamation's state permits to export water, and for these reasons, water quality requirements for salinity and Delta outflow heavily govern operation of the export pumps, including, at times, restrictions on pumping.

Fifth, the Delta was historically a 700,000-acre tidal freshwater marsh. Over a hundred years ago, much of this marsh land was reclaimed by constructing 1,100 miles of levees and then draining the lands behind them to allow for crop production. Wetland, marsh, and riparian areas in the Delta have been transformed into farmland or urban developments. Many factors in addition to the export pumps affect species health in the Delta, including toxic substances, other water quality issues, nonnative species, hatchery management, illegal fishing, and smaller, local water diversions. The Delta of the future will be affected by worsening land subsidence, heightened seismic risk and possible effects of climate change which could include both sea level rise and changes in storm timing, intensity, and frequency.

As a result of many of the factors just cited and as noted earlier, the Delta's biologically-diverse ecosystem is in serious decline. Several fish species have declined to the lowest population numbers in their recorded histories. The commercial and recreational salmon fishing season in California was completely closed in 2008 and 2009, and the delta smelt population has continued to decline. As a result, water exports through the Delta have been modified to protect at risk fish species and the overall aquatic ecosystem, which affects water deliveries to urban and agricultural water users who rely on the Delta for their water deliveries. Notwithstanding their limited applicability so far this year, the FWS and NMFS biological opinions for delta smelt, salmon, steelhead, and sturgeon do address water exports at the State and Federal pumps. The opinions, issued in 2008 and 2009 by the FWS and NMFS respectively, determined that operation of the CVP and the State Water Project (SWP) as proposed would jeopardize fish species protected under the ESA and adversely modify their critical habitat. Both opinions included a Reasonable and Prudent Alternative (RPA) to the proposed CVP/SWP operations to avoid jeopardizing the listed fish, and in both cases, under certain conditions, the RPAs limit the ability of the projects to export water at certain times of the year. Both opinions are the subject of ongoing litigation.

Hopefully, this context helps explain all the factors that influence the South-of-Delta allocation. As noted earlier, at this point in time, this year's allocation for South-of-Delta agricultural water service contractors is 75%—which is above the 20-year average final allocation of 62%. There could be an opportunity to increase that allocation in the next month based on runoff conditions South-of-Delta. For example, in 2006, the last year when a final allocation hit 100%, the initial allocation was 65%, increased to 85% at the end of April, and revised to 100% in mid-May. Any increase above 75% will result in South-of-Delta water supplies for agricultural water service contractors to be well in excess of the twenty-year average. Nonetheless, we understand that reliability and certainty of the water supply South-of-Delta is not what it once was. We therefore remain committed to working with our partners to develop short- and long-term solutions, including those currently under consideration in the Bay Delta Conservation Plan (BDCP). I would like to take this opportunity for the rest of my statement to describe actions the Department and Reclamation (as well as other Federal agencies) are taking to assure that water reliability can be maximized not just in 2011, but for decades into the future.

Reclamation is committed to optimizing the use of available water supplies. Through our WaterSMART program, we are focused on projects that improve water management efficiency and provide funding for projects focused on water conservation activities, water banking, and water transfers. Over the last two years Rec-

[2] http://cdec.water.ca.gov/cgi-progs/snow/COURSES.04

lamation has provided almost $15 million in cost share funding for the development and expansion of numerous groundwater banking conjunctive use projects in the San Joaquin Valley. In addition to conjunctive use projects, funding for water use efficiency projects was provided to several Central Valley water agencies to improve water measurement and delivery system automation that resulted in improved water accounting and reduced water losses. Further, through our water recycling program, Reclamation has provided over $477 million in cost-shared funding to recycling projects in California through FY 2010. Statewide, these projects are producing over 240,000 acre-feet of water per year.

Reclamation has a long history of working to address the water supply needs of California. For the past several decades Reclamation has been working toward solutions to resolve complex environmental and water supply issues under the CALFED program and the CVPIA. Under the CALFED program, Reclamation has been working with other Federal, State, and local agencies to study ways to increase water storage in California. Many of these studies are nearing completion and last month, Reclamation issued a Record of Decision for a water operations agreement with the Contra Costa Water District which will facilitate the District's efforts to expand Los Vaqueros Reservoir in Contra Costa County. The expansion project will increase the existing reservoir's storage from 100,000 acre-feet to 160,000 acre-feet. In addition, Reclamation is midway to completing construction of the Delta-Mendota Canal/California Aqueduct Intertie. This project will provide increased water deliveries by restoring and improving CVP conveyance capacity to match the Jones Pumping Plant capacity in the Delta. Improving existing facilities and maximizing the use and flexibility of existing facilities is cost-effective with less environmental impact.

When the current biological opinions were released in 2008 and 2009, all parties recognized the dire condition of the listed species and their Delta habitat as well as the likely effects on water supplies, and multiple lawsuits were filed almost immediately. As a result, the National Academies of Science (NAS) were retained by the Departments in late 2009 to conduct a phased review of the science in the biological opinions, the RPAs, and the initial draft of the BDCP. The first phase, concluded in March 2010, included a review report that focused on the basis for the RPAs. In the second phase, the panel has been asked to evaluate the use of science in the BDCP and to publish its findings in a written report later this year. The final phase of the National Academies study, due in late 2011, will address how to most effectively incorporate science and adaptive management concepts into holistic programs for management and restoration of the Bay Delta. The request by both Department of the Interior and Department of Commerce for the NAS to undertake this multi-layered study underscores our commitment to ensuring that the Opinions and future regulatory actions pertaining to the Bay Delta are based on sound science.

Bay Delta Conservation Plan

At the foundation of the jeopardy findings in the FWS and NMFS opinions is the understanding that the CVP and SWP operate export facilities in the middle of an aquatic ecosystem. For this reason, the BDCP has been underway since 2007 and is currently investigating water conveyance alternatives to move CVP and SWP water through, around, or under the Delta while restoring the Delta ecosystem. The purpose of the BDCP is to provide for a sustainable Delta and a more reliable water supply to meet California's water needs.

BDCP participants are drafting a Habitat Conservation Plan under the ESA that identifies proposed conservation measures addressing water conveyance and project operations, habitat restoration, and other stressors on the Delta environment. Options currently being considered include water exports via dual conveyance facilities (using existing south Delta intakes, new intake facilities in the north Delta, and a new isolated conveyance facility around, under, or through the Delta); large-scale restoration of tidal marsh habitat; and measures to address other stressors such as pollutants, introduced species, predation, and hatcheries management.

The BDCP will serve as the basis for the permitting of new water conveyance facilities. It will also establish the parameters for modifications to the operation of the CVP that are subject to consultation under the ESA. These facilities and the operational and restoration actions that would accompany them offer the best chance at present to address the export constraints discussed above and address the critically important concerns of water users regarding the vulnerability of Delta levees and the potential impact of their catastrophic failure upon the water supply. At the same time, it would provide for a sustainable Delta that will meet the needs of people and fish species dependent upon it. Over the last six months, federal and state agencies, working with affected interests, have made significant progress in working through a number of important issues related to the BDCP. While there

is still much analysis and review to be done, Reclamation and the other Federal agencies are working with the State of California and other appropriate parties toward a draft BDCP and EIR/EIS.

As this process unfolds, it is important to bear in mind that the BDCP is a collaborative, public planning process that will provide for the conservation of species while improving water system reliability. Reclamation is participating in this effort to help facilitate activities of the BDCP with other State and Federal agencies because we understand the importance of reliable water supplies and a restored Delta environment. A significant amount of ecosystem restoration and water conservation work is already underway in the Delta, through the CALFED Program, and through initiatives by some of the water districts participating in this hearing today. Throughout all the public meetings, draft reports, workshops, town hall meetings and even Congressional hearings, we will remain focused on the dual objectives of this Program.

Conclusion

At last year's hearing, Reclamation highlighted the broad set of actions underway today at the Bureau and Departmental levels to improve California's water supply infrastructure and our ongoing operations. The Interim Federal Action Plan for the California Bay-Delta released in 2009 by six Federal agencies continues to leverage available Federal resources, particularly in the areas of drought relief and financial assistance. In the construction arena, more than 40% of Reclamation's funding from the American Recovery and Reinvestment Act (ARRA) has been invested in this state. Many projects like the intertie between the Delta-Mendota Canal and the California Aqueduct underway northwest of here near Tracy and the Red Bluff Fish Passage Improvement Project near Redding will be complete or are nearing completion this year. We also have a suite of water transfer programs that facilitate the transfer of water from willing sellers to willing buyers throughout the CVP. We are pleased to discuss these actions in greater detail with the Subcommittee today.

Understanding the need of farm operators to make early planting decisions, Reclamation also developed a series of actions for the 2011 water year to help support water allocations earlier and higher and is intended to be used to respond to dry-year conditions as necessary. Those actions are identified in the CVP Water Plan for 2011.

Reclamation has a long history of commitment to science across the agency including in the California Bay-Delta estuary. Reclamation is a founding member of the Interagency Ecological Program, a four-decade-old partnership of six federal and three state agencies that carries out or coordinates most of the monitoring and research conducted in the Bay-Delta. Reclamation believes that sound, peer-reviewed science is key to the success of an adaptive management approach to achieving the goal of increasing water supply reliability while continuing to protect and enhance the Bay-Delta ecosystem.

In closing, I would like to emphasize that the Department and Reclamation are acutely aware of this Subcommittee's interest in water and power related issues in the Bay Delta region. The water supply and Delta conditions have declined over several decades and the long-term solution needs to be thoughtful, implementable, and supported by the public. It will take time to achieve the goals of the BDCP. In the interim, Reclamation is taking actions in cooperation with our State and local partners to provide some relief to the environment and to water users to prevent the loss of valuable resources before we are able to find and implement long-term solutions.

As people who administer contracts for water and power, and who work with water districts and farmers on a daily basis, we understand the very real ramifications of water shortage and declining fish populations on peoples' businesses, on families, and on communities. We will continue to work to maximize our reliability in light of the challenges presented by hydrologic droughts, environmental conditions, or regulatory actions.

Thank you again for this opportunity to testify on this important topic. I would be happy to answer any questions the subcommittee may have.

Mr. McCLINTOCK. I'd also like to note for the record that John Laird, the Secretary for the California Natural Resources Agency, was invited to attend today's hearing, but Secretary Laird declined the invitation.

To our witnesses who decided to attend, thank you very much for all your testimony. At this point, we'll begin questions for the wit-

nesses. To allow all of our Members to participate and also ensure that we can hear from all of our witnesses, we are going to be limiting Members to five minutes for questions, although we'll do a second round as requested. However, if Members have additional questions, we'll accommodate them.

And I'll begin. And I'd like to start with Mr. Birmingham. We just heard a statement a few minutes ago and that statement was there is no more water and anyone who says that is just trying to promote their career or words to that effect. As I recall, there are four acre-feet per second passing under the Sacramento Bridge right now on their way to the Pacific Ocean that we can't store. My first question to you is if we had simply built the reservoirs that were originally envisioned by the Burns-Porter Act in 1958, would we be having any of these discussions or problems today?

Mr. BIRMINGHAM. Mr. Chairman, the simple answer is no. We are the beneficiaries of a water supply infrastructure system that was designed by our forefathers and implemented, but it was never really completed. And had we completed all of the infrastructure associated with the original water plan of California, we would not be experiencing these impacts. To say there is no more water probably is technically correct, but the reality is it's a question of how we manage the water resources that we have. And we are doing a terribly inefficient job of managing those resources.

There are a number of things we can do with a stroke of a pen that would improve the efficiency of management of water resources. Integrating the two water projects is a single example and there are many, many others. But I'd like to touch on something that Mr. Upton said and that is we need to apply the standards of reasonable and beneficial use to environmental uses of water. Really what we are talking about today as it relates to the implementation of these biological opinions is that water is being used for no reasonable purpose. We are dedicating water to the fish, but it is not helping the fish. And as a consequence, we are suffering enormous hardship on the westside of the San Joaquin Valley regardless of how good conditions might be someplace else.

Mr. MCCLINTOCK. But it was mentioned by the Bureau of Reclamation, for example, that existing plant facilities, Temperance Flat, for example, don't need to appropriate cost-benefit ratios. But as you begin to do that you realize what about construction costs.

Those are the costs that, in all of the biological opinions, have been issued regarding the price of the facilities right into the stratosphere and we end up with paralysis. So your suggestion is we essentially begin applying the same cost-benefit analysis to all of the water diversions and ask the simple question are they accomplishing what they are supposed to be accomplishing and what economic value are they adding?

Mr. BIRMINGHAM. Again, the simple answer is yes. And this goes to a question that Ranking Member Napolitano circulated to all of us, that is if we have new facilities, who's going to pay for them. And the simple answer is the beneficiaries should pay for them, but then the question becomes who are the beneficiaries. And the classic example is in Public Law 99-546 Congress authorized that the Central Valley Project could be used to meet water quality objective in the Delta. That was going to be a new beneficiary of the

project. And Congress directed that the Secretary of the Interior undertake a cost allocation study, because those costs of meeting those water quality objectives in the Delta were supposed to be non-reimbursable. That study has never been done despite our repeated requests. We, the farmers, are still paying for storage that has now been dedicated to the environment. And so the beneficiaries pay and we need to do the cost-benefit analysis that you're describing in order to determine whether or not these projects make sense.

Mr. MCCLINTOCK. Thank you. Mr. Watte, you are a farmer in Tulare County. One of the messages here today is farmers are just going to have to learn to deal with the fact that we are going to have a lot more conservation, just grin and bear it. In fact, a hearing in Washington D.C. Recently, one member of the Subcommittee said, well, farmers they are always complaining and the more they complain, the better they are doing. What's your response?

Mr. WATTE. Relative to water conservation, using it more wisely, the concept that's overlooked is the amount of water we use and the amount of units, the output that we create, we are using similar amounts of water that we did 20, 30 years ago. Some of our crops are producing 100 percent more. And so if you think about it in terms of output, which is how it should be thought of, we are doing a wonderful job, much more efficiently than we ever have and we continue to work on it. But the whole idea of saving water through conservation or using it, you know, that's a concept that I think is sometimes overlooked.

Mr. MCCLINTOCK. Thank you very much. I'll recognize Ms. Napolitano.

Ms. NAPOLITANO. Thank you, Mr. Chairman. It is very interesting to listen to both sides, because I have been at hearings here several times through the last few years in this particular area. Just as I was looking at information that July of 2009—(Inaudible)—announced 40 million for the Recovery Act for the drought—(Inaudible)—in California and in the Central Valley in contrast to the 26 million—(Inaudible)—so it is a little bit of a disparity there. The question that I have will be addressed to several of you. And I have submitted those questions for a reason, because I want to have a better idea. And yes, Mr. Birmingham, it is an issue that I believe should be on the record and that's why it's being submitted. I'm looking for yes or no answers from all the ag members on the panel.

Have the water shortages during 2007-2009, the extreme drought years, affected agriculture production, yes or no.

Mr. LARSON. Yes.

Mr. WATTE. Yes.

Mr. BECK. Yes.

Mr. BIRMINGHAM. Yes. But I would want to challenge——

Ms. NAPOLITANO. Yes or no.

Mr. BIRMINGHAM.—challenge the——

Ms. NAPOLITANO. Yes or no.

Mr. Birmingham. Absolutely, the water supply reductions in——

Ms. NAPOLITANO. Next. Thank you. I just want a yes or no, because I'm following up with something else.

Mr. BIRMINGHAM. Yes.

Ms. NAPOLITANO. OK. Now, the three highest agriculture sales on the record were in those three years, and I believe they were good before that, according to the California Department of Food and Ag 2009 figures and they coincide with those three years of extreme drought. Why wasn't it that these record-setting cash received translated into lowering the unemployment for farming related jobs? Anybody.

Mr. LARSON. There are areas in California that we had plenty of water, plenty of production, plenty of labor, but the area that I refer to in my testimony is the area on the westside. 300,000 acres of dry land and 40 percent unemployment over the last five years, that's still the case.

Ms. NAPOLITANO. Thank you. That answers my question. Anybody else? OK. To Mr.—Commissioner Connor, if the South-of-Delta water service contractors were allocated 100 percent of their contract this year, how would that impact other contractors? In other words, here in the State with water flow restrictions, where do you believe the water would come from and how are we able to apply those water allocations.

Mr. CONNOR. Well, I think there's a Congressional question as to if there was 100 percent allocation given away, distributed out, whether we could provide that water, whether we have the capacity and infrastructure to provide that water. It couldn't be all taken. So there's a threshold question. Perhaps we could deal with our storage facilities in a way that we could. And I think that's something that would have to be looked through.

The other answer to your question as to whether or not—who would that water come from, well, it either would come from senior water users, which would be at odds with the way we operate the projects under our conditions, or it would come from the Delta, which would be in violation of our permanent conditions. Otherwise, how else will water cover any balancing act with all of these permanent conditions, environmental regulations as well as our contractual obligations that we have. And that's the basis that we are maximizing our allocation presently at the level we have right now, and we are constantly reassessing it.

Ms. NAPOLITANO. How many—very quickly, my time is running out, Commissioner. What are the designations of the water rights both for senior and junior?

Mr. CONNOR. Well, we commonly refer to them as senior or junior, but we have settlement contracts both north and south of the Delta that we honor first. We have M&I contract obligations. We have a whole mix of different types of contracts——

Ms. NAPOLITANO. How about Native American?

Mr. CONNOR. With respect to?

Ms. NAPOLITANO. Water rights.

Mr. CONNOR. With respect to water rights in the Native American Community that has been part of—the treaty rights recognized in the Tule River revision has been part of the reason for our adjustment in water supplies being made available to projects and to those Native American rights.

Ms. NAPOLITANO. Thank you. Mr. Chairman, I yield with that.

Mr. MCCLINTOCK. I'm pleased to introduce Chairman Hastings of the State of Washington, a state that looks deceptively like Oregon.

Mr. HASTINGS. Well, at one point Washington was part of the Oregon area.

There's been a lot of discussion—first of all, I want to thank all of the witnesses here today. There's been a lot of discussion of——

AUDIENCE MEMBER. Could you speak up, please?

Mr. HASTINGS. There's a lot of discussion based on making decisions based on good science, which I certainly agree. I want to put up a chart that has to deal with ocean conditions. And I want to ask Mr. Collins and Mr. Birmingham some questions. Your testimony created——

The COURT REPORTER. I can't hear him.

Mr. HASTINGS. Mr. Collins, you suggest that water, river water directly correlates—(Inaudible.) Mr. Birmingham says otherwise. The National Marine Fisheries says that ocean conditions were the main reason for a declining current. This chart in front of you shows the measure of water temperature. The top of the chart, it measures between 1980 and 2000 when ocean conditions were relatively warm. The bottom chart relates to the—(Inaudible.) Looking at this, there seems to me there is a correlation and I would just like to have your observations on both of those. Mr. Birmingham, I'll start with you.

Mr. BIRMINGHAM. Mr. Chairman, there isn't any question that fish need water. The question is always how much. And the decline of the Sacramento River Chinook salmon fishery over the course of the last four or five years has been attributed to increased pumping out of the Delta. And, first, I would want to challenge the question of has there been increased pumping. But more than that, if the decline of the salmon fishery was a result of increased pumping, then how do we explain the reduction in salmon runs on virtually every tributary to the Pacific Ocean up and down the West Coast, including Oregon, Washington and California. And, fortunately, those runs are improving. But pumping in the Delta does not explain the decline of those runs. And what does explain, in large part, the decline of those runs is ocean conditions. That's the conclusion that NOAA Fisheries reached. And I'm not a biologist, but it certainly tends to make sense that if the fish lack food in the ocean, then they will not survive to return to spawn.

Mr. HASTINGS. Mr. Collins.

Mr. COLLINS. I think that there's a number of different factors that affect salmon populations—ocean conditions, the pumps, I disagree, I think they do affect, absolutely. I mean, nowadays when they release the salmon from the hatcheries, they get a very, very small percentage of them making it back, which is why we have a trucking program to truck them around the Delta all the way down to the Bay. We get a way bigger percentage of those fish back, because the Delta's pretty much lethal to the baby salmon going back to sea. As far as numbers of fish on other rivers on the coast, I think being from Washington you have seen the huge numbers. The returns on Columbia were—the best is the 30s I think it was.

Mr. HASTINGS. Right now it is larger since we have started keeping records. We started in 1938. The answer to your question is yes. But you said—so both of you then, I hear both of you saying

that we ought to base the decisions based on science, this is something we ought to take into consideration, right?

Mr. COLLINS. Well, there's nothing we can do about the ocean conditions. There is something we can do about it in the river.

Mr. HASTINGS. Of course, but it is science, you know, and we are trying to base decisions on science, so wouldn't you say that that is a good starting point.

Mr. COLLINS. Yes, sir. Science is good.

Mr. HASTINGS. Mr. Birmingham, you would say that too.

Mr. BIRMINGHAM. I certainly would, Mr. Chairman. And one of the things that I would agree with Mr. Collins is that the Delta is lethal to baby salmon out migrating. But the question is why is it lethal?

We have very accurate records of the number of fish we entrain at pumps and it's less than one percent. However, we don't know how many of the baby salmon migrating out are eaten by striped bass. But the National Marine Fisheries Service has said if we want to improve the salmon runs, we ought to eliminate the restrictions on the take of striped bass, because they consume millions, literally millions of fish as they are migrating out of the Delta.

Mr. HASTINGS. Thank you. Mr. Chairman, I just wanted to make a point that if we are going to make a decision, we ought to base them on the facts. This is a fact that ought to go into our deliberation. Thank you.

Mr. MCCLINTOCK. Thank you. Mr. Costa. Well, everyone else is in California, so I'm safe from here on.

Mr. COSTA. Having been down to Chairman Hastings' District of Washington, they have great farm country and we welcome you here today.

I'd like to continue with Doc Hastings' questioning line, both to Mr. Birmingham and Mr. Collins, about the factors that we talked about that are impacting the Delta fish. How about the—you mentioned earlier the ammonia, that a certain number has been reported that goes into the Delta. Is that impacting the fish?

Mr. BIRMINGHAM. The analysis of the impact of discharges of ammonia is still being conducted. And what the analyses tend to show, Mr. Costa, is that the discharge of ammonia affects the food sources for fish which then has an indirect effect on the Delta smelt.

Mr. COSTA. Mr. Collins, you think that's impacting it.

Mr. COLLINS. Well, I think that—yes. You know, any time you put pollution in——

Mr. COSTA. How about the quadrupling of the population in the Delta over the last two decades with all the non-point source that flows into the Delta, is that impacting the Delta?

Mr. COLLINS. I think that any pollution that goes into the Delta is impacting the wildlife of the Delta. The more flow, you can flush stuff out into the ocean, the healthier the Delta will be.

Mr. COSTA. The whole statement, that's the best and most reasonable use. I mean, you didn't talk about——

Mr. COLLINS. Well, to me that's——

Mr. COSTA.—whether or not the upper——

Mr. COLLINS.—because I'm a salmon fisherman.

Mr. COSTA.—Sacramento River Valley water users should be contributing as well.

Mr. Birmingham, on the area of withdrawal of water from the Delta on unscreened pumps, is that impacting the Delta?

Mr. BIRMINGHAM. Yes, Mr. Costa, unscreened diversions in the Delta affect those fishes.

Mr. COSTA. I think it's fair to say that there are many factors which we have not been able to make a determination as to which of those factors are contributing to which degree.

Is it possible, Mr. Chairman, that I could have Mr. Will Stelle of NOAA—who is behind Mr. Connor—to ask him a question at the table?

Mr. MCCLINTOCK. Yes.

Mr. COSTA. Mr. Stelle, I'm perplexed. I asked you this question a couple weeks ago. Maybe you can give me a better answer. Because, Mr. Collins, I agree that we need to address all of the people that are impacted by our water decision, including fishermen. I don't appreciate the condescending and rather insulting comments you made in regard to people who work very hard here, trying to make a living every day and need water just as much as fishermen do.

Mr. Stelle, you made a decision earlier in the last month to allow for the opening of fish in the fishing season, which I think is good. As you said, the fishing season's been closed. It's been determined that 20 percent of the river run salmon will be lost as a result of opening up the season. I mean, you have to fish, catch the fish. And those adult fish don't come back to the Delta to spawn, right?

Mr. STELLE. (Nods.)

Mr. COSTA. But you also made the decision that only a 1 percent take would be allowed or permitted at the pumps. I'm trying to understand if we are trying to protect the fish, what NOAA's position is you are allowing for a 20 percent take by opening up the season, but your standard is 1 percent at the pumps for export purposes. Can you explain it?

Mr. STELLE. Yes, Mr. Chairman. Thank you. My name is Will Stelle and I work for NOAA Fisheries——

Mr. COSTA. Mr. Stelle, my question——

Mr. STELLE. Yes. The answer is that we are trying to do two basic things. One is to improve significantly the survival of juveniles going out to sea. If you are trying to rebuild the population of the San Joaquin and Sacramento systems, the salmon populations, you have to do two things—you have to make sure that the young survive and you have to make sure the parents get back——

Mr. COSTA. I get that part. But 1 percent versus 20 percent.

Mr. STELLE. The 1 percent at the pumps serve as a testament of entrainment rates. It's not an estimate of overall mortalities associated with pumping. There is a significant——

Mr. COSTA. I realize that's part of the problem. I'd like to get more detail later on.

Mr. STELLE. I'd be happy to.

Mr. COSTA. Mr. Connor, I agree with some of the witnesses, Supervisor Piepho, Dayatra Latin, that we need more water south of the Delta. Where are we on the Temperance Flat?

Mr. CONNOR. Temperance Flat study is one of the four studies that we have in progress. I don't have a specific due date at this point in time when we expect that we'll get the draft and get this study out. I know, as mentioned earlier, the economics have been called into question. And so what we are doing right now is we are looking at how to integrate that project——

Mr. COSTA. We need to have a thorough discussion with the Chairman and the Subcommittee, a cost-benefit analysis——

Mr. CONNOR. Happy to do that.

Mr. COSTA.—other projects as well. I have another question with regard to BDCP, but my time has expired and hopefully in the second round I'll get to it.

Mr. MCCLINTOCK. Next is Congressman Denham.

Mr. DENHAM. Thank you. Mr. Connor, I'd like to follow up on that last questioning, specifically San Joaquin River Restoration Settlement. To reintroduce salmon back into the San Joaquin River system above the Mendota Pool by utilizing eggs from other Central Valley salmon run that are listed as threatened or endangered under the Federal Endangered Species Act, how much will this program cost in the first fiscal year, 2012, and every year after.

Mr. CONNOR. The overall San Joaquin River Restoration program, all the activities or just those related to the fisheries, just the reintroduction.

Mr. DENHAM. Just the reintroduction, to reintroduce the salmon.

Mr. CONNOR. I don't have that specifically broken up for reintroduction of salmon. I think overall for all the activities that we are looking at to do the next fiscal year, we are probably spending something close to the 35-40 million dollar range. That doesn't include spacing east of us which is calling in large part we have that for the average reintroduction.

Mr. DENHAM. So you haven't done a cost-benefit analysis to know how many fish we are going to have and what expense per fish that would cost?

Mr. CONNOR. Cost-benefit analysis, that's not part of the settlement program.

Mr. DENHAM. It's a big part of the settlement, because it's reintroduction of salmon. Why wouldn't we have done a cost-benefit analysis up to now?

Mr. CONNOR. This is a settlement of litigation over violation of the Bureau of Reclamation of a state water code. As a condition of this settlement and part of the stipulation and part of the agreement as it was ratified by Congress, we are supposed to be restoring the river, which includes the release of flows, the channel maintenance activities that we are doing, we are working on water management goals and we are looking at specifically what we need to do to reintroduce fish into the river. That's the fundamental part of the settlement. The settlement legislation specifically calls for a cost-benefit analysis, a feasibility analysis on some of the water supply, does not call for a cost-benefit analysis of the fishery reintroduction part of the program.

Mr. DENHAM. Well, I think that would be an important part as we are struggling as a nation to figure out how we can solve our difference. So let me move on to the next issue. All Central Valley salmon runs struggle to regain their historic numbers. Why would

Reclamation purposely reduce the numbers of available salmon in other streams, plant them into the San Joaquin system and further threaten current runs?

Mr. CONNOR. Well, I think initially what we are going to be looking at in the reintroduction process are runs that aren't endangered or threatened, second of all, what they will be at some point in time, looking at some of those runs. And there will be very tight conditions to ensure the overall survivability of the species.

Mr. DENHAM. You haven't done an analysis on what it's going to cost per salmon? Has Reclamation formed a benefit-cost ratio of not reintroducing the salmon run in the San Joaquin River?

Mr. CONNOR. No, we have not.

Mr. DENHAM. How long will Reclamation attempt to reintroduce salmon into the San Joaquin system?

Mr. CONNOR. How long are we looking at?

Mr. DENHAM. How long?

Mr. CONNOR. We are looking at an—overall it's a 20-year program. There are a number of activities that are threshold before any reintroduction takes place, that includes the analysis of the interim flows and the restoration flows, evaluating the seepage impacts, we have channel capacity projects that we have to get done, and we have to do this all in tandem with our water management goals. And so overall, I can't remember the specific day that we are looking at reintroduction. I think it might have been as early as 2012. But the Bureau of Reclamation in implementing these programs will make those decisions and will not move to reintroduction until the system is ready to support those. And we have to work with our settlement parties as part of that process in working through those deadlines, et cetera. The basic improvements to the river, to the channel and to our ability to ensure the success of the program is critical before we make any reintroduction.

Mr. DENHAM. So you do have goals for the 20-year program, correct?

Mr. CONNOR. We do overall, yes.

Mr. DENHAM. And you do have a defined amount of money that is going into the program, correct?

Mr. CONNOR. We have an overall budget and expectation of what the program's going to cost us.

Mr. DENHAM. So if you have an overall budget and you have an overall expectation and you have both for a 20-year program, how can you not have a cost-benefit analysis to understand exactly how much you are going to spend on each fish so you know if you are going to meet your goal or not?

Mr. CONNOR. The goal is to have a successful fishery and what that is in terms of overall, the population—or the current population is going to be something that's defined over time based on if we can restore the flows that are part of the whole situation. Once again, we have not been called or requested as part of the overall settlement to do a cost-benefit analysis. Overall, I have seen figures that indicate that the goal that the legislation was going to do was going to be something where we repair natural fisheries with around 30,000 fish.

Mr. DENHAM. Defined over time is not something these farmers could take to the bank. I have a number of other questions, but I'll refrain until the second round.

Mr. MCCLINTOCK. Next is Congressman Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman. It's a very interesting hearing and a rather good example of why we don't get very far. We mostly point to each other and say you are to blame. In fact, I think all of us share in the responsibility and to a large extent we all share the blame. I'd like to ask Supervisor Piepho if you could expand on those things that could be done immediately in the short-term to enhance everybody's opportunity for more water north of the Delta as well as south of the Delta.

Ms. PIEPHO. Thank you, Mr. Congressman. I'd be happy to. As I mentioned, additional storage south of the Delta is very, very important in that since December there have been several extended periods where their pumps were not constrained by biological opinions and water can be flowing through. If agencies were not getting their full amounts this year, it is because investments have not been made for storage to enable more water to be pumped in wet years, which would also help in dry years obviously.

Second, the adoption of the solutions-oriented approach begins with immediate short-term actions, fish screening, levee protection, emergency preparedness all would help to promote a healthy ecosystem that would also enhance water supplies and improvements for water quality throughout California.

An additional and absolutely critical investment, again, is the emphasis for ensured reliability on high quality water throughout the system as encouraged by the Delta Vision report, not only for flood control or for protection of the locally private owned lands, but for the water system throughout the State. Levees protect water quality and important infrastructure to keep California running and will for the foreseeable future. We must protect levees today in order to protect the existing water supplies, state power grids, oil and gas lines, interstate highways and the railroads that traverse the Delta today.

Mr. GARAMENDI. Thank you very much. I wanted to get that on the record that there are things we can do immediately that are important for north of the Delta as well as for south of the Delta. It's critical that we protect the Delta levees. They could go at any time. Those who want to build a canal, it would be realistically about 10 to 20 years before we get a single drop of water out of it. What do you do in the meantime? Supervisor, thank you for that testimony.

Mr. Beck, you raised a point about a viable water storage south of the Delta, that is the underground aquifers. Would you please expand on that and could you please tell us if there are any particular reasons why it does not have limited capacity?

Mr. BECK. Yes, Mr. Congressman. In Kern County we've probably got the most extensive groundwater bank program in the country. And what it takes is you have to have the right hydrogeologic conditions and the subsurface has to have the right structure to support that type of recharge and recovery act. It's also got to be located next to the right reconveyance facility and have the right quality of water. Most important, you have to have water

to send to those areas. So without water supplies, our banking projects sit empty. So while our pumping capacities are available——

Mr. GARAMENDI. Well, are you banking water now in the groundwater supply?

Mr. BECK. Yes. Our banking projects are full right now because of the hydrologic conditions.

Mr. GARAMENDI. You have reached capacity.

Mr. BECK. Yes, we have.

Mr. GARAMENDI. Well, that speaks to the need for storage south of the Delta and the need for the Temperance Flat and other storage facilities in Madera and other places to move forward vigorously on the studies and the cost-benefit that goes with it. We'll have to sort that out as those studies are done. I guess I'll wrap up. I have a minute.

There are solutions that are available to us and we need to move on those that are immediately available, the storage facilities that are there today need to be fully utilized, whatever they may be. And most of them are at the moment, but others can be developed rather quickly and those need to be put in place. Some are going to be very, very expensive and may not be desirable because of the cost.

In regard to the Delta itself, there are things that need to be done immediately in the Delta and there has been some state fund available. There's enough Federal money available right now for those facilities in the Delta. Those are basically enhancing the Delta levees that are there that ensure us for the next decade, maybe for two decades, that water will be able to flow through the pumps when it is viable.

My final point is that the Endangered Species Act does allow for Section 10, which is an adaptive management program, and the Bureau of Reclamation is not blocking nor is the Fish and Wildlife Service.

Both of them have over time engaged in the adaptive management programs. We need to do that. We need to be very aggressive in setting up an adaptive management program based upon science and over time making modifications in the pumping and in other aspects of the transfer facilities so that we can make adjustments. It's possible. It can be done. Thank you, Mr. Chairman.

Mr. MCCLINTOCK. Thank you. Finally, our final questions from Devin Nunes.

Mr. NUNES. Thank you, Mr. Chairman.

Mr. Connor, I'd like to go to you first. Would the Obama Administration support a temporary waiver of the Endangered Species Act to allow the pumps to run despite whether or not there's water or non-water for the next few years until you can get all of your studies done?

Mr. CONNOR. I'd have to look at the—in the Administration, I would have to look at the tax assessments section, so I'm not going to offer any kind of notion of support or non-support. I think, quite frankly, it will be an uphill battle. We have to look at a lot of ways to—there's other ways we can improve this overall system, including science as one of them. I think we have learned a lot over the

last few years that we can make an impact on water supply projects.

Mr. NUNES. Sure. In the meantime though you have folks here that need to go back to work, because you are going to have flooding this year and you are also still going to have land that will be idle because there will not be enough water because the Bureau of Reclamation has not been able to move the water because of the Endangered Species Act. So I was just hoping the Obama Administration would support a waiver. And I think there's been——

Mr. CONNOR. There has been no restriction because of the ESA this year as I stated in my testimony.

Mr. NUNES. I want to let Mr. Birmingham respond to that very quickly, but I think you do have some experience with waivers, if I'm not mistaken. Wasn't there a waiver done back in the early 2000s for the silvery minnow in New Mexico——

Mr. CONNOR. There was——

Mr. NUNES.—the State of New Mexico?

Mr. CONNOR. There was something about the minnow, right, addressed——

Mr. NUNES. You are familiar with that, I assume.

Mr. CONNOR. I'm very familiar with that.

Mr. NUNES. You want to state for the record your prior employment.

Mr. CONNOR. I was with the Senate Energy and Natural Resources Committee counsel working on the Water and Power Subcommittee.

Mr. NUNES. Who was the Chairman, or its Ranking Member?

Mr. CONNOR. Chairman Jeff Bingaman.

Mr. NUNES. From New Mexico.

Mr. CONNOR. That is correct.

Mr. NUNES. Right. Mr. Birmingham, would you like to respond?

Mr. BIRMINGHAM. Thank you, Mr. Nunes. I would like to respond, because what Mr. Connor said about the impact this year of the biological opinions, again, is technically correct, but it's not the entire question. The allocation that we received this year, the initial allocation was 50 percent and we got a 50 percent allocation notwithstanding the projections that it was going to be wet. We got a 50 percent allocation because the Bureau of Reclamation had to assume the worst-case scenario in terms of how the biological opinions and all of the other restrictions that have been in place throughout the years would affect the operations of the project. And so had the Bureau of Reclamation not had to project the worst-case scenario, our initial allocation this year would have been significantly higher. It could have been 75 percent and——

Mr. NUNES. Not to mention, Mr. Birmingham, that the last two years would have been much higher also, because the biological opinions weren't in place. Water wasn't stored and held over. And that's why I want to point out that in some cases the Congress will make waivers to the Endangered Species Act, which Mr. Connor is familiar with. And I'm not holding him responsible for what President Obama's decision will be. But the fact is that Congress has made waivers, be it temporary, and that will be a logical course ahead.

I want to switch to Mr. Collins. I thought your testimony was very well enlightening for me. I haven't met these billionaire farmers yet, but I'd like to meet them. You are quote, "the Delta is lethal for fish," I thought that was fascinating. Why is the Delta lethal to fish?

Mr. COLLINS. I'm not a scientist. I'm a commercial fisherman. But I know that the returns of fish that we truck around the Delta do way, way better than the ones that try to naturally swim out. There's a lot reasons——

Mr. NUNES. So loading fish and——

Mr. COLLINS. There's a lot of reasons——

Mr. NUNES.—moving them around the Delta, that's a good job for the government to do.

Mr. COLLINS. There's a lot of reasons that the fish aren't making it through the Delta. When the pumps are running, you know, they are turning the river backwards, the quality——

Mr. NUNES. Hold on, Mr. Collins. The pumps are man-made, correct?

Mr. COLLINS.—the quality——

Mr. NUNES. The pumps are man-made, correct?

Mr. COLLINS.—the chemicals that are coming off the farm fields and everything else. There's a lot of pollution factors.

Mr. NUNES. Including the farmers in the Delta.

Are those islands man-made just like the pumps, the islands in the Delta and the levees that you are so concerned about? Are those man-made?

Mr. COLLINS. The hydrology in California used to be way, way simpler than it is today. You had two rivers that ran down into the Delta that ran out to the ocean. Back then the fish——

Mr. NUNES. So shouldn't you tear down all those levees.

Mr. COLLINS. I'm not suggesting that the only use of water in California is for salmon. I'm not suggesting that. That would be ridiculous for me to suggest that.

Mr. NUNES. But why do you pick on some man-made projects and not others? When you say—when you talk about——

Mr. COLLINS. Ten years ago there was farming going on and there was fishing going on.

Mr. NUNES. One final question. Who stopped you from fishing?

Mr. COLLINS. The government——

Mr. NUNES. The government.

Mr. COLLINS.—because there weren't enough salmon. The number of salmon got down to 39,000 that returned from millions of fish, so we stopped fishing because we don't want to catch the last salmon.

Mr. NUNES. Thank you, Mr. Chairman. I want to make sure for the record that it was the government that stopped Mr. Collins from fishing, not the pumps.

Mr. MCCLINTOCK. Thank you, Mr. Nunes. We'll now begin the bonus round of questioning.

I'd like to pick up where Congressman Nunes left off, your statement of hydrology. Hydrology of the Delta was a lot different in prehistoric times. Obviously, the agenda of the environmental Left is to restore it to prehistoric times, which only requires restoring the human population to its prehistoric condition. I am well aware

that we have floods and we have droughts. Then we went to the construction of facilities that even out those flows, provided year-round water flows that made the current ecology of the Delta possible in the first place. And when I look at the tremendous facilities that were envisioned by the previous generation, the Burns-Porter Act, and realize how little of that actually was completed and realize that if we had it, we wouldn't be having any of these discussions today, there would be plenty of water to go around for everybody, it breaks my heart. The Bureau of Reclamation was established within the Federal Government for the purpose stated, and proudly stated, of making the desert bloom again. So, Mr. Connor, I'd like to ask you, what are this Bureau's plans for making the desert bloom again?

Mr. CONNOR. Making the desert bloom requires addressing all of our legal obligations effectively and coming up with more additional water management strategies. I would agree with Mr. Birmingham completely and totally that we can do a much better job of managing the water supplies that we have. But the fact is we operate in the reality of certain laws and recognize certain values and the impacts of the projects that we construct, so we need to deal with that. We need to deal with our ESA obligations and we need to construct better infrastructure, more efficient water management strategies——

Mr. MCCLINTOCK. I want to get some specific answers from you, if not have a very short one. You mentioned we need to allocate our supplies better.

Well, we are watching four acre-feet per second pass under the Sacramento Bridge right now right out to the Pacific Ocean that we could just store for use in dry years or in dry seasons. I'd like to know what conditional water storage facilities you have in the works to alleviate this situation.

Mr. CONNOR. Well, we just approved a record decision on the Contra Costa project to raise Los Vaqueros, so there's one study that's turned into an action that's going to result in a raise there. We also have ongoing studies there with Shasta and the Temperance Flat site, as well as the offstream Sacramento reservoir. What's happening with those studies, we are working on those very hard. Quite frankly, until conveyance issues in the Delta—because these projects—the storage facilities have to be integrated with the overall migration. Until we fix the conveyance out there, the cost-benefit ratios are not going to pan out. So we are going to go ahead and publish the data so everybody knows at least the technical aspects of these storage studies, but the reality is we are going to have to deal with the conveyance issues in order to keep the technology alive. At the same time we are working on groundwater projects. We are investing in conjunctive use groundwater——

Mr. MCCLINTOCK. OK. You mentioned Temperance Flat. The Natural Resources Defense Council calls Temperance Flat the dumbest dam in America. You disagree with that apparently.

Mr. CONNOR. The Bureau of Reclamation has not made that judgment. We are working on the study. We are analyzing with our partners the data and we are going to take that study to completion——

Mr. MCCLINTOCK. What was Temperance Flat's current condition of water storage? About a million acres?

Mr. CONNOR. I was looking at that this morning and I'm stumped on that. I can probably lean over my shoulder and get you an answer.

Mr. MCCLINTOCK. Let me hit one other point along the lines of Congressman Costa, except in this case in regard to the Delta smelt. My understanding is the Federal Government's Interagency Ecological Program calls for a take of up to 33,500 Delta smelt annually, but the level of authorized take established there is quite a bit more than 167, 124 and 211 adult Delta smelt that were authorized to be taken in the last few years by the Federal and state pumps. How do you reconcile those numbers?

Mr. CONNOR. I didn't quite follow the question. With respect to the——

Mr. MCCLINTOCK. The Federal Government's Ecological Program calls for a permissible take of 33,500 and yet over the last three years no more than 211 Delta smelt had been authorized at the Federal state pumps.

Mr. CONNOR. I'm not sure, quite frankly, how the Fish and Wildlife Service comes up with those takes. I do know that——

Mr. MCCLINTOCK. Can I get a brief answer to that, Mr. Birmingham? In about two seconds can you respond.

Mr. BIRMINGHAM. Mr. Chairman, I'm not familiar with the specific program that you just articulated, but as an example, earlier—or late last year the official—the USGS was given an incidental take permit to conduct a study in the Delta and they were authorized to take 2500 Delta smelt, 2500. If we take nine Delta smelt, we shut down the economy of the State of California and I think that's the inequity that you are talking about.

Mr. MCCLINTOCK. OK. Thank you. Ms. Napolitano.

Ms. NAPOLITANO. First of all, I'd like to—(Inaudible.) Water Supply San Joaquin Valley in 2009, another one from the California Natural Resources Agency and another one, California water shortfall.

Mr. MCCLINTOCK. Do we have objections?

Ms. NAPOLITANO. Second, I'd like to have the panelists please answer in writing the questions that were submitted to you that you have in writing. Then in regard to the silvery minnow, the 2003 amendment in question did not waive the Endangered Species Act. The water project in question remains subject with respect to the silvery minnow. Instead of overturning the biological opinion as so many have sought to do in their debates, it protected biological opinion from litigation and that's for the record.

Third, I want to make for the record known that I'm from Southern California, as you all know, and in our—just in that county alone, Los Angeles County, there are supposedly 11 million people, well, it looks more like up to 12, 13 million. That's about a third of this population. So in essence when you pass water bonds and you do all of that, a third of it's paid for by just the LA County. Never mind San Diego—(Inaudible.) So we understand the issue when we have to pay 1100 to 1500 an acre-foot of water. Figure that one out. And then there's the issue of the water coming in that is contaminated with pesticides, fertilizers, cadmium and other tox-

ins which is an additional cost to be able to run through the water through the membranes to make—to ensure treatment. So you understand the frustration that we bring to the record.

Now, Mr. Stelle, what kind of flexibility can the National Marine Fisheries Service exercise with respect to a biological opinion, especially in terms of an annual described spring operations?

Mr. STELLE. Congresswoman, the Endangered Species Act gives us, NOAA Fisheries and Fish and Wildlife Services, a significant degree of flexibility in making adjustments annually and programmatically. There is no question about that. So the real issue is what kind of adjustments are warranted and what can we support scientifically. If we have new ideas on better ways to operate, to improve survivals, then we can capture those in the biops on an annual basis, on a rolling basis. We do so on an annual basis at the present time and we will continue to do so.

Ms. NAPOLITANO. Why on an annual basis?

Mr. STELLE. Because we learn every year as we operate. So in the fall time after the close of the season, we can convene an independent science panel and ask that panel what we learned and what kind of adjustments should we be making the next year in order to benefit from what we learned. We have done that once, we will do it again this fall and we are committed to it with the Fish and Wildlife Service and the Bureau, learn as we go.

Ms. NAPOLITANO. Then why does the National Marine Fisheries Service claim its biological opinion is sufficiently flexible if it has never exercised any of those flexibilities?

Mr. STELLE. Ma'am, with all due respect, we have exercised that flexibility. In fact, we are sending a letter to the Bureau and the State which will be ensuring some of the adjustments that we made based on the panel last fall.

Ms. NAPOLITANO. Thank you.

Mr. STELLE. And it's an absolute ongoing commitment and it's sincere. Good ideas, we will capture them. It's our responsibility.

Ms. NAPOLITANO. Thank you. I believe I'm out of—well, I have a minute. Mr. Watte, you mentioned in your testimony the construction of Temperance Flat was necessary and that Reclamation is no longer an able partner in the efforts. If Reclamation is no longer an able partner, what is stopping the local business from meeting the construction efforts and why not build it yourself?

Mr. WATTE. Well, it's not something we can do just—you know, an independent, smaller-type district can do. I'm not exactly sure of the entirety of your question. You want to repeat that.

Ms. NAPOLITANO. Well, we have long considered that the user pay. We heard it over and over again.

Mr. WATTE. Beneficiaries pay, yes.

Ms. NAPOLITANO. Correct.

Mr. WATTE. Yeah.

Ms. NAPOLITANO. So the dam is going to be constructed by the users, paid for by the users.

Mr. WATTE. There's many projects that users, beneficiaries, would be happy to do, but as I said in my testimony, trying to get even the smallest projects accomplished, anything in California, is extremely difficult and very expensive.

Ms. NAPOLITANO. Thank you, Mr. Chairman.

Mr. BIRMINGHAM. Excuse me, Mr. Chairman, may I correct a statement I made a moment ago in response to your question?

Mr. MCCLINTOCK. I'm sorry.

Mr. BIRMINGHAM. In response to your question, I said that the United States Geological Survey was given an incidental take permit for 2500 Delta smelt. In fact, it was 2200 Delta smelt. And I just wanted to correct the record. Thank you.

Mr. MCCLINTOCK. Next is Chairman Hastings of Washington.

Mr. HASTINGS. Thank you. Thank you very much. I have——

The COURT REPORTER. I can't hear you.

Mr. HASTINGS.—so let me try to capitalize this.

AUDIENCE MEMBER. Can you speak up, please?

AUDIENCE MEMBER. Can you get closer to the mic?

Mr. HASTINGS. I'm sorry. You know, maybe this particular Councilman doesn't speak often. I would like to just ask a very simple question to Supervisor Larson and Mr. Birmingham. You have both experienced drought. And so my very simple question to you this year is did the Federal Government or was it Mother Nature that alleviated the drought this year.

Supervisor Larson?

Mr. LARSON. The Federal Government has done nothing this year other than give us 75 percent of the water. Mother Nature alleviated the drought with 175 percent of rainfall.

Mr. HASTINGS. Mr. Birmingham?

Mr. BIRMINGHAM. Like so many other questions, Mr. Chairman, that is a difficult question. We have been helped significantly by the above-average, significantly above-average precipitation and runoff that we have had, but I would not want the Committee to be left with the impression that Reclamation and Fish and Wildlife Service have done nothing. In particular, this year the Bureau of Reclamation developed a number of actions so that it could give us a higher allocation earlier. Had they not taken those actions, our initial allocation would have been rather than 50 percent, probably would have been 25 percent or 30 percent, so they have been trying to find some flexibility and where they can they have utilized that flexibility. But the basic point is that the water supply shortages that we have suffered this year—and 2007 and 2008 were not critically dry years. They were below-average years, but 2008 was not critically dry. Look at the hydrograph I have attached to my testimony as Exhibit 1. It shows 2008 was essentially an average year, yet we were 45 percent supplied. Those were a consequence of the regulations that have been imposed on the operation of projects.

Mr. HASTINGS. But 75 percent more came from Mother Nature; is that correct?

Mr. BIRMINGHAM. This year 75 percent came from Mother Nature. And we could get to 100 percent without taking water away from anyone else as we did in 2006.

Mr. HASTINGS. This is a good follow-up. On a scale of one to ten, with ten being the absolute highest, is there a risk that a drought could return with existing regulations in place? Supervisor Larson?

Mr. LARSON. Yes.

Mr. HASTINGS. Mr. Larson?

Mr. LARSON. They haven't changed any rules and we are——

Mr. HASTINGS. Mr. Birmingham?

Mr. BIRMINGHAM. Yes. And on a scale of one to ten, ten being the likelihood of a drought coming back, it's a ten.

Mr. HASTINGS. OK.

Mr. BIRMINGHAM. Regardless of how wet it is.

Mr. HASTINGS. But the question speaks to the issue that there has to be something coming out of this Committee to resolve these issues and that is why this hearing is held here today after having gone through a couple years of not having this discussion.

Final question to Supervisor Piepho. And I wanted to ask you this question, because in your oral testimony and in response to Congressman Garamendi's question, you were talking about solutions being prospective; is that correct?

Ms. PIEPHO. No. No, there are direct short-term——

Mr. HASTINGS. Well, that's prospective. It could happen in the future is a solution that's prospective; is that correct.

Ms. PIEPHO. I don't know that I would agree. I know that the voters in this State have passed a water bond to do levee improvements that have not been implemented. So if a prospective vote has already been taken to apply the revenue to a project that should move jobs forward and stay in the Delta is prospective I'm not sure I understand.

Mr. HASTINGS. OK. Well, all right, maybe that's a bad choice of term. But in your oral testimony you said that one thing we can't do is go back. Now, I'll tell you it struck me because going back farmers here have water. Would you like to explain that phrase where you said we can't go back?

Ms. PIEPHO. Sure. My reference to going back has been a historical debate that's occurred on California's water for hundreds of years, frankly. And we all know the Mark Twain story about whiskey and water and fighting. My point to the words is that I believe, as an optimist, that with good people at the state, Federal and local level working together, we can find comprehensive solutions for the State's water system, build an infrastructure that benefits short, mid and long-term goals and use our revenue, our infinite tax—I'm sorry, uninfinite tax dollars to good, higher best purposes. And we agree with the cost-benefit analysis on infrastructure projects, including high speed rail.

Mr. HASTINGS. Well, it struck me in this whole discussion, and there certainly appears to be a couple—two of the same sides on that. But when I heard that phrase, it, frankly, raised a red flag. Whether you share that or not, there may be others that have the same red flag that I would have, so I thank you.

Mr. Chairman.

Mr. MCCLINTOCK. Thank you. Mr. Costa.

Mr. COSTA. Thank you very much, Mr. Chairman.

Mr. Beck, you spoke about the efforts to focus on water supply. I think Kern County Water Agency is a good example in terms of water management and tools and using all the tools and your efforts since. But I authorized the water bank that you spoke of earlier originally some 400,000 acre-feet in 1988. What is the capacity of that water bank today.

Mr. BECK. Congressman Costa, we have projects along the Kern bank that encompass over 30,000 acres. Those projects recharge in a wet year over 300,000 acre-feet of water each year. They can also

recover about the same amount. So those current bank projects have been very important in our ability to withstand the regulatory drought that we have experienced.

Mr. COSTA. In terms of dealing with the Endangered Species Act, I'm glad that you talked about using the Section 10 and the entire conservation plan is something that I think the Bureau needs to look at in more depth. You also indicated though, Mr. Beck, in your testimony, the Bay-Delta conservation plan, as many of us believe, is really the long-term solution. Today we have been talking about a lot of short-term efforts. In terms of long-term efforts, you mentioned that sporadic involvement of Federal Government has caused delays today. Could you be more specific about what we ought to be doing if we want to get our act together and be a real partner in taking care of California's long-term water lease, which I said in my opening statement we need to do?

Mr. BECK. Yes. I think there's a theme that you have heard today, we have all got to work together on this. It's such an important issue. Those of us that are on the ground, whether it's Tom or myself or the farmers that are represented today, understand every day you wake up thinking about how you are going to get water for California, what's the next step and what it takes for us to do our jobs to keep the ball rolling. We have seen good progress with the new state Administration. They have hit the ground running.

They are actively engaged. The difficulty we have had with the Federal Administration is that it's taken some time to get them as directly engaged at the Washington level as we felt is appropriate. We have seen great representation from the folks in California, folks on the West Coast.

Mr. COSTA. We have been pushing them. You think it's getting better? I have other questions I want to ask.

Mr. BECK. I think it is getting better, but what I said when I met with them is you can't take a breath. It isn't like you get over——

Mr. COSTA. And we have to hold them to milestones. Is that not the case? Hold them to milestones——

Mr. BECK. That's correct. We have some deadlines ahead.

Mr. COSTA. OK. Mr. Birmingham, we counted up the amount of water that we have given up, taken according to Mr. Collins. No other part of the entire state has given water away, not freely, but as we have as a result of various court decisions, state and Federal statutes and other impacts. When you look at the CVPIA reform in 1992, Mr. Birmingham, if you look at the settlement agreement and other factors, court decisions you are aware of, how much water has been taken from the San Joaquin Valley, not willingly, to benefit other regions of California and benefit other areas.

Mr. BIRMINGHAM. Well, Mr. Costa, that's an excellent question and it goes right to a point Mr. Garamendi made. I hope that I haven't impressed the Subcommittee that I'm blaming anybody else, particularly the fishermen, for the situation we are in. I'm not. And I agree with Mr. Garamendi that we all share some blame and we all share some responsibility. And it's for precisely that reason, Mr. Garamendi, as you'll recall, in 1994, December 15th, 1994, we signed a Bay-Delta Accord, in fact, you negotiated the Accord,

where collectively the state and Federal projects voluntarily gave up a million acre-feet of water for the protection of listed species.

But to answer your question directly, Mr. Costa, we have lost—in the San Joaquin Valley we have lost in excess of a million acre-feet of water annually under the biological opinions of the Central Valley Improvement Act and that water is now being used for fish and wildlife enhancement.

Mr. COSTA. If you add the east side, it would be a million two.

Mr. BIRMINGHAM. If you add the east side, it would be a million two. And there are other programs that I have not included. The Trinity River Restoration Program I have not included in that million acre-feet that we have lost.

Mr. COSTA. The fact is that every part of this state is going to have to get involved if we are going to provide enough water for a population of 50 million people by the year 2030, which we know is going to happen just as well as we know the droughts and floods will happen. And we are not taking care of our short-term or long-term water lease. Thank you very much, Mr. Chairman. My time has expired.

Mr. MCCLINTOCK. Thank you. The Chair would like to ask that you be careful with these signs. The Committee is very tolerant of signs, but I do have to ask they not be hung over the balcony and they not obstruct anyone. With that, we'll go to Congressman Denham.

Mr. DENHAM. Thank you, Mr. Chairman. Mr. Upton, allotments made out of the San Joaquin River Restoration Settlement could help solve a number of Valley problems. How much money do you spend on water storage out of that settlement?

Mr. UPTON. I'm not aware of any on water storage.

Mr. DENHAM. That was part of the settlement though, was it not?

Mr. UPTON. I had suggested that in the early part of the settlement when we were negotiating, because I learned from my salmon education that they liked cold water. So it made a lot of sense that they could build Temperance Flat, because then you'd have more cold water to put down the river for the fish, but the environmentalists rejected that out of hand.

Mr. DENHAM. Thank you. Mr. Connor, on that same line of questioning, part of the settlement, some water storage, some projects equity of implementation.

Mr. CONNOR. We are working on a number of water management actions. Water storage is not one of them. The primary goals of the water management program are to restore capacity of the Friant-Kern Canal and Madera Canal. And those have active eco studies ongoing right now with the anticipated releasing later this year.

Mr. DENHAM. So only water flow?

Mr. CONNOR. Increased capacity could take more water through those canals as they were originally designed. We are also working on a current water account. We just made an announcement now that it will allow credit to be given for the flows being made available for the fishery restoration program. The advantage of that, and we are going to look prospectively, which is going to help the Friant district's now to move out 460,000 acre-feet of credit, so that they will get that in a water year like this. They will be able to

purchase that water at very low rates as contemplated as part of the settlement.

They can take that water if they have capacity. Also, water management goals would look at increasing the canal capacity which would also help in that regard.

Mr. DENHAM. OK. How about the farmers that are along the river itself, what about the seepage issues that they are going to be facing with a large flow.

Mr. CONNOR. The seepage issues are a high priority and we have had some seepage concerns and issues already in their field. And we are releasing our environmental impact statement in April, our program statement to deal with those seepage issues. But that doesn't change the fact that we already have issues with that. We have installed 110 monitoring wells so far to better understand the seepage and we are trying to work with those farmers that have already been affected. In fact, I'm going out to meet with some of those folks this afternoon.

Mr. DENHAM. And I wanted to address a couple of the projects that we are working on here today. I have H.R. 869, which deals with Exchequer. Has Reclamation taken a position on that bill yet?

Mr. CONNOR. We have not taken a position on that bill yet, but I am aware of the bill and we have talked about it internal so we'll be prepared to take a position when the U.S.——

Mr. DENHAM. And the Madera groundwater bank, where is Reclamation as far as the Madera water bank?

Mr. CONNOR. I'm not exactly sure where we are in working with those issues associated with the Madera groundwater. I know we see opportunity for our owners as far as banking. It's a work in progress, but I can't expand on that for the record for you.

Mr. DENHAM. Mr. Upton, can you comment on the water bank?

Mr. UPTON. Well, they have had it for seven years and have spent millions of dollars. And it goes with what Mr. Watte said, trying to get anything done in this state is almost impossible because of all of the impediments that are put in place. But the water bank is exactly, I would think, what everybody would want to do here. It's a great project. But it's been held up by—I don't—you know what it's been held up by. I would urge the Bureau to certainly call the Madera District, Lance Johnson, and get it done. They are ready.

Mr. DENHAM. We will help facilitate that if there's some type of communication breakdown. Seven years of trying to push a project through, we'll make sure that you have all the information on that too. It's certainly a non-controversial, no expense project. If we can't get those done, it would sure show a lack of involvement to get anything done. I yield the rest of my time.

Mr. MCCLINTOCK. Mr. Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman. A couple of things. I think we need to have an understanding that, in fact, salmon populations in California have crashed. I'd like to introduce into the record two charts that just simply show the crash of the salmon. This particular chart begins in '98 with a robust salmon and ends down here in 2008. There's no doubt we have seen the crash of the salmon population in the state. A similar one, slightly different population run, but the same results. We have a problem.

We have a real problem and we have to find a solution to that problem, and the solution is going to require a lot of cooperation and it's going to require a toning down of the rhetoric, although I have certainly had my share of it over the years.

One other thing it's going to require, Mr. Chairman, is a lot of money. As you certainly know from your own speeches, the Federal Government's supposed to reduce its expenditures, significantly reduce its expenditures while reducing taxes. So where is the money going to come from for these projects? In the studies that are being done of Temperance and the other storage facilities, the question will inevitably arise over who is going to pay, and that raises the question of the Federal Government's share. The way the Federal Government is headed, or at least you and your colleagues want it to head, is to significantly reduce Federal expenditures. This may be a high priority and we can find the money to do these things, maybe not. But this is a very, very real question for all of us. Where is the money going to come from to pay for all these facilities?

Mr. Chairman, you have mentioned the Burns-Porter Act. I think I was around shortly after it was passed. My recollection is there's one facility that has not yet been built from the Burns-Porter Act and that's the Peripheral Canal. I think all the other facilities have been built.

There are certainly other facilities that have been suggested over the years. I think that's the only one. Now, as I said earlier, even if we were to have a significant start on building a facility today, it would be probably 15 to 20 years before the first drop of water would be available. We have to deal with what happens in the near term, that is in the next 10 to 20 years, and that takes us back to the Delta and what Supervisor Piepho has suggested.

My final point is I want to thank everybody for their participation today. These are profoundly important issues in California. There are solutions.

And I would recommend that we look at several things. First of all, conservation everywhere. Second—and that's, I mean, everywhere, city, county, everywhere.

Second, the Delta is stressed for many reasons. Pumping is clearly one of the reasons as are other stressors in the Delta from striped bass to ammonia from the Sacramento and other sanitation facilities.

All of those have to be addressed, including those of us who farm in the Delta and pump dirty water back in the estuaries. All of these things are important, all have to be dealt with. Second, we need storage facilities. We need a lot of them. We need to move forward with all of the studies. The studies are the cheap part. What comes next is very, very expensive and all of us are going to have to dig deep and think very hard about how we are going to pay for those storage facilities.

Finally, we are going to need to address the need for recognizing that the climate is changing.

I want to thank the water users here and some years ago, four or five years ago, we talked about re managing the operations of the reservoirs so that we could have real time information about water conditions, snow conditions, rain conditions and the like. I

know there's progress on this and we focus on the American River to accomplish that. And I urge us all to move forward on that so that we make better use of what we already have. Many things need to be done. The era of plenty, well, that's a challenge.

Mr. Chairman, thank you for the hearing. And for those of you that participated, thank you. I yield with that.

Mr. MCCLINTOCK. Mr. Nunes.

Mr. NUNES. Thank you, Mr. Chairman. Mr. Collins, I'd like to go back to some fishing questions for you. The stripe bass, do you fish for stripe bass?

Mr. COLLINS. No. There's no commercial fishery for striped bass.

Mr. NUNES. So you don't fish for them at all?

Mr. COLLINS. No. We are not allowed to catch them.

Mr. NUNES. They are non-native species to the Delta, correct?

Mr. COLLINS. Yeah. I remember hearing a story about the last line rail cars back in 1890s or something like—milk cans or something like that back in the 1890s.

Mr. NUNES. But would you—since they are non-native, would you support allowing people to catch as many stripe bass as possible?

Mr. COLLINS. It's a non-issue for me. I mean, I don't do fisheries management. I mean——

Mr. NUNES. But they are not native, so it seems like why wouldn't they just fish them if they weren't there to begin with.

Mr. COLLINS. Yeah.

Mr. NUNES. Yes is a good answer. We finally agreed on something.

Mr. COLLINS. I mean, yeah. I mean, I'd like to see everybody catch plenty of fish to eat.

Mr. NUNES. OK. Thank you. Thank you, Mr. Collins. Supervisor Piepho, excuse me, do you support long-term either having a Peripheral Canal or some kind of ability to move freshwater around the Delta?

Ms. PIEPHO. Around the Delta, no. We prefer through Delta conveyance. We do not feel that the State should abandon the Delta for its value of its infrastructure and beyond just water supply.

Mr. NUNES. As in a pipeline underneath the Delta?

Ms. PIEPHO. You can do dual pipe lines through the Delta definitely to preserve it and the integrity and the importance of the Delta into the State, not just to the locals around the Delta.

Mr. NUNES. Does Contra Costa County take any responsibility for problems in the Delta?

Ms. PIEPHO. I think there are many stressors to the Delta from locals to parties beyond from environmental to agricultural to business and that's why we seek and advocate for true science and looking forward to the National Academy of Sciences' study coming forward that will hopefully identify what those stressors are, what those precursors are and what we collectively have a role and responsibility to address. It isn't just one thing. It's not just flows. It may be size of flows, timing of flows, does the Bay need freshwater flow through the Delta to remain healthy and salmon to populate. I think the answer to that is yes, but I'm not a scientist. But yes, we all do have a role and responsibility.

Mr. NUNES. So you support freshwater flows in the Delta and I understand you don't know the exact type of flows that they need, but——

Ms. PIEPHO. Unfortunately, none of us do, because that study has not been made and it's one we advocate for.

Mr. NUNES. Do you think it's fair that the freshwater from this area is taken away when you have—San Francisco gets their water supply from Hetch Hetchy and they have had to give up zero?

Ms. PIEPHO. Well, I think that we all do need to look at allocations as a part of the comprehensive plan throughout the state, senior and junior water rights beginning and then the percentages. Westlands Water, Mr. Birmingham's talking about percentages of allocations, but we are not talking about the numbers themselves. And I think the number themselves are very, very important to have on the table, not just the percentages.

Mr. NUNES. But specifically do you think that San Francisco should give up some of their water supply?

Ms. PIEPHO. Well, I'm not from San Francisco, so I don't wish to speak for them, but——

Mr. NUNES. But you are willing to advocate taking our water supply?

Ms. PIEPHO. No. I didn't say that. I didn't say that. What I said was we have allocations that are very important and the Delta has been overcommitted to the State's water supply and that we all have a role and responsibility, in my opinion, of preserving and protecting the Delta so it has a value to all of us, not just North versus Southern California, not just the valley here versus the valley where I come from. We all have a role and responsibility, so we can all benefit from the Delta, because I believe if it is restored, we identify what the flows are, we identify what the surplus is, then we can have a better——

Mr. NUNES. Supervisor Piepho, thank you for your testimony. My time is running short here. I do want to just clear up some things for the record.

Mr. Chairman, I want to make sure that the Committee does go back and study—Ms. Napolitano unfortunately had to leave, but the last time I checked, she does get water, whether it has pesticides, fertilizer and anything else that she claims it has, that is where a majority of her constituents get their water supply, so I'd like to know specifically if the Ranking Member wants to give up their water supply, sounded today like she wanted to, so I'd like to have it on the record.

Also, the charts that Mr. Garamendi put up, they are very interesting, because they happen—they start at the year where there were record salmon flows. If you go back ten years prior to that—or salmon runs, I'm sorry—the salmon runs were basically what they are a couple years ago. And so they went like this, your chart starts right there, of course, and shows a collapse. So I think it's important if we are going to look at salmon runs, this Committee should look at the history of salmon runs over whatever we have records for, for three or four decades. With that——

Mr. MCCLINTOCK. I want to thank everybody who's participated in the hearing today, all of our witnesses who traveled quite a ways, all of our Members of Congress and the State of Washington

and to all of you for spending your valuable time with us here today.

Members of the Subcommittee may have additional questions for witnesses. We ask that you respond to those in writing. Again, I want to thank all of you. It's been a very constructive and enlightening hearing. The purpose of this, of course, is not just to talk at one another, it's to gather and consolidate legislative recommendations to resolve this issue. I'd like to invite all of you to present any of your—any recommendations that you have on the legislation that Congress needs to consider on this issue. The hearing record will be open ten business days to receive these responses. And if there's no further business, without objection, Subcommittee stands adjourned.

[Whereupon, at 12:43 p.m., the Subcommittee was adjourned.]

[Additional material submitted for the record follows:]

Statement submitted for the record by Steve Chedester, Executive Director, San Joaquin River Exchange Contractors Water Authority

Mr. Chairman and Honorable Members of the Subcommittee, my name is Steve Chedester and I am the Executive Director of the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors). The Exchange Contractors are a public agency of the State of California and are comprised of four water agencies that provide water to farmers along the San Joaquin River below Friant Dam, for some approximately 153 miles to the confluence with the Merced River. We provide water to 240,000 acres of irrigated agriculture. Our water rights result from water development in the 1850s. Through a contract with the Bureau of Reclamation, we exchange these water rights for water when available from the Central Valley Project Delta Mendota Canal. When water is not available from the DMC, the Bureau of Reclamation is obligated to provide us with water from the San Joaquin River. This contractual arrangement was a central component of the development of the Central Valley Project in the San Joaquin Valley.

I am providing the Sub-committee with a substantial amount of information that will be useful in understanding the current status of implementation of the San Joaquin River Restoration Program (Program). I will summarize that information by highlighting some of our key concerns.

The Program is faced with the following problems:

i. The Program is not on schedule. The San Joaquin River Restoration Settlement Act (Act or Legislation) was enacted two and a half years after it was expected to be enacted by the Settling Parties. The delay was not the fault or responsibility of any of the Parties. Despite this delay, the Bureau of Reclamation (Reclamation), United States Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) are all proceeding as if the Legislation had not been delayed. The result is that development of the Program is not proceeding logically or comprehensively.

ii. The Program is being implemented out of sequence. The reintroduction of fish to the river was to occur by the end of 2012 and several infrastructure projects were to be completed by 2013. Despite the fact that not one shovel of dirt has been turned for any of the infrastructure required to protect the fish and downstream landowners, FWS, NMFS and the California Department of Fish and Game (CDFG) have indicated they intend to stick to the schedule in the Settlement unless someone or something determines that they not proceed. This is despite the present knowledge that the required infrastructure as called for in the Settlement will not be in place by 2014.

iii. The Program is broke. The burn rate on the Program has been about $20 million/year. Of the $88 million in federal funds the Program started with, according to Commissioner Connor, only $39 million remains. In two years the Program will be out of money.

The costs and funding for the Settlement and the estimated costs for the near term actions are set forth on the chart on the next page:

Projects Requiring Funding For FY2012–FY2018*	**Funding Required**	**Notes**
Structural improvements	$300 million	This includes projects such as Mendota Pool, Reach 2B improvements, etc.
Friant Dam - Water Management Goals	$103 million	This is strictly for Friant Dam's Water Management Goals
Reclamation's administrative budget	$56 million ($8 million per year for 7 years)	This is purely for administrative expenses, e.g., staffing and monitoring of projects, as they are completed.
Minimum Funding Needs for FY2012 – FY2018	***$459 million (an extremely conservative estimate)***	

* Ends September 30, 2018

Source of Actual Available Funds	**Actual Funds Available**	**Notes**
Amount left from original $88 million exempt from PayGo	$39 million	Half of the original $88 million was spent on staff and consultants. Not a single shovel of dirt has been turned to construct the estimated $300 million in necessary improvements.
CVPIA funds ($2 million per year for 7 years), exempt from PayGo	$14 million	
Estimated Contribution from State of California	$50 million	This was originally estimated at $200 million but it is likely to total half of that amount and $50 million has already been spent.
Total Funds Available:	***$109 million***	This assumes $50 million from the State of California.

Funding Shortage:	***$350 Million***

iv. The Program is Harming Third Parties. The Settlement, the Legislation, the Settling Parties, and every member of Congress involved in promoting the Legislation promised that the Third Parties would not be harmed. Section 10004(d) of the Act requires that the Secretary of the Interior mitigate any impacts before implementing a single project, including the release of water from Friant Dam. Despite these legislative directives and assurances, Reclamation has not yet issued a Programmatic Environmental Impact Statement (PEIS), and due to lack of installed mitigation measures, downstream farms have been flooded, crops damaged, a levee destroyed, and monetary impacts incurred.

v. The Program Has Not Yet Met Its Obligations Under the National Environmental Protection Act (NEPA). A Programmatic Environmental Impact Statement (PEIS) was supposed to have been finalized over two years ago according to the schedule Reclamation set forth at the beginning of this process. The PEIS was required so that the public and Congress could understand how the Program was going to be developed, what environmental im-

pacts would occur that would require mitigation and whether the Program was likely to achieve the goals for fish restoration and water management. Rather, Reclamation has proceeded to implement the Program on a segmented or piecemeal basis. For instance, without a PEIS, for the past two years Reclamation has been implementing the Program by releasing water from Friant Dam with nothing more than Environmental Assessments and Findings of No Significant Impact (FONSI), and they have started environmental scoping processes on Reaches 2B and 4A. They have proceeded without benefit of a feasibility report, overall plan for implementation, or comprehensive environmental review of the entirety of the Program. For a program that spans over 140 miles of river, involves ESA-protected species, adversely impacts downstream landowners, water agencies and the physical environment, and costs $500 million or more, this is not a reasonable or rational way to proceed.

How We Got to this Point.

Along with the Exchange Contractors, the other Third Parties include the Central Valley Project Contractors that comprise the San Luis and Delta Mendota Water Authority, and the independent irrigation districts located on the east side of the San Joaquin River on the Stanislaus, Tuolumne and Merced Rivers. Each of these sets of Third Parties have particular interests at stake as a result of the Restoration Program.

I would like to provide the Sub-committee with some background that is essential to apprise you of the situation we face today.

The stipulated Settlement among the Settling Parties, which includes, among others, the Bureau of Reclamation, the Friant Water Users Authority and the Natural Resources Defense Council, was entered into in 2006. At that time, the Settlement was negotiated and legislation drafted without consulting the Third Parties. After the fact, we were afforded an opportunity to seek amendments to the legislation. Senator Feinstein and Representatives Cardoza, Costa and Radanovich spent countless hours trying to work through amendments to the legislation that was already secretly agreed to by the Settling Parties. To an extent, we were successful; to some extent, we were not.

One of the major issues of concern to us was the adequacy of funding for the Restoration Program. The Environmental Protection Agency funded a study that was conducted by the engineering firm of CH2MHill. That study and further analysis estimated that the Program would cost approximately $1.4 billion. The Settling Parties did not agree with that amount, but, rather, maintained that the program could be funded for about $500 million. As a result, we Third Parties tried to obtain in the legislation a requirement that the Program be implemented on a project-by-project basis, consistent with the amount of money that was available. Our concern was that we not have a repetition of the dismal situation that we still face to this day as a result of the partial funding and construction for the San Luis Drain and the long-term damage that has occurred.

We were unsuccessful in obtaining that amendment to the proposed legislation. In 2006 and 2007, as the Settling Parties and Third Parties were negotiating changes to the legislation, we did not know then what we know now. Importantly, we now know that there are grossly insufficient funds to support the Restoration Program. In fact, in 2009, because of the implementation of "PAYGO" requirements, of the approximately $300 million that was sought to be obtained from the federal portion, only $88 million became available. At that time all parties hoped the additional funding would be obtained in 2010. That did not happen.

The Settlement and initial legislation did not undergo the normal process for Congressional approval. There was no report to Congress, no feasibility study conducted, and no environmental review pursuant to the National Environmental Policy Act. Rather, this extraordinary process took place without the usual protections and refinements that ordinarily would accompany such a program. As a result, Congress was never able to appreciate and debate the merits of the daunting task of restoring the San Joaquin River. That task is made even more daunting today, due to the lack of funds.

Where We Are Today.

The Bureau of Reclamation identified the funds that would be available, the projects that would need funding, and the timetable for the construction of these projects. It was anticipated that after these projects were funded, spring run Chinook salmon would be restored to the San Joaquin River. Just to give you an idea, pursuant to the Settlement, the following projects were to be completed by the end

of 2013. Along with some of the items are dollar amounts in bold that indicate Reclamation's estimates of the costs for development as of 2008:

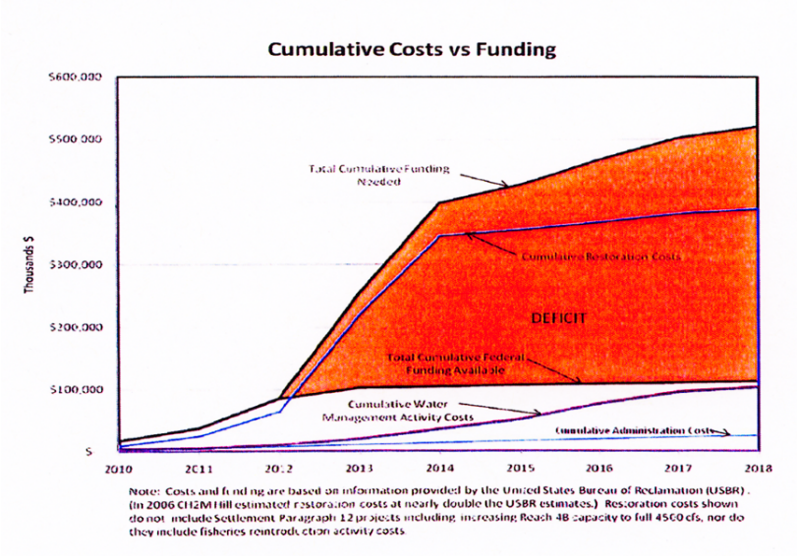
- September 2009—Complete environmental permitting **(in excess of $30 million)**
- December 2011—Complete modification of Reach 4B to capacity at least of 475 cfs **($15 million)**
- December 2012—Complete Reach 2B–Mendota Pool bypass channel for 4,500 cfs **($80 million)**
- December 2012—Complete modifications of Sand Slough Control Structure **($5 million)** and San Joaquin River headgate for 500–4,500 cfs and fish passage
- December 2012—Complete screening of Arroyo Canal and fish ladder at Sack Dam **($11 million)**, but a revised project deemed preferable by USBR will replace Sack Dam **($30 million)**
- December 2012—Complete modification of structures in the Eastside and Mariposa Bypasses (flood control structures owned by California Department of Water Resources) for fish passage **($38 million)**
- December 2012—Complete construction of low flow channel in the Eastside and Mariposa Bypasses for fish passage, if necessary
- December 2012—Complete steps to enable deployment of fish barriers at Salt and Mud Sloughs **($1 million)**
- December 2013—Complete Reach 2B channel capacity increase to 4,500 cfs with floodplain and riparian habitat **($75 million)**

By the end of 2016 the following Phase 2 projects were to be completed:

- December 2016—Complete modification of Reach 4B for 4,500 cfs
- December 2016—Complete filling and isolating gravel pits in Reach 1 (gravel pits create habitat for warm water fisheries, like bass, that eat salmon)
- December 2016—Complete modifications to Bifurcation Structure (upstream of Mendota Pool) for fish passage and to prevent entrainment

None of these projects have even been started. None of these projects have undergone environmental review; none of these projects have been studied within the context of the overall development of the fish restoration program; and none of these projects have commenced construction. In fact, it is only once the PEIS is issued that we will be able to even have a glimpse of how Reclamation intends to develop this program.

Based on this information and the costs identified in the chart above, below is a graphical depiction of the problem faced by Reclamation to fund this Program. As is obvious, the deficit in the Program is going to be growing rapidly commencing in 2013. Within the darkened portion of the graph, the blue line indicates the cumulative restoration costs as distinct from the water management costs and the entire darkened area is the Program funding deficit.



The Fish Restoration Efforts.

Currently, we have a situation where the U.S. Fish and Wildlife Service, National Marine Fisheries Services, and California Department of Fish and Game are proposing to go forward with the fish restoration portion of the Restoration Program without having the infrastructure in place that is necessary to protect the fish.

From the outset of the Restoration Program, it was understood that fish would be returned to the river once significant infrastructure was in place. Attached to my testimony as Exhibit A is an excerpt from the Stipulated Settlement that sets forth the Bureau of Reclamations schedule for development of the necessary infrastructure. According to Reclamation, the major facilities listed above were to be in place prior to the introduction of spring run Chinook salmon to the San Joaquin River. I note that the schedule calls for fish to be inserted in the River in about mid-2012, but as I understand it, those are test fish not meant to be the first generation of the hoped for sustainable population of spring run salmon.

Further, the fish reintroduction program was going to start with non-protected species of salmon, such as Sacramento fall run Chinook salmon. Those fish would have been used to test the new system to determine the effectiveness of the completed infrastructure and to identify areas where additional infrastructure, such as screens or other devices to keep fish out of irrigation works, would be needed. In part, these facilities were identified extensively by Edward Donahue, an expert who prepared a report for the settlement of the litigation.

As I said before, no infrastructure has been put in place. And yet, the Program is moving forward this year, placing fall run Chinook salmon into the San Joaquin River. The validity of this experiment is highly questionable for several reasons. While CDFG identified several studies that could be conducted this year, due to the fact that the river is in flood flow condition, CDFG has conceded that the only benefit to putting fish in the river is to train staff in the handling of fish. This is a very expensive training program.

According to Dr. Forrest Olson, a fisheries biologist with CH2M HILL, the following problems arise with the proposed planting of fall run Chinook salmon into the river at this time:

- Fall run Chinook salmon behave differently than spring run Chinook salmon. Due to their life histories, spring run will be larger when they out-migrate, and therefore have greater swimming ability and the ability to avoid predators. Juvenile fall run Chinook salmon will be swept down with the flood flows.
- Putting fish in the river at this time, during flood flows, will not replicate conditions that the fishery will normally experience during the course of a year. Therefore, for a meaningful experiment, fish should be planted in the river at various times and under various flow conditions.
- Because the river is in flood flow operation, the vast majority of water is conveyed through flood control channels around the San Joaquin River. This is to avoid downstream flooding. These flood control channels were constructed by the State of California and are operated by local flood control districts. The experience of the fish in the flood control channels is remarkably different than that in the main stem of the river.
- The river is going to be reconfigured under the Restoration Program. Testing fish survivability under current conditions will bear little to no relationship to the survivability of fish once the river is reconfigured.

Conclusion.

The current fishery proposal exemplifies the problems with the implementation of the Restoration Program. A logical development of the Program, assuming that funding was not a problem, would dictate that analysis be conducted, a preferred alternative adopted, infrastructure constructed, mitigation measures put in place to avoid harm to downstream interests, and only thereafter would the fish restoration part of the Program commence. Yet, here we are, with no infrastructure, little to no mitigation measures, running out of money, and yet the National Marine Fisheries Service, Fish and Wildlife Service, California Department of Fish and Game, and the Bureau of Reclamation, are proceeding with the fish restocking program as if the rest of the Program had been implemented according to plan. This makes no sense. The program needs to get back on track. To that end, the Exchange Contractors request that the following eight measures be implemented expeditiously:

1. No spring run Chinook salmon should be introduced to the river until adequate improvements are in place. This is by far our number one concern as putting spring run in the river too soon will have detrimental impacts on the downstream property owners and potentially jeopardize the success of the fish reintroduction.

2. Reclamation must agree in writing to not release Program flows of a magnitude that would exceed 1300 cfs in Reaches 2A—nor more than 50 cfs in Reach 4A (below Sack Dam).
3. Form a working group of the settling parties, Third Parties, representatives from the State of California, and Senator Feinstein and the local Congressional representatives. The purpose of the working group would be to analyze current conditions facing the implementation of the Restoration Program and to come up with a plan that reflects the current schedule; loss of 2½ years due to the delay in implementing the legislation and related adjustments to the schedule; determining what can be done, given the money that remains, which is clearly insufficient to carry the program to 2019; and to set a course of action that properly sequences the Program in a manner that meets the needs of both the Restoration Program and the affected Third Parties.
4. Revise the Technical Advisory Committees (TAC) for flow releases and fisheries so that third parties are included in these committees. The TAC is comprised of only NRDC and the Friant contractors. The federal and state agencies are afforded input and receive recommendations, but the affected Third Parties are only afforded an opportunity to learn of decisions being made after the fact. This is too late, particularly given our experience with and knowledge of the river. The request to participate in the TAC was made by the Third Parties at the time they were informed of the settlement. Recent events concerning flows and the fishery issues have proven that it would be even more useful to have the Third Parties participate on these committees.
5. Congress should include in the appropriations for the Restoration Program sufficient funds to pay for damages already incurred.
6. Legislation should be enacted, or if feasible funds directed through the appropriations process, to establish a claims fund to pay for future damages without the need to go through the Federal Tort Claims Act and litigation processes. This would be a mini version of the "Gulf Oil Spill" type of fund, that could be administered either by an independent third-party administrator, or by the Bureau of Reclamation. The fund would need to be transparent and contain a right to appeal should there be a dispute over the damages that are incurred.
7. Despite the impending publication of the Programmatic Environmental Impact Study, unless it is included in the PEIS, Reclamation should be required to conduct a feasibility study that assesses the Restoration Program for the next eight years based upon the amount of money actually available and the timing for the investments in infrastructure and implementation of the program. The feasibility study will provide everybody with an opportunity to understand how a roadmap for implementation of the program can be created under the current funding circumstances.
8. Based on the results of the feasibility study and the PEIS, Reclamation should pursue "no regrets" projects that have independent utility, until such time as the program is fully funded. Such projects might include Mendota Dam improvements, installation of tile drains, reinforcement of levies, and reconstruction of Sack Dam.

With the exception of the payment of claims and the formation of the claims fund, we do not believe that legislation is necessary to address any of the other measures. Rather, this can be accomplished administratively, but subject to Congressional oversight and input.

Thank you for this opportunity to comment.

EXHIBIT "A"

(Stipulated Settlement "Exhibit C")

EXHIBIT C

The Parties have collectively developed the following timeline for the development and implementation of the improvements described in Paragraph 11 of the Stipulation of Settlement. In so doing, the Parties have considered a variety of factors including, but not limited to, the desire to commence Restoration Flows (and other restoration-related activities) at the earliest possible date, as well as the challenges associated with the development and implementation of these improvements. For these reasons, the dates set forth below represent milestones for purposes of implementing the Settlement. The enforceable deadlines are set forth in the Stipulation of Settlement.

These dates were drawn from a schedule the Federal Defendants developed to assess the estimated minimum period to complete the Paragraph 11 improvements. The Parties recognize that this schedule is ambitious and reflects the Parties' intent to complete the improvements in an expeditious manner. Many assumptions were made in developing this schedule and include, but are not limited to: technical understanding of the nature of the improvements given the current limited availability of detailed site-specific information, availability of sufficient funding and resources, timely acquisition of necessary land and entry rights, timely availability of detailed information and survey results for environmental analysis, timely issuance of necessary permits, and no reduction in the estimated annual 120-day construction period due to weather, in-stream flows events, environmental or permitting requirements.

Program Environmental Compliance

September, 2009:

- Complete necessary and appropriate NEPA, NHPA, ESA, CEQA review

Phase 1 Improvements

December, 2011:

- Complete modification of Reach 4B to route at least 475 cfs

December, 2012:

- Complete Reach 2B–Mendota Pool 4,500 cfs bypass channel
- Complete modifications of Sand Slough Control Structure and San Joaquin River headgate for routing 500–4,500 cfs and fish passage
- Complete screening of Arroyo Canal and construction of fish ladder at Sack Dam
- Complete modification of structures in the East Side and Mariposa Bypasses for fish passage
- Complete construction of low-flow channel in East Side and Mariposa Bypasses, if necessary
- Complete steps to enable deployment of fish barriers at Salt and Mud Sloughs December, 2013: Complete Reach 2B channel capacity increase to 4,500 cfs with floodplain and riparian habitat

Phase 2 Improvements

December, 2016:

- Complete modification of Reach 4B for routing 4,500 cfs
- Complete filling and isolating gravel pits in Reach 1
- Complete modifications to Bifurcation Structure for fish passage and to prevent entrainment, if necessary

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