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SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON
ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

ON

S. 27

TO AUTHORIZE THE IMPLEMENTATION OF THE SAN JOAQUIN RIVER RESTORATION SETTLEMENT

MAY 3, 2007

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SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

THURSDAY, MAY 3, 2007

U.S. SENATE,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON ENERGY AND NATURAL RESOURCES,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room SD–366, Dirksen Senate Office Building, Hon. Maria Cantwell presiding.

OPENING STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. I want to call to order this hearing before the Water and Power Subcommittee. It is my pleasure to welcome everyone to this morning's hearing, and specifically the witnesses who traveled across the country to be with us here today. We appreciate their efforts.

The purpose of this hearing is to receive testimony on S. 27 sponsored by Senator Feinstein and Senator Boxer, which authorizes the implementation of the San Joaquin River Restoration Settlement.

As I understand it, the Settlement is the culmination of years of litigation and tough negotiation among some very diverse interest in California. These parties have now come together with a plan to address one of the toughest issues facing Natural Resource managers in the West—the restoration of salmon fisheries in the heart of a highly productive agriculture region. For years now, along the west coast, people from all walks of life have worked together to ensure that salmon runs in this region are healthy and thriving.

Unfortunately, the hard work has not paid off in the way that we had hoped. By the late 1990's, west coast salmon runs had declined to only 10 to 15 percent of what they had been in the 1800's. Currently, 26 district populations of Pacific Salmon and Steelhead Trout are listed as either endangered or threatened under the Endangered Species Act, and there is obviously much more work to be done.

Up and down the Pacific coast, salmon are not only an important food and economic resource, they are also a cultural icon. Salmon recovery is both possible and vital. Only with the return of abundant, self-sustaining populations of wild salmon and Steelhead to the Pacific States, can we fully honor tribal treaties, protect salmon-based communities, and safeguard the $4 billion in salmon recovery that's already been made in investments by American tax-

payers, and obviously by the Pacific Northwest electric rate payers over the past 25 years.

In northern California and the Northwest States, salmon are an indicator of the health of our land, of our streams, and of our economy. The bill before us today represents an opportunity to go on the offensive, and restore salmon to areas in which they have long been gone, and to do that, we have to make sure that these supporting, competing interests work together.

So, I look forward to working on this bill, and to gain some additional insight from those testifying today.

As I noted, Senators Feinstein and Senator Boxer are the sponsors of this legislation, and we welcome them to provide their perspectives on this bill before the subcommittee.

I know that both of you are pressed for time, but I'd also like to invite Senator Corker, the ranking member of the subcommittee, to make his opening comments, and then we will allow you to make your statements, and obviously, then, followed by the administration.

So, Senator Corker, thank you very much for joining me at this subcommittee hearing today.

STATEMENT OF HON. BOB CORKER, U.S. SENATOR FROM TENNESSEE

Senator CORKER. Madam Chairwoman, thank you, and I think you probably know a little bit more about this subject than I do, but thank you.

And, it's a pleasure to be here with the San Joaquin Water Settlement in California, to discuss it, I welcome both of my esteemed colleagues from California, Senators Feinstein and Boxer. And thank you for coming to the subcommittee hearing.

I'm pleased to see the parties involved in this case after 18 years of contentious litigation have decided to settle. The goals of the settlement, to restore and maintain fish populations, while not adversely impacting water supplies to long-term water contractors, is commendable.

I recognize the work the witnesses have put into the settlement, and look forward to hearing from each of you. As you provide your remarks, I would like to hear you discuss three issues, and that is, the financial mechanisms needed to ensure a full settlement, how third-party impacts are going to be addressed, and how successes will be determined under the settlement.

Again, I thank you, I thank the witnesses for your presence, and thank you, Madam Chairwoman, for conducting this hearing. I look forward to hearing the testimony today.

Senator CANTWELL. Thank you, Senator Corker.

Senator Feinstein, and Senator Boxer, again, welcome before the subcommittee.

Senator Feinstein, would you like to start?

STATEMENT OF HON. DIANNE FEINSTEIN, U.S. SENATOR FROM CALIFORNIA

Senator FEINSTEIN. Thank you very much. Both of us appreciate this courtesy. There's an old saying in California, "Whiskey's for

drinkin', and water's for fightin'." And there's no area where this has been more the case than the future of the San Joaquin River.

This River historically supported large salmon populations, but since the late 1940's, approximately 60 miles of the River have dried up in most years. And there have been lengthy court battles.

The Natural Resources Defense Council and the environmental community sued the Friant Water Users and the Department of the Interior. The litigation has gone on for 18 years now.

But a year and a half ago, all of that changed. Judge Karlton, in the Eastern District of California, ruled that if the parties couldn't come to a settlement, he would settle it for them. And, all the parties believe that the judge would likely rule in favor of releasing much larger amounts of water from Friant Dam than the settlement requires.

In addition, the judge's imposed solution would lack the benefit of months of compromise negotiations between the parties, and other groups not part of the litigation, on how to restore the River, while preserving the many parties' different interests.

And so, all of the parties decided—believe it or not—that a settlement would be in their best interest, and they asked for my help, and the help of Congressman Radanovich to push them towards settlement. All agreed the alternative to settlement would be worse.

Despite all expectations, each side did make concessions. They did come to an agreement, but the process wasn't finished. The settlement required Federal implementing legislation to become fully effective. And, so I invited all of the parties to the litigation, and other parties who felt their concerns had not been addressed, back to Washington to hammer out the details of the legislation.

The negotiations went on for hundreds of hours, over a period of weeks, last September. They were tough negotiations. They often went on late into the night. We went over every line of this legislation. And when it ended, I asked if anybody had objections over any provision. We went provision by provision. If they did, then we would discuss and caucus, and come back with language that everyone could agree on.

And finally, we reached a point where everyone around the table agreed on the legislation. And then I asked each of the parties to sign, and indicate that they would support it—both in public and in private—and they did.

After the voters of California passed Propositions 84 and 1E at the November election, which provided at least $100 million, and potentially hundreds of millions in State funding for this restoration project, I asked the settling parties, the State and other congressional sponsors of this settlement effort to agree to one final modification to the financing provisions of this legislation.

This final modification which I requested, requires a 50 percent match in non-Federal contributions as a pre-condition for spending any new Federal appropriations that are authorized by this bill.

So, we're here today. Here's what the legislation will do. It will help transform the San Joaquin into a living river, and ensure that the hardworking men and women in the Friant Service Area will continue to have a stable water supply.

The legislation indicates how the settlement agreement is going to be implemented. It involves the Department of the Interior, the Department of Commerce, the Bureau of Reclamation, and essentially gives the Secretary of the Interior the additional authority to: one, take the action to restore the River, provides the oversight; two, reintroduce the California Central Valley Spring-run Chinook salmon; three, minimize water supply impact on Friant water users; and, four, avoid reductions in water supply for third-party water contractors.

The parties bridged the gap for one simple reason—it gives all sides certainty on how the river will be restored, and the water will be used.

The Natural Resources Defense Council will be able to see that the San Joaquin River is restored, without further litigation. The Friant Water Users Authority will know that its water supply will remain at manageable level. The third-party water contractors will be able to avoid all but the smallest impacts as a result of the settlement, except on a voluntary basis. And the State of California now has partners in efforts to restore the river, improve water supply and protect threatened species.

Around the table were my friend and colleague, Senator Barbara Boxer, and when she could not attend, she had her staff present, I believe her Chief of Staff, present at all meetings, Representatives George Radanovich, Richard Pombo, Dennis Cardoza, Jim Costa, and Deven Nunes, representatives of the State of California, and the Federal Government, the Friant Water Users Authority, the Natural Resources Defense Council, as well as numerous third-party water contractors from the Central Valley—they were all there. And this is the first time I can remember five members of the House of Representatives actually being there for virtually most of all meetings.

This indicates how critical this issue is to the entire Central Valley. The negotiations, as I said, went late into the evening, but each side came together in good faith, and compromised on a number of key issues. And, in the end, the Natural Resources Defense Council, the Friant Water Users Authority, the State of California and all third parties have agreed to support the settlement and the legislation, and they pledged to do what's necessary to see that it's approved by Congress.

I believe the parties involved in these negotiations came up with a workable solution. And I believe the parties will continue to work in good faith to address any remaining water supply reductions for Friant.

At my request, Friant has prepared a 76-page list of water supply project options. These include projects to build groundwater banking and recharge facilities. To construct facilities to link the separate water distribution systems of the Friant district, and to increase the capacity of major water conveyance facilities, for the projects that need Federal funding. As an appropriator, I stand by to do what I can to help, and I know my colleague, Senator Boxer will, as well.

We expect many projects like these to be in place before full restoration flows beginning in 2014. But here's the risk—if we don't pass this legislation, and the settlement is not enacted, then the fu-

ture of the San Joaquin won't be charted by the people who use the water, it will be decided by a judge, who will demand that far more water be released than is envisioned by the current settlement agreement—with far less certainty, this is the key—over how that water will be used.

Therefore, if the judge just releases water, there can be no certainty that it can be planned at times, and the flows in a manner which will accommodate the salmon, as well as water users.

So, I'm here to ask you to pass this legislation. Again, I repeat, it is a settlement between parties, it is not legislation that Senator Boxer or I sat down to write to solve a problem—we may have solved it differently, I don't know. But, what I do know is that 18 years of court litigation is too long, and right now you have representatives from the parties of issue that are here today—this is not an easy thing to do, it's not an easy thing to do for these people to compromise, but they have done it, and they've done it with the equal interests of their farming interests, the water users' interests, and the interests of returning this spring-run salmon.

Senator, you asked, what guarantee is there? What oversight will there be? There is no real guarantee, but the Department, the State and the Federal Government have the ability to maintain some oversight over this, to see that it is done, to learn from mistakes in water release, and to try to regenerate this important salmon run.

We believe it can be done, and we believe it's going to take some careful planning, some experimentation, but one thing I really do believe, after sitting at that table for I don't know how many hours, is that there is truly goodwill now, among these communities. And so we have the opportunity to do something which has never been done before.

I thank you, and I appreciate your consideration.

And, may I be excused? I have a Data Breach bill on markup in Judiciary.

Senator CANTWELL. Thank you, Senator Feinstein, we appreciate you being here on this important legislation, and I know that you do have to go to a markup of your own bill in another committee, so we'll excuse you, unless Senator Corker has a comment or question.

Senator CORKER. It was outstanding testimony, and it sounds like you've done an outstanding job in reaching settlement. I thank you for coming before us today.

Senator FEINSTEIN. Well, thank you, I appreciate that, thank you.

I'll turn it over to my colleague.

Senator CANTWELL. It's a pleasure to have the chairman of the Environment and Public Works Committee to testify before the Subcommittee on Water and Power, so, Senator Boxer, thank you for being here.

STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM CALIFORNIA

Senator BOXER. Thank you. I want to say to my friend, Senator Feinstein, just for one moment before she leaves, I want to say publicly, a great big thank you to her, for her patience in sitting

at that table. And just her focus on achieving this, I was so glad to be her assistant in this matter, and I'm so thrilled to be a cosponsor of the legislation, and I'm very pleased to be there today. So, go forward and do good work.

But this really was something to see, because as the Senator said, in our State when you mention water, people just sit up. If you look at how our State grew, and all of the water wars, you would understand it, and we have many more that will come before you at another day, which I won't go into now.

I want to thank both of you Senators for being so kind to allow us to present this to you. I also want to thank Senators Bingaman and Domenici, so if I might do that, and then I will summarize. Mine is a lot briefer, but I do have some pictures to show you, which I think will be interesting.

The San Joaquin River Restoration Settlement Act is a great bill for California's environment, its economy, its quality of life, and as you heard, it's a result of years of debate, compromise, lawsuits, wranglings, everything. And, when I was asked at those meetings, what we saw was, you know, people who just can't see eye to eye, finally just force themselves to see eye to eye. The environmental community want to restore this into a great river again, and the agricultural community, who depends on the water for livelihood.

So, I want to show you the Friant-Kern Canal—this is an 152-mile long structure that carries water in a southerly direction from Millerton Lake to Kern River. The Friant-Kern Canal, along with the 36-mile long Madera Canal, provide 1 million acres of farmland in central California with a vital source of irrigation water.

The gross agriculture production of these lands in California's Central Valley exceeds $3 billion annually, so water is the lifeblood. In addition, it also provides the essential water to cities and communities within the project area.

And then, of course, I'm going to show you something you know very well—a grape field—this is the produce that Americans enjoy every day, but there are consequences to diverting so much water to agriculture. Dry rivers—this dry spot is just one of what averages to be 60 miles each year that runs dry on the San Joaquin, and that's right, one of California's great rivers, its second largest, runs dry for one-fifth of its total length.

It's meant that the once-great salmon runs of the San Joaquin no longer exist, and it's hurt fisherman and Indian tribes, and recreational business, and our way of life. But the bill we're considering is going to give the San Joaquin a second chance, and again, try to meet everyone's needs.

This river was born in the midst of the granite peaks and verdant forests of California's high Sierra Nevada. The great stream reaches all the way to the Delta, and the San Francisco Bay. The San Joaquin River is very much a part of our great, rich natural heritage.

Fishing—there are many parts of the river that are beautiful, we have the opportunity to make it a living river, along its entire length.

So, colleagues, as you've heard, this bill is a result of decades of struggle, and countless hours of negotiations. It demonstrates that agriculture, environmentalists and interested stakeholders can

work together to do good things for our community. A health and revitalized San Joaquin River will prove that an agricultural economy can exist side-by-side with a healthy environment. And, it has been difficult to get where we are today, but I think we're at a very key moment here, with the help of Congress, we can move forward.

And, I think, Senator Corker, you have a very fair question. And I would say, now that you know a little bit more of the background and the struggles, and the fact that the Court is ready, willing and able to impose a settlement, that acts as—I think—an enforcer. Knowing what could happen is far worse than what we have here, and what we can do here.

So, I look forward to working with you on this committee, with Senator Feinstein, and all of the stakeholders, our colleagues in the House, to seize this chance to make this great vision a reality. Again, I thank you so very much. And as far as technical questions of the bill, I would ask that those be directed to Senator Feinstein's staff, because as far as technically, I don't have the—I didn't write it, I am the co-sponsor of it, so I don't think I can answer technical questions.

But, on the big picture, just know how hard we worked to get this where it is. Know how hard it was for the stakeholders, who really have a lot of emotions at stake in all of this, whether they're farmers, and you know, they know the work they do and how they need the water, or the recreational industry, the environmentalists—it's very tough, but this is a wonderful achievement, I think, by Senator Feinstein, and I am very honored to just be a helper in the whole thing, and I hope you can also help us to make this become a reality.

Thank you very much.

Senator CANTWELL. Thank you, Senator Boxer, for your testimony, and I don't know, Senator Corker, if you have any questions or comments for Senator Boxer?

Senator CORKER. I think any technical questions, as you mentioned, we'd ask Senator Feinstein's staff. Thank you for coming before us, and it sounds as if you all have got a great relationship between the two Senators, and——

Senator BOXER. We do.

Senator CORKER. And a great resolve for the citizens of California. So, thank you for coming.

Senator BOXER. Senator, thank you so much.

And, Madam Chairman, thank you very much.

Senator CANTWELL. Thank you, Senator Boxer.

We'll now go to our first panel, which is going to be Mr. Limbaugh, the Assistant Secretary for Water and Science at the Department of the Interior.

Welcome Mr. Limbaugh, we appreciate you being here this morning to give testimony in regards to S. 27.

STATEMENT OF MARK LIMBAUGH, ASSISTANT SECRETARY FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

Mr. LIMBAUGH. Thank you, Madam Chairman. Senator Corker, Madam Chairman, members of the subcommittee, I appreciate the opportunity to be here today to discuss S. 27. My name is Mark Limbaugh, I'm the Assistant Secretary of the Interior for Water

and Science. I have a written statement I'd like to ask be submitted for the record, and just give some oral comments, thank you.

The Department supports S. 27. As you know, this bill implements a settlement of an 18-year old legal dispute, *NRDC* v. *Rogers, et al.* Through the good faith efforts of the settling parties, the Natural Resources Defense Council, Friant Water Users Authority and representatives of the Federal agencies, and with the help of Senator Feinstein and Senator Boxer, Representative Radanovich and the other representatives of the California delegation, an opportunity exists to resolve this litigation in a way that will restore the San Joaquin River in California, and increase water supply certainty to farmers in the Friant Division, Bureau of Reclamation Central Valley Project.

The settlement agreement is based on two goals: to restore, and maintain fish populations in good condition in San Joaquin River, below Friant Dam to the confluence of the Merced River, and to reduce and avoid adverse water supply impact to all of the Friant Division long-term contractors that may result for the flows provided for in the settlement.

S. 27, in turn, directs that funds are to be used to meet both the water management, and restoration goals outlined in the settlement. The bill directs the use of the Friant surcharge, annually paid to the CBPIA restoration fund to implement the settlement. This surcharge is expected to average about $8 million per year, or $160 million over the 20 year period.

In addition, up to $2 million annually of other CBPIA restoration fund payments from the Friant users would also be available for settlement purposes.

S. 27 also dedicates the capital component of water rates paid by Friant Division water users toward implementation. Worth roughly $220 to $240 million over the 20 year period. Under this bill, these funds would be deposited in a newly-established San Joaquin River Restoration Fund, to pay directly for implementing the settlement. In addition, S. 27 authorizes up to $250 million of Federal appropriations to contribute toward implementation, but as Senator Feinstein pointed out, requiring an equivalent non-Federal cost share.

The State of California's recent passage of Propositions 84 and 1E should provide about $200 million additional dollars in State funds for restoration.

Having said all of this, the total cost and the specificity of these actions still contain significant uncertainty, and this is a source of concern to all parties. We must also remember that implementation of the settlement, including this authorization legislation does not imply a limitless Federal commitment to funding implementation costs.

Now, we recognize the importance of addressing unintended impacts of third parties in the implementation of the settlement, but several steps have been taken to involve them today. Water users on the west side of the Central Valley, users of tributaries of the San Joaquin River downstream of Friant Dam, the exchange contractors, and other parties concerned about river management

issues reviewed the settlement documents before they were executed.

Numerous briefings were held during 2006, where the settling parties explained the proposal in detail, responded to questions, and listened to comments. The settling parties made modification to some of the documents, and provided the third parties with detailed, written responses to their comments. In addition, language was added to the legislation before it was introduced to strengthen protections for third-party impact.

Reclamation has worked closely with a group of third-parties on a Memorandum of Understanding which was signed this last February. It articulates their concerns, and commits Reclamation to work closely with them throughout the implementation of the settlement.

Finally, in supporting S. 27, the administration remains committed to implementing other salmon restoration programs along the Pacific Coast. In particular, we will still continue to work with the State of California and the Hoopa Valley and Yurok tribes to implement the Trinity River Restoration Record of Decision.

Madam Chairman, this concludes my testimony, and I'd be happy to answer any questions that you may have, thank you.

[The prepared statement of Mr. Limbaugh follows:]

PREPARED STATEMENT OF MARK LIMBAUGH, ASSISTANT SECRETARY FOR WATER AND SCIENCE, DEPARTMENT OF THE INTERIOR

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss S. 27, the San Joaquin River Restoration Settlement Act. S. 27 provides authorization and funding for the Secretary of the Interior to implement the terms and conditions of the Stipulation of Settlement (Settlement) dated September 13, 2006, in *Natural Resources Defense Council, et al.* v. *Kirk Rodgers, et al.,* which was approved by the U.S. District Court on October 23, 2006. The Department supports S. 27.

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

BRIEF BACKGROUND

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

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

In 1988, a coalition of environmental groups led by NRDC filed suit challenging the federal defendants' compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) in connection with the renewal of

the long-term water service contracts between the United States and the Central Valley Project, Friant Division contractors. Most of the Friant Division long-term contractors intervened as additional defendants.

Through amended complaints, the plaintiffs subsequently included a claim asserting that pursuant to § 8 of the Reclamation Act of 1902, the federal defendants must operate Friant Dam in accordance with California Fish and Game Code § 5937. California Fish and Game Code § 5937 requires the owner or operator of any dam in California to allow sufficient water to flow through or around the dam in order to keep the downstream fishery in "good condition." During the initial phase of the litigation, the District Court ruled that the contracts were not entered into in violation of NEPA requirements, but held that approval of the renewal contracts violated procedural requirements of the ESA. The District Court did not rule on the § 5937 claim. On June 24, 1998, the Ninth Circuit Court of Appeals affirmed most of the District Court's rulings but remanded to the District Court the issue of the applicability of California Fish and Game Code § 5937 to the operation of Friant Dam.

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

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

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

RESTORATION GOAL

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

WATER MANAGEMENT GOAL

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

PHASED APPROACH

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

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

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

IMPORTANCE OF LEGISLATION

As the implementation of this historic Settlement begins, I can't emphasize enough how important it is for Federal authorizing legislation to be approved and signed into law. Passing this legislation soon will demonstrate the kind of support and commitment from the Federal government that is necessary to prove we are serious about making this settlement and its twin goals a reality. Some initial funding and authority exists for Interior agencies to work with our State partners to initiate planning and environmental review activities, which we have already begun to do. Without authorizing legislation such as S. 27, however, we lack sufficient authority to implement the actions in the Settlement. Moreover, beginning in fiscal year 2008 we will have insufficient funding to stay on the aggressive schedule called for in the Settlement to complete the necessary planning and environmental reviews for initiating construction activities and ultimately restoring flows into the San Joaquin River from Friant Dam. Such delays would send the wrong message regarding the Federal support for implementation.

RESTORATION FUNDING

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

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

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

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

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

Although the Settling Parties have agreed on a suite of actions to be taken to restore flows and salmon runs, the total cost and the specificity of those actions still contain significant uncertainty. The Parties anticipate that a multi-agency technical team established to implement the Settlement would develop additional design de-

tails typically found in a Feasibility-level study needed to take the proposed actions. The Parties also anticipate that the estimated costs projected to be required to meet the restoration goal (i.e. $250 million-$800 million) would be further refined during the initial phase of implementation.

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

STATUS OF IMPLEMENTATION

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

THIRD PARTIES

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

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

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

In supporting this settlement, the Administration remains committed to implementing other salmon restoration programs along the Pacific coast. The San Joaquin settlement that would be implemented by S. 27 provides a model of how stakeholders can come together to rebuild historic salmon populations and restore communities. We are open to exploring how this model could be used to help implement other similar restoration programs.

CONCLUSION

This monumental agreement ends an 18-year legal dispute over the operation of Friant Dam and provides increased certainty to Friant Division farmers who rely on CVP water deliveries while returning flows and salmon runs back to the San Joaquin River. S. 27 would provide the federal authorization and funding needed to move into implementation. We believe that this historic agreement is the start of a truly collaborative process that will result in a restored river for all. I strongly recommend that this committee act swiftly on this legislation to allow the Federal government to move forward without delay and to send a message of support to the Parties and our implementing partners.

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

Senator CANTWELL. Thank you, Mr. Limbaugh, for that testimony.

You indicate that the feasibility level designs have not been done on actions needed to restore the salmon runs, particularly on channel restoration. In thinking about the funding, obviously, this is something that, I think comes to mind on this. Is it clear that the funding in the bill, which I think is about $650 million of Federal, and $250 million of State dollars, will be sufficient to complete the activities that are required in the settlement?

Mr. LIMBAUGH. Madam Chairman, we believe so. There is a range of possibilities. The State has looked at a total cost of the settlement and the legislation basically comports to within that range of total cost. There are many studies that are out there that are actually record in the litigation that could be used to look at further designs, further studies, and looking at implementing restoration and water management goals that contemplate it by itself.

Senator CANTWELL. If additional funding is necessary to complete the actions of the settlement and such funds aren't provided, will there be a breach in the settlement? How do we resolve that?

Mr. LIMBAUGH. Senator, the settlement contemplates the direct funding approach, taking existing funds that are being paid for by California parties and putting them into a Restoration Fund, so from the outset, the expectation is that we will have "X" number of dollars, and as I highlighted in my testimony, about $8 million a year from the surcharge, and about, between $10 million and $12 million a year from the capital repayment to actually put on the grant, and any additional funds, I would think, as time arises, we have agreed to allow the settlement to—and the legislation to include an authorization of up to $250 million of Federal funding through appropriations process to be matched by other non-Federal funds.

It is our understanding that this should be enough funding to accomplish the goals of the settlement.

Senator CANTWELL. Have you been in discussion with NOAH and Fish and Wildlife Services, and California Fish and Game about

evaluations of the Restoration Plan? About flows and restoration habitats?

Mr. LIMBAUGH. Senator, it's my understanding that Fish and Wildlife Service has been involved from the start, it's also my understanding that NOAH Fisheries has been involved to the extent that they could be, and as far as California Fish and Game, I think so. So, we have been involved with all of those agencies, and throughout this process in looking at the possibilities of implementing, so——

Senator CANTWELL. How would you characterize the Interior Department's view of the settlement in the successful results that you think might be achieved? I mean, are you very excited about the settlement, you think that what's been outlined here, you're very enthusiastic about what you think the results of that would be and returning, creating a salmon fishery again?

Mr. LIMBAUGH. Well, Senator, that's a very good question and I believe we are excited about the settlement.

Senator CANTWELL. I mean, if you had to give it a grade, what would you give it?

Mr. LIMBAUGH. Well, we don't see these kinds of opportunities every day. You have an 18-year old litigation risk that has been out there, parties fighting amongst themselves for many years, that does not provide for the certainty that people need to go on with their lives, and to make investments and to look to the future in terms of how their environment's going to be for their grandchildren and their great-grandchildren.

And so, when you look at that opportunity that we have to actually implement something that people have worked out on the ground, and that can have a vision, that can work together, and get rid of this black cloud that hangs over some of the water users, or the other side, the other parties to the settlement terms of restoring the river, I think moving forward and having some positive relations and positive benefits to this basin and to the State of California, I think it's a grade A.

Senator CANTWELL. And, in regards to salmon recovery—I guess I'm asking as someone representing the Department of the Interior and in consultation with these other Federal agencies, and obviously, you know, wearing my Pacific Northwest hat, we always want to make sure that the agencies are fighting for good science, and looking at these plans as they believe that they will be successful. And so, I very much appreciate people coming together, as they have, but I want to understand how enthusiastic you are about the requirements, or the implications as it relates to salmon recovery.

Mr. LIMBAUGH. Well, the recovery of the fishery, Senator, is part of the uncertainties that I've mentioned. To take a river that's been dry for 60 years, or 40 years—however long it's been, you know, in and out, intermittently dried up.

It'll be interesting to see whether we can get a viable fishery. But the point is, is that we're working towards that goal, we do have the fisheries agencies involved, I believe they're excited about this settlement, and I think it's basically a much better approach than what we have now. And so, I think, if you look to the possibility of restoring a salmon run on the San Joaquin, this settlement gets us a lot closer than any other effort that's out there.

Senator CANTWELL. I do have some more questions, Senator Corker, do you have any questions?

Senator CORKER. I just have a couple, thank you.

You talked about the opportunity that this is, and it does sound like a unique opportunity, I also know after being around here a few months, there are opportunities every day to fund things. Is the administration willing to budget for the amounts of money necessary to see this through?

Mr. LIMBAUGH. Senator, the legislation contemplates a direct funding stream that's there. While agreeing to further appropriations, we certainly at this point do not agree to any further budget that's dependent on the necessary cost-sharing requirement that's in the appropriations language.

But, the directed funding, we believe, is enough to get this program off the ground, it's something that's already going to the Treasury that would simply be directed into that local area to restore the River, and accomplish water management goals.

Senator CORKER. Well, I guess I'm a little confused—I understand about the direct payments, but my understanding was also you all were needing to set aside another $10 or $15 million to go with the State and local match—is that not the case?

Mr. LIMBAUGH. Well, like I say, Senator, it depends on whether the matching dollars are there, I think that's the number one thing. If they are, and the need is there, then we would certainly take a hard look at budgeting for that funding.

But, at this time, we only contemplate the directed funding to begin this process of getting this restoration underway. In other words, I can't commit to future budgets, but I can commit to supporting the terms of the settlement, and supporting the authorization of the settlement through the legislation.

Senator CORKER. Do you contemplate, then, the future funding will be necessary? This is all—obviously, authorizing legislation, but give us your view of what will occur over the next 10 or 15 years?

Mr. LIMBAUGH. Well, the contemplation that the legislation looks at is a combination of some innovative financing, using revenue streams to float bonds, or to look at getting some up front funding to start the restoration process, so that would kick-start this whole program, rather than relying on just so much a year.

And so, as we go forward, we would have to look and see what the needs would be. I would think we're looking at—probably within 5 years, there may be a need for additional funding. But, it depends on whether that matching funding is there. Again, it's the kind of thing that we would watch, we were going to be integrally involved in the Restoration efforts through the Bureau of Reclamation, the Fish and Wildlife Service, and through the State of California, working together to implement this settlement. We would look forward to those kinds of decisions in the future, to do this.

But, at this time, we believe the directed funding is enough to get this thing kick started.

Senator CORKER. Just one more question—if you would, just briefly describe the tools that you all have available to make the water available to the 15,000 farms that are adjacent to the river?

Talk to us a little bit about the flexibility you use to make that available, and also cause it to be a place for salmon?

Mr. LIMBAUGH. Well, Senator, the legislation and the settlement contemplates a water management goal study to look at what are the best ways to minimize the impact to the water users in the Friant Water Users Authority from the use of water agreed to in the settlement to be used for river restoration and the salmon fishery. And, we would certainly look at a wide variety of projects—I know Senator Feinstein mentioned that she directed the Friant Water Users to come up with a report that highlighted, I guess, over 60 is what she said—projects that could be used to minimize the impact or recycle, restore that water to the farmers for their use.

Some of the tools that I'm familiar with are water banking, where you would actually use excess flood flows to bank water in the ground, and then pump it back later when you need it, others are conservation measures, others are management and technology measures that could be used to circulate water throughout that project, where it makes sense, and be able to utilize that water more efficiently and more effectively, in minimizing the impact of the use of the additional water for the river restoration.

So, those are the kinds of tools that I'm familiar with, I know that Friant Water Users have an extensive list, we would certainly be taking that list under advisement as we look to studying this effort, and studying the water management goals, come up with some that are doable, that are cost-effective, and that will work to make this settlement a sustainable settlement.

Senator CORKER. Thank you. It sounds as if—I know this is a very, very complex issue and it's taken a lot of years and great effort by the Senators and others to work this out, it sounds very much like it's kind of a work in progress, and a lot of it will be determined as it moves ahead, is that correct?

Mr. LIMBAUGH. Senator, yes, I think it is a work in progress, I also look at it as an opportunity to bring, to help keep the parties together, to move forward together, to have a vision together that will get us out of the courts, and into managing the resource for the benefit of the future generations, for the benefit of the fishery, and for the benefit of those farm families that are under the gun right now in terms of where the court seems to be going.

So, I do believe that it will be a work in progress, as many settlements are, but I tell you, it's much better pathway to go than to continue to duke it out in court.

Senator CANTWELL. Thank you, Senator Corker, very much.

We've had a vote that started a few minutes ago, and so we're going to try to wrap up this panel and then have a 15-minute recess before we start the next panel, but if I could, Mr. Limbaugh, get you to just give me an idea on a couple of things, as succinctly as you can, that I can cover, but—you were just discussing the water management plan, and obviously, there is going to be reduced water supply. Do you think that we have the right plan for the substantial part of the shortage that's going to occur, you know, in the Friant Water Users area?

Mr. LIMBAUGH. Senator, I think the settlement contemplates the plan to be started once the settlement and the legislation is com-

plete, but we do have a head start with the work that the Friant Water Users have done, the Bureau of Reclamation certainly has some studies from the past that have looked at how they could better manage water in the Friant unit——

Senator CANTWELL. But the Department of the Interior believes that there is enough there for a mitigation plan? You think it'll be mitigated?

Mr. LIMBAUGH. The study is there to be done, I believe that the mitigation can be accomplished with the tools that we've noted.

Senator CANTWELL. Okay, and what about the Hoopa Valley Tribe? Is that the correct pronunciation?

Mr. LIMBAUGH. Yes.

Senator CANTWELL. Is it your view that S. 27 raises a conflict of interest between the Federal trust responsibility for Trinity River fisheries in the San Joaquin settlement?

Mr. LIMBAUGH. No, I don't believe so. We continue to fund the efforts on the Trinity, we have looked at both the Restoration Fund, and the Water Related Resources Account to fund those efforts on the Trinity, and we continue to be committed to implementing the Record of Decision on the Trinity, so, they're really two separate projects. Obviously, funding is tight, we have to do with what we have to do with, but we will certainly work very hard to ensure that the Trinity River Record of Decision is completed.

Senator CANTWELL. Okay, and in addition to S. 27, is the administration open to using surplus Reclamation Fund revenues to meet the growing number of critical water needs in the West?

Mr. LIMBAUGH. Well, Senator, the Reclamation Fund is controlled by the Congress, and——

Senator CANTWELL. Your opinion?

Mr. LIMBAUGH. Pardon me?

Senator CANTWELL. In your opinion, do you think we should use those funds for the various water needs.

Mr. LIMBAUGH. My opinion doesn't count in this instance, Senator.

Senator CANTWELL. Well, I think this is an important issue, we're probably going to have a follow-up hearing on this. But, I think there are critical water needs throughout the West, and how we can best meet those needs, this obviously shows you what happens when we don't plan on a broad basis.

And, obviously, no one wants to say that the solutions to these issues are many years of conflicts, and then settlement. So if there are ways that everybody can work on the front end of the problem, knowing what we're facing, and maybe some resources to do that.

Sitting on the Energy Committee now for several years, it always amazes me every time a water bill is brought forth, every member of the committee participates with their own examples, and frustrations of what's happening in their areas. So, we'll look forward to having you back, maybe with more——

Mr. LIMBAUGH. Senator, I just want to add—I look forward to working with you on that, because I think those are very important issues and certainly we need to work together on trying to figure out a pathway forward on a lot of those issues.

Senator CANTWELL. And just as succinctly as you can say—what happens if we don't pass this bill? Obviously, we're saying that the implications of not doing this this year are severe, so——

Mr. LIMBAUGH. Well, Senator, certainly time is of the essence on the settlement, to get it going. It's been 18 years. I'm not sure how the settling, other settling parties feel, you'll have to ask them, but in terms of not passing the bill, I don't believe we have a settlement until the legislation is passed.

Senator CANTWELL. Thank you.

So, the subcommittee will be recessed for 15 minutes, hopefully we'll reconvene at 11 a.m.

[Recess.]

Senator CANTWELL. And we'll welcome our second panel to testify.

I want to mention a housekeeping issue, that the subcommittee has received a number of additional statements, exhibits, testimonies regarding the bill before us today, those items, as well as written submissions of all of the witnesses testifying will be made part of the record.

So, welcome, gentlemen. We have Mr. Dan Dooley, representing the Friant Water Users Authority; Mr. Howle Candee of the Natural Resources Defense Council; Joe Grindstaff with the State of California; Steve Chedester with the San Joaquin River Exchange Contractors Authority; Mr. Ken Robbins, representing the Merced Irrigation District; and Allen Ishida, with the Tulare County board of supervisors.

Thank you, gentlemen, very much for being here, we welcome each of you, and I think, since you're lined up that way, Mr. Dooley, do you want to begin?

STATEMENT OF DANIEL M. DOOLEY, ESQ., REPRESENTING FRIANT WATER USERS AUTHORITY, LINDSAY, CA

Mr. DOOLEY. Thank you, Madam Chair, it's a pleasure to be here, and I look forward to trying to respond to any questions you might have.

I'm Dan Dooley, of Dooley Herr & Peltzer, I represent a number of the members of the Friant Water Users Authority which is composed of 22 public agency irrigation and water districts from the Merced County line on the north, to the southern end of Kern County on the south. Each of those members, public agencies, is represented by an elected board of farmer-directors, and I am pleased to say that they supported this settlement unanimously, in proving the terms of the settlement last July. Each of those boards of directors considered the terms of the settlement, and voted to approve it.

And I might mention that there are 120 some-odd elected board members on those 22 public agencies, there was one no-vote against the settlement by one of the agencies. So, it's uniformly, I think, supported by the farmer board members of the people I'm representing today.

You've heard a lot about the 18 years of litigation, I'm one of the people who's been involved for all of those 18 years. And it has been a very contentious battle, obviously the stakes were very high. And there have been, I think, a couple of benchmark determina-

tions that have caused my clients to believe that it was time to consider a settlement.

Particularly, in 1998 a decision of the trial court was appealed to the 9th Circuit, where he had determined that the State law that requires the release of the water for fishery was one of the Federal—or was one of the State laws that was applicable to the Reclamation project, under section 8 of the 1902 Reclamation Act.

There's been a lot of speculation that this, a case, if we'd gone to trial would be appealed to the Supreme Court, and the Supreme Court would rule in our favor. Candidly, we filed a writ of certiorari on that Federal question in 1998, and the Supreme Court did not take the case. So, the Federal question has essentially been resolved, and avenues of appeal are non-existent.

So, what we're confronting now is the implementation of the State law, and after the court ruled that the Bureau of Reclamation had violated the State statute by not releasing enough flows for fisheries downstream of the dam, he then scheduled a trial on the remedy, which is, how much water? And, it was in preparation for that trial that it became clear to us in the exchange of technical reports among our experts, that there was an opportunity to discuss settlement.

And so, that's why we got to this point. We were looking for certainty. We wanted to know how much water we had from year to year, and not have that amount be regulated annually by a court that had retained jurisdiction to implement a judgment, and not have certainty as to our water supply.

And so what this settlement does for the Friant Water Users is, it gives us a cap on how much water we have to provide, in particular hydrologic circumstances, so that we know from year to year how much water is available to us, and how much is required to restore the river.

It also caps our financial obligations at levels that we've determined are acceptable, and those financial obligations are redirected, in some cases, to support the implementation of the settlement. And, there is an independent water management goal that's been referred to, and we believe that the worse-case scenario of how much water we would lose—which is about 15 percent of our historic deliveries—can be substantially reduced by the implementation of additional groundwater management programs, water management programs, and exchange programs among and between various water users. That, by the implementation of those programs, we will substantially reduce the water supply impact on our client.

And, Senator Feinstein referred to a report that she requested that the Friant Water Users prepare, and I have a copy of this report, which I'd like to offer for the record of this hearing, to make sure that your committee staff receives sufficient copies of it. This is the report that details a variety of water management programs that we believe can be utilized to offset the water supply impacts on the Friant farmers.

I think in the final analysis, I would say that what all of the parties realized is that we were more apt to minimize water supply impact and have a successful restoration program if we were work-

ing together, rather than fighting the implementation of a court judgment.

And, it took us 18 years to get to that point, but I think I can tell you that the Friant Water Users Authority enthusiastically supports the implementation of this settlement as an alternative to the litigation, and we respectfully request that you approve and move forward S. 27, which has a number of provisions that are necessary to implement the settlement.

Thank you very much, and I'm obviously available for questions.

[The prepared statement of Mr. Dooley follows:]

PREPARED STATEMENT OF DANIEL M. DOOLEY, DOOLEY HERR & PELTZER, LLP,[1] REPRESENTING FRIANT WATER USERS AUTHORITY, LINDSAY, CA

Madam Chair and members of the subcommittee, it is an honor and privilege to appear before this Committee, and to ask your support for legislation implementing an historic agreement that resolves a long-standing conflict on the San Joaquin River. I am Daniel M. Dooley, a partner in Dooley Herr & Peltzer, LLP. I serve as general counsel for many of the irrigation and water districts that compose the Friant Water Users Authority. Along with Kole Upton, Chairman of the Friant Water Users Authority, I was a principal negotiator of this historic Settlement of the 18-year-old lawsuit known as *NRDC, et al.* v. *Rodgers, et al.* Mr. Upton was unable to be here but has provided a written statement, which I ask be included in the record of this hearing.

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

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

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

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

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

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

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

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

BACKGROUND

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

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

After the 9th Circuit Court of Appeals ruled that the application of the state law to Friant Dam was not facially preempted (and the United States Supreme Court denied a writ seeking review), the case reached a crucial turning point in August 2004 when the judge ruled Section 5937 imposes a continuing duty to release sufficient water from Friant Dam into the San Joaquin River to restore former historic salmon runs and fishery conditions. The trial court assigned liability to the Bureau of Reclamation. The court never determined how much water would be needed to satisfy the state law or whether that amount would be so large that it would be preempted by the federal law, but set the case for a trial that was to have started in February 2006 to determine the "remedies"—the amount of the releases. In 2005, the parties began preparing for that trial and, in the process, gained valuable new scientific information from the expert reports prepared by our respective trial witnesses about possible restoration strategies.

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

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

In exchange for restoring the San Joaquin River below Friant Dam, Friant's new water dedication for the fishery's needs would be capped at certain amounts based

upon hydrologic conditions. That instantly provided Friant water users with what had long been missing in prior settlement discussions—a declaration of water supply and quantity certainty for decades into the future. We were well aware in taking this key compromise and filling in the details that such an agreement would result in use of a portion of the Friant Division water supply for Restoration Flows. And, yes, it represents water that our already water-short area can't afford to lose. Friant also recognized that the cap on water for Restoration Flows would remove what promised to be years of continued uncertainty over the Friant water supply that would result in socioeconomic disruption of the eastern San Joaquin Valley if, after trial, the judge ordered water releases and retained jurisdiction to modify restoration flows annually.

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

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

THE SETTLEMENT AGREEMENT

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

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

The Restoration Goal includes three essential elements. Those include:

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

The Water Management Goal and its implementation embrace two critical elements. They include:

- Development and implementation of a plan to recirculate, recapture, reuse, exchange, or transfer water released for Restoration Flows within bounds of the Settlement's terms and all applicable laws, agreements and environmental policies. One example of the type of program that Friant believes would be included in this plan would be repair work on the Friant-Kern and Madera Canals to bring these conveyance facilities back to their originally designed capacities in order to facilitate the transfer and/or exchange of water.
- Creation of a Recovered Water Account that provides an opportunity for Friant Division long-term contractors to recover water they have lost to Restoration Flows at a reduced water rate in wet water conditions. Friant Division long-term contractors providing water for Restoration Flows will be able to purchase water for $10 an acre foot during certain wet conditions when water is available that is not necessary to meet contractual obligations or Restoration Flows. This provision is designed to increase water banking and management programs and boost incentives for districts to actively participate while reducing the Settlement's water supply impacts.

Some of the Settlement's Other Features include and address:

- State of California Participation: This contemplates that the State will of necessity participate in implementing many provisions. A Memorandum of Understanding has been negotiated with various State agencies. It specifies how Friant, the NRDC coalition, federal government and the State will integrate implementation activities. The State has expressed a desire for its Resources Agencies to be actively involved. We expect the State to provide technical and funding resources. Specific agreements will be negotiated with the State regarding specific Settlement actions. It should also be noted that Proposition 84 was approved by the California voters in November of 2006 and includes $100 million for San Joaquin River restoration.
- Funding: There are very specific provisions related to Settlement funding, including provisions relating to the character of the capital investment, limitations on Friant Division long-term contractor payments, identification of existing funding resources and additional appropriations authorization. The Settlement provides that costs will not add to CVP capital obligations. It also commits Friant Division long-term water contractors to continue paying the CVPIA Restoration Charge and Friant Surcharge for the life of the Settlement but caps Friant's obligations at those amounts. The Friant Surcharge would be dedicated to implementing the settlement, as would Friant's capital repayment portion of CVP water rate payments. Up to $2 million annually of the Friant CVPIA Restoration Charge payments will be made available for implementing the Settlement. In addition, the Settlement authorizes appropriations authority for implementation totaling $250 million. (Some of these identified sources of funding are not subject to the appropriations ceiling or to annual appropriations and may not be subject to scoring for budget allocation purposes.) State funding from various revenue streams, including state bond measures, is anticipated. Funding identified in the Settlement will be available to implement the Water Management Goal as well as the Restoration Goal.
- Other Claims Resolved: The Settlement resolves all claims pending in the existing litigation, including those challenging the validity of the Friant Division long-term renewal contracts.
- Third Party Impacts and Participation: There has been a great deal of concern voiced about third party impacts. All of us clearly understand and the Settlement acknowledges that implementation will require a series of agreements with agencies, entities and individuals who are not parties to the litigation. The Interior Department is to coordinate with interested third parties (including third parties who own or control lands or facilities affected by Settlement implementation), and for public participation in Settlement implementation. Provisions of the MOU with the State contemplate joint efforts to provide mechanisms for non-party participation in Settlement implementation. Further, and as a result of a series of intense negotiations last September, a number of changes and additions were agreed to the legislation before you today; these changes resolved the third party concerns, and all participating in those discussions have signed a pledge that as a result of the changes, they will support the Settlement and the legislation and oppose changes that are not agreed to by all of the parties.

- Management and Administration: A Restoration Administrator position is to be established to help implement the agreement and advise the Interior Department on how the river restoration hydrographs are to be implemented, when buffer flows may be needed, what river channel and fish passage improvements will be made, how reintroduction of salmon will be accomplished, how and when interim flows releases will be made, and the targets, goals and milestones for successful implementation of the fishery program and coordination of flows with downstream tributary fishery efforts. Appointment will be for a six-year term. Friant and NRDC have identified a candidate for the Restoration Administrator position and are in the process of securing his appointment. A Technical Advisory Committee will be created to advise the Restoration Administrator. It will include two representatives each from the plaintiffs' coalition and Friant defendants as well as two members mutually agreed upon, but none are to be federal employees. Two members will represent ex officio the two California agencies primarily involved with implementation of the Settlement, the California Department of Water Resources and the California Department of Fish and Game. Terms are to be for three years.
- Long-Term Friant Water Service Contract Amendments: When the Friant Division's long-term renewal contracts were enacted in 2001, they included a stipulation requiring necessary contract amendments to reflect and be consistent with any Settlement agreement. Such a provision is part of the Settlement. Friant's long-term contracts will be kept in place with no further National Environmental Policy Act or Endangered Species Act compliance actions required.
- Resolution of Disputes: Procedures are included for attempting to resolve disputes by meeting and conferring. Should that be unsuccessful, services of a neutral third party are to be used. Finally, the parties could turn to the U.S. District Court.

FEDERAL LEGISLATION

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

MITIGATION OF WATER SUPPLY IMPACTS

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

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

- Projects and programs that should be considered by the Secretary in developing the plan for recirculation, recapture and reuse of Restoration Flows that is required by the Settlement and the legislation;
- Rehabilitation and enhancement of Friant Division conveyance facilities to permit greater utilization of surplus River water to maximize the effectiveness of integrated regional and district programs and projects;

- Integrated regional management projects and programs that create improved integrated water management activities between districts and among groups of districts; and
- Improved district groundwater banking, conveyance, distribution and water management programs and facilities.

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

CONCLUSION

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

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

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

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

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

This Settlement, and the legislation before you, is the product of literally thousands of hours or arduous negotiation and analysis. All parties to the litigation, and third parties who expressed concerns about the Settlement originally, have committed enormous good faith efforts to structure an agreement that fairly and acceptably balances all of the varied interests. Incredibly, we found such a balance. I believe this Settlement sets forth a model for resolving complex water resource dis-

putes. The last piece is enactment of H.R. 24. I request that this Committee move this Bill as quickly as possible so that the parties can fully move forward to the challenging task of implementing this historic restoration program.

Thank you.

Senator CANTWELL. Thank you, Mr. Dooley.

Mr. Candee.

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

Mr. CANDEE. Thank you. Good morning. My name is Hamilton Candee, and I am a senior attorney with the Natural Resources Defense Council and the co-director of our Western Water Project in San Francisco.

Thank you for the opportunity to testify today in support of S. 27 to authorize the historic settlement in *RDC* v. *Rogers,* and to restore the California San Joaquin River.

For the past 18 years, I've been a counsel of record in this case, representing a coalition of 14 environmental and fishing groups who, in turn, represent over 2 million people nationwide, and 250,000 in California. With me today is Philip Atkins-Pattenson, a lawyer at the California firm of Sheppard Mullin Richter & Hampton, and together, he and I were negotiators during the full year of negotiations that led to the settlement.

The bill pending before the subcommittee will approve and help fund a historic settlement agreement and a comprehensive restoration process that will bestow benefits on millions of Americans, end one of California's longest-running water disputes, and also preserve a vibrant agricultural economy in one of the country's most significant agricultural regions.

We are submitting materials for the record that will address the terms of the settlement in greater detail, so my remarks about the settlement will be very brief.

However, before I discuss the settlement and the legislation, I would like to just say a few words about the San Joaquin River itself, how it has been managed for the past 60 years, and why restoration is so important.

The San Joaquin is one of California's great rivers, one of its largest rivers, and the second-longest river in the State, and it's one of two major tributaries to the San Francisco Bay Delta, which is the largest estuary on the west coast. The Bay Delta is an estuary of international, ecological importance, and also the source of drinking water, for over 22 million people.

In the early 20th century, the mighty San Joaquin River supported steamboat travel, and teemed with wildlife, including one of the largest Chinook salmon populations on the entire Pacific coast. By the early 1940's when Friant Dam was built, the steamboats were gone and the abundant wildlife had diminished, but tens of thousands of spring-run Chinook salmon still survived in the river, and in fact, continued to survive after the completion of the dam. It wasn't until the Bureau of Reclamation began diverting so much water of the dam that 60 miles of the river downstream were dried up, that the salmon finally disappeared.

For the past half century, over 90 percent of the river's flow has been diverted at or immediately below Friant Dam, mostly for irrigation purposes. But, as Senator Boxer pointed out in her testimony, these diversions have come at a tremendous cost to the environment, also to the recreational and commercial fishing industries, to ground water levels in adjacent areas, and to the lower San Joaquin River in the Delta.

In fact, in the Delta, the de-watering of the upper San Joaquin River has contributed to water quality impairments that adversely affect farmers and communities in the lower part of the river, in San Joaquin County, and to the millions of people who rely on the Delta for drinking water.

But, just as the operation of Friant Dam has contributed to these serious problems, the operation of Friant Dam under this historic settlement will be part of the solution to these problems.

I have attached to my testimony a number of materials, including a summary of the many broad benefits of the settlement, an initial list of supporters—which has now grown considerably—some of the clippings and editorials in California supporting the settlement, as well as statements from interested officials and organizations. In fact, support is bipartisan, we have strong support from the Governor, from the Bush administration, but also from water users throughout the State, including the Metropolitan Water District of Southern California.

So we are hopeful that that strong support will help move the legislation quickly, because as it was stated earlier in the question and answer session, there is a risk that if the legislation doesn't pass, we don't have the full authority to implement the settlement, the Federal Government may not have the money it needs, but in addition, the State money that has been committed, the $100 million from Prop 84, and potentially another $100 million could be at risk because the State legislature is waiting for the Federal money to show up before they match it with the State money.

Before I end, I just want to give a quick list of some of the benefits of the settlement which, we believe, will be benefits, not only for the State of California, but for all of the different stakeholders who have been involved in these negotiations.

First, it will restore continuous flows to the San Joaquin River, and all the way down to the Bay Delta, which for 60 years, basically, the upper river has been disconnected from the Bay Delta, so this is a crucial issue.

Second, it will restore the Central Valley Spring-run Chinook salmon, and a number of other fish populations to the San Joaquin after a period of 50 years.

It will provide certainty to the Friant Division long-term water contractors, to the specified water releases that are actually specified in the settlement. It will provide flexibility to the contractors to reduce or avoid their water supply impact with the new measures that are called for by the settlement as a water management program.

It will provide protections to the interests of third parties, and I should mention that that was a major priority for the settling parties, was reaching out to the third parties during the settlement negotiations, and then afterwards. As Senator Feinstein indicated,

that was a big part of what the final revisions were to the legislation.

In short, we urge the committee to pass the legislation as quickly as possible, and we thank you for your support.

[The prepared statement of Mr. Candee follows:]

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

Good morning. My name is Hamilton Candee and I am a senior attorney with the Natural Resources Defense Council (NRDC) and the Co-Director of NRDC's Western Water Project in San Francisco. Thank you for the opportunity to testify today in support of S. 27, a bill to approve and authorize the historic Settlement in *NRDC* v. *Rodgers* to restore California's San Joaquin River. For the past 18 years, I have been a counsel of record in this case, representing a coalition of 14 environmental and fishing groups which, in turn, represent over 2 million people nationwide, and more than 250,000 Californians. With me today is Philip Atkins-Pattenson, a partner in the California law firm of Sheppard Mullin Richter & Hampton, who also represents the NRDC Coalition. Both of us were directly involved in the extensive multi-party negotiations that produced the landmark agreement that is the subject of today's hearing.

The bill pending before the Subcommittee will authorize and help fund a historic and comprehensive settlement agreement and restoration process which will bestow benefits on millions of Americans while ending one of California's longest running water disputes and preserving a vibrant agricultural economy in one of the Country's most significant agricultural regions. We and others are submitting materials for the Record that will address the framework and the details of the Settlement in greater detail. However, before I discuss either the Settlement or the legislation, I want to first briefly describe the San Joaquin River—how it has been managed for the past 60 years; and why its restoration is so important.

The San Joaquin is one of California's largest rivers, and significantly, is one of two major tributaries to the San Francisco Bay-Delta—the largest estuary on the west coast. It is an estuary of international ecological importance and the source of drinking water for over 22 million people. The San Joaquin River originates in the high Sierra, and flows west past Fresno, and then north through the heart of the San Joaquin Valley until it joins the Sacramento River in the Delta region.

In the early 20th Century, the mighty San Joaquin supported steamboat travel and commerce between San Francisco and Fresno; and it teamed with wildlife, including one of the largest Chinook salmon populations on the entire Pacific Coast. So abundant were these salmon runs that farmers in the southern San Joaquin Valley used to pitchfork the fish and feed them to hogs. People who lived near the present site of Friant Dam reported being kept awake at night by the thunderous noise of spawning salmon. By the early 1940's when Friant Dam was built, the steamboats were gone, the abundant wildlife had diminished, but tens of thousands of spring run Chinook salmon, as well as a smaller fall run, still survived in the river—and in fact, continued to survive after completion of Friant Dam. It wasn't until the Bureau of Reclamation began diverting so much water from the dam that 60 miles of river downstream were dried up that the salmon finally disappeared.

For the past half century, over 90% of the river's flow in most years has been diverted at or immediately below Friant Dam, mostly for irrigation purposes. Other witnesses will surely speak to you about the huge agricultural economy that has benefited from these diversions. But these economic benefits came at a tremendous cost—to the environment, to the recreational and commercial fishing industries, to groundwater levels in areas adjacent to the river downstream of the dam, and to the lower San Joaquin River and the Delta, where the de-watering of the upper San Joaquin River has contributed to chronic water quality impairments that adversely affect farmers and communities in San Joaquin county, and millions of people who rely on the Delta for drinking water. But just as the operation of Friant Dam has contributed to these serious problems, the operation of Friant Dam under this historic Settlement will be part of the solution to these problems.

To illustrate the broad benefits of restoration and to show the remarkably broad support for the Settlement and the restoration program it provides for, I have attached to my testimony a number of materials, including a summary of the broad benefits of this settlement, recent news clippings and editorials, and statements of support from interested officials and organizations from around California. I would

ask the Chair's permission to have all of the attachments to my written Statement included in the final record of this Hearing.*

A number of the clippings and editorials I have attached are from cities and towns in the Delta and they document the vital importance of restoring the San Joaquin River to that region. Communities and farmers in the Stockton area will see both water quality and water supply benefits from the Settlement. And other communities and farmers downstream of Friant Dam will also be benefited by a living river flowing through the heart of the Valley and into the southern Delta. The fragile Delta ecosystem and San Francisco Bay will receive a life-giving infusion at a time when this critical estuary and its threatened fisheries desperately need it. And for salmon fishermen and fishing communities on California's North Coast whose livelihoods once depended on the San Joaquin River's legendary spring-run salmon, this Settlement heralds a return of the spring run and an important step forward in rebuilding our recreational and commercial fisheries. Indeed, it is hard to find a river this large anywhere that has been literally dry for half a century and then brought back to life. It is equally hard to find a restoration project with such profound and far-reaching benefits.

It is because of the broad benefits of San Joaquin River restoration for our environment, our quality of life and our economy, that an almost unprecedented array of stakeholders from one end of the state to the other is supporting this Settlement. When we first announced the Settlement last September, we prepared an initial list of supporters, which is included in the Exhibits we have submitted to the subcommittee. Since last fall, that list has continued to increase and now includes such diverse parties as the Metropolitan Water District of Southern California, the Bay Area Council—which is the SF Bay Area's leading business association—and the Madera County Farm Bureau. Each of their letters of support is also included in the Exhibits.

Nevertheless, the Settling Parties have recognized that this landmark agreement, while supported by the overwhelming majority of stakeholders and beneficial to millions of Californians, must be carefully implemented to avoid potential adverse impacts to third parties. Mindful of that concern, the Settling Parties spent much of the past year reaching out to third-party stakeholders, briefing them on the proposed settlement, discussing their concerns, and where appropriate, modifying the settlement to incorporate their perspectives and interests. That effort continued as the settlement effort moved from the negotiating table to the Congress last year.

In this respect, I would like to particularly thank two of the key players in producing this Settlement and this legislation, Senator Dianne Feinstein and Congressman George Radanovich, who not only sponsored the original talks in 2005 that led to the Settlement, but have consistently supported the fragile consensus that emerged from these talks ever since. And each of them played a critical role last fall in identifying and addressing issues of concern to numerous third parties, starting with the first congressional hearing on the Settlement on September 21, 2006 which was chaired by Congressman Radanovich in the House Subcommittee on Water & Power.

At that hearing, the Subcommittee heard from two panels: the first comprised of representatives of the Settling Parties and the State of California, and the second comprised of interested third parties. Immediately following the hearing, the Settling Parties were invited by Senator Feinstein to commence negotiations with a wide range of third parties who had asked for revisions to the then-pending proposed Settlement legislation to address their concerns about potential impacts of the Settlement. These negotiations included several members of the House Resources Committee, other interested members of the House, both of California's Senators, as well as the various parties who testified on the third-party panel on September 21, 2006. Significantly, the major water districts in Tulare County that receive water from Friant Dam were represented by the Friant Water Users Authority, and the Congressmen who primarily represents Tulare County was also a participant in the talks. On September 27, 2006, after extensive and difficult negotiations in Washington, DC and California, the Settling Parties, the State of California, and all the numerous third parties that crowded into the Senator's conference room agreed on a large number of changes to the proposed legislation. To memorialize this remarkable agreement, the parties signed a written Pledge of Support, which committed all the signatories to support the Settlement and the revised legislation, and to oppose any amendments to the revised legislation that are not agreeable to all of the signatories. A copy of that Pledge of Support document, along with Senator Feinstein's press release announcing the agreement, is submitted with the Exhibits to my testimony.

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*The attachments have been retained in subcommittee files.

Subsequently, on October 23, 2006, the Federal Court in Sacramento that had presided over the *NRDC* v. *Rodgers* litigation for 18 years approved the Settlement following a hearing on a formal motion brought by the Department of Justice, the Friant Defendants and our Plaintiff coalition. The Court approved the Settlement without change after considering the views of 13 interested individuals and groups who were not parties to the litigation but who were allowed to file *amicus* briefs expressing their views on the Settlement.

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

In December, 2006, the Settling Parties and the State of California addressed Senator Feinstein's request to revise further the Settlement legislation to address the issue of "cost-sharing" between non-Federal sources of funding and the $250 million in new Federal funds authorized in the legislation. The Settling Parties were able to successfully address the Senator's concerns.

As a result of these two rounds of consensus discussions to make final revisions to the draft legislation, on December 6, 2006, H.R. 6377 and S. 4084 were introduced in the House and the Senate with broad, bi-partisan support, including original cosponsorship by Senators Dianne Feinstein and Barbara Boxer and Representatives George Radanovich, Dennis Cardoza, Jim Costa, George Miller, Grace Napolitano and Richard Pombo. Action was not taken on the bills given the short time left in the 109th Congress, but were reintroduced on January 4th of this year as H.R. 24 and S. 27, on the first day of the 110th Congress, once again with bipartisan support in the California delegation. We thank all of the co-sponsors for their strong support, especially Senators Feinstein and Boxer who have been so critical to carrying this effort forward.

This is the background of the legislation that is now pending before you. It is unique legislation in that it has the support of the Settling Parties—who represent 22 water districts, 14 conservation and fishing groups, and 5 federal agencies—as well as a wide array of California water users and landowners who were not parties to the Settlement but who have now pledged their support for the Settlement and this legislation. And it is strongly supported by the State of California, which was not a party to the litigation, but has nonetheless committed extensive financial and agency resources to the implementation of the Settlement. We are also pleased to note that the President's FY 08 federal budget, and Governor Schwarzenegger's FY 08 State budget, both support increased funding for the relevant government agencies to implement the Settlement, and the 5 state and federal implementing agencies have already begun the implementation process.

In closing, I would like to briefly recap the benefits of passing H.R. 24 and fully implementing the Settlement. The Settlement will:

- Restore continuous flows to the San Joaquin River—California's second-longest river and one of two main arteries to the Sacramento-San Joaquin River Delta, the source of drinking water for over 22 million Californians;
- Restore the Central Valley Spring-run Chinook salmon, fall run Chinook salmon, and other fish populations to the San Joaquin, much of which had been destroyed by the operation of Friant Dam over the past 60 years;
- Provide certainty to the Friant Division long-term water contractors through the specified water releases provided for in the Settlement;
- Preserve the San Joaquin Valley's strong agricultural economy, while enhancing environmental values in the Valley through restoration of a living river and associated habitat;
- Provide flexibility to the Friant Division long-term contractors to reduce or avoid the water supply impacts resulting from the Settlement through specified water management techniques such as ground water banking, low-cost water in wet years, and other measures;
- Provide protections to the interests of third parties, as included in the current legislation and in the Settlement, and ensuring that all of the settlement provi-

sions will be implemented in accordance with all applicable laws, including the National Environmental Policy Act, the Endangered Species Act, and State law;
- And provide for myriad opportunities for public input and participation during the implementation of the Settlement.

NRDC, having worked together with the other Settling Parties, the State and those third parties who have signed the attached Pledge of Support, is extremely proud of what we have accomplished in this Settlement and revised legislation. The Federal and State agencies and the Settling Parties are already actively involved in the process of Settlement implementation. The Settling Parties have also cooperatively developed protocols and agreements for public and third party participation and input. But it is critical for all of us that we obtain passage of this legislation that is pending before you in order to fully implement what Secretary Kempthorne and so many other leaders have correctly described as an "historic settlement." We ask that Congress promptly pass S. 27, the San Joaquin River Restoration Settlement Act, so that the San Joaquin River can flow once again and all of the benefits of the Settlement can be realized.

Thank you.

Senator CANTWELL. Thank you.

Mr. Grindstaff.

STATEMENT OF P. JOSEPH GRINDSTAFF, DEPUTY SECRETARY FOR WATER POLICY, CALIFORNIA RESOURCES AGENCY AND DIRECTOR, CALIFORNIA BAY-DELTA AUTHORITY, SACRAMENTO, CA

Mr. GRINDSTAFF. I'm Joe Grindstaff, the deputy secretary for water policy, and the director of the California Bay Delta Authority, appearing in support of this legislation today, on behalf of the State of California.

This truly is an incredible opportunity for us to resolve a very difficult problem. I won't go through my written testimony in detail, I do want to point out that the State is committed to supporting this effort—financially, technically, in every way we can, because it's really important for the State that we restore this river.

We think that there are opportunities, in fact, to deal with the water management issues, which have been some of the more contentious issues, to help make sure that the impacts are minimized, while we obtain the benefits of really restoring a river that will have huge benefit as time moves on.

I won't point out that these are not just short-term decisions, but decisions that will go on for the next 50 and 100 years, and the San Joaquin River in California is really important when you look at climate change and potential impacts there. The San Joaquin mountains are higher than the mountains to the north that, where water is fed to the Sacramento River, it's important that we restore this fishery, so that we can maintain cold water habitat as time moves forward.

This is an important thing to do, it's incredibly difficult, but we are committed to doing our part, and to helping to make it work. Thank you.

[The prepared statement of Mr. Grindstaff follows:]

PREPARED STATEMENT OF P. JOSEPH GRINDSTAFF, DEPUTY SECRETARY FOR WATER POLICY, CALIFORNIA RESOURCES AGENCY AND DIRECTOR, CALIFORNIA BAY-DELTA AUTHORITY, SACRAMENTO, CA

INTRODUCTION

Chairman Bingaman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss S.B. 27, the San Joaquin River Restoration Settlement Act. I am here to convey the State of California's support for this legislation.

As my colleague Nancy Saracino testified before the House in March of this year, the settlement that S.B. 27 would implement represents unprecedented consensus on a process that will have lasting positive impacts on the natural environment while protecting farmers and the Central Valley economy. The settlement creates a clear obligation to the settling parties, but more importantly, an incredible opportunity to achieve a historical restoration of a western river.

THE ROLE OF THE STATE OF CALIFORNIA

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

Recognizing the importance of an agreement that could set the stage for restoration of the San Joaquin River, the state has expressed its support throughout the process that ultimately resulted in the settlement to be implemented by S.B. 27. In January of 2006, Governor Schwarzenegger sent a letter to Secretary of the Interior Gale Norton, in which he conveyed early state support for a solution to the long-debated future of the San Joaquin River.

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

California has already allocated $1.5 million dollars for restoration activities in the current budget year. An additional $18.3 million in funding from prior bonds and Proposition 84, the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006, has been proposed in the Governor's 2007-2008 budget to initiate restoration activities consistent with the settlement.

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

COORDINATION AND COMMUNICATION AMONG PARTIES

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

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

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

PROGRESS TOWARDS IMPLEMENTATION

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

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

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

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

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

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

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

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

In conclusion, we are pleased with the progress made towards restoration thus far. In order to move forward and to begin to reap the rewards of restoration the parties await the critical missing piece necessarily for full scale implementation, and that is the proposed legislation that is before you today.

CONCLUSION

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

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

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

Thank you.

Senator CANTWELL. Thank you.

Mr. Chedester.

STATEMENT OF STEVE CHEDESTER, EXECUTIVE DIRECTOR, SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, LOS BANOS, CA

Mr. CHEDESTER. Good morning, Madam Chairman, my name is Steve Chedester, I'm the executive director of the San Joaquin River Exchange Contractors Water Authority. We're currently referred to as the "Exchange Contractors." And we are one of those third-parties that are affected—will be affected—by this settlement and legislation.

I'm here today to testify in our support for the S. 27. We did testify prior to this on the House Subcommittee on Water and Power on September 21 and did provide a letter to the subcommittee on March 1 of this year. And, we do have concerns with the settlement, but we do provide—we do offer support, and we think that if this is implemented as it's crafted, we will be protected and mitigated.

Mitigation, though, is a very big issue to us. The adverse impacts to this are substantial, and we believe, though, that through the process of the legislative negotiations that were talked about earlier by the Senator and others, that we have provided the protections and necessary means to make sure that our growers and our landowners are protected.

The Exchange Contractors is a joint powers authority, we represent four water agencies, and we irrigate about 240,000 acres on the west side of the San Joaquin. The majority of the river restoration efforts and channel restoration efforts that are going to occur because of this are going to occur within our service area. So, we do have a very keen interest in what happens.

We will limit our comments to the proposed legislation that are particularly important to us. We were not parties to the litigation, we were a third-party that was brought in, afterwards, and therefore it is settlement of litigation, and while it appears to be balanced, it is a compromise. And, with that, such goes along with it.

The proposed settlement would obligate the Bureau of Reclamation to release water down the San Joaquin River and to reconstruct many parts of the river, to reconstruct facilities that are ours for diversion, fish screens, levies and mitigations for landowners who will be impacted by this implementation of this legislation.

Costs are an issue, and we believe that we did work out a mechanism by which a lot of the costs that will be looked at, particularly in Reach 4b, where the river will have to be completely restructured, provided a mechanism that a study has to be done ahead of time, a report given back to the Secretary on how they will design the study, whether it's feasible to go that direction or use another direction which is called a bypass, the flood channel, and then pursue that if it's proven feasible. And that is a very important issue for us, especially for those landowners along that stretch of the River.

We had four major concerns when this was first proposed, that is, protection of our water rights, protection from ESA, adequate funding to make sure that whatever mitigations are proposed can be implemented. We have some examples of the Federal Government not being able to finish a project, and we want to make sure

that the impacts from that don't occur again, and that is why we are so vitally concerned with that.

And then, lastly would be that the third-parties have a way to provide input into the restoration effort.

In February of this year, we were able to complete an MOU with the Bureau of Reclamation, us and other third-parties. That allowed us to be able to have direct input to the settlement and how it is implemented in studies, and that was very critical for us, and it's very, it was actually one of the keystones for us to be able to go forward, that has occurred.

I won't recite to you our areas of legislation that are of major concern, it's in my written testimony. I would like to say, though, in conclusion that we believe that S. 27 is a balanced bill. We do believe it protects fish and farms. We appreciate the subcommittee's consideration of this legislation and your attention to this issue. I ask that both my testimony of September 21, 2006, and my letter of March 1, 2007 be included in the record, I have provided that to the committee, both electronically and hard copy. And again, if you have any questions, I'd be happy to answer them.

[The prepared statement of Mr. Chedester follows:]

PREPARED STATEMENT OF STEVE CHEDESTER, EXECUTIVE DIRECTOR, SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER AUTHORITY, LOS BANOS, CA

Good morning, Acting Chairperson Cantwell and members of the Subcommittee, my name is Steve Chedester and I am the Executive Director of the San Joaquin River Exchange Contractors Water Authority. We are commonly referred to as the "Exchange Contractors." It is my honor today to address you on a matter of crucial importance to the Exchange Contractors.

I am testifying here today to offer our comments on S. 27, The San Joaquin River Restoration Settlement Act, introduced by Senator Feinstein of California. I previously addressed the House Subcommittee on Water and Power on September 21, 2006 regarding the proposed San Joaquin River settlement. In addition, since I was not able to testify at the March 1, 2007 hearing before the House Subcommittee, I sent a letter to the Subcommittee indicating our support for the legislation and identifying those portions of H.R. 24 that are of particular importance to the Exchange Contractors. Over the past several months, we have diligently worked with the settling parties and other affected third parties to ensure that the adverse impacts of the actions to restore the San Joaquin River are mitigated.

The Exchange Contractors is a joint powers authority comprised of four water entities that irrigate 240,000 acres of prime agricultural land in the San Joaquin Valley. We are located along the San Joaquin River directly downstream from Friant Dam to the confluence of the Merced River. The four agency members include the Central California Irrigation District, Columbia Canal Company, Firebaugh Canal Water District, and San Luis Canal Company.

The Exchange Contractors are an essential party to the implementation of this legislation as our lands are directly downstream of Friant Dam and abut a majority of the San Joaquin River where the fish restoration program will be implemented. In addition, our water supply facilities and the levees that protect our lands are located in this stretch of the river and will be impacted by the new operations required to restore the fisheries.

The comments of the Exchange Contractors are limited to those areas of the proposed legislation that are particularly important to us. When considering this legislation it is important to keep in mind that it will implement a Settlement Agreement negotiated by parties to litigation that did not include the Exchange Contractors or many other parties, including private landowners, affected by the terms of the settlement. Needless to say, while we support the legislation, it is a product of compromise.

The proposed Settlement will obligate the Bureau of Reclamation to release water from Friant Dam in order to protect downstream fisheries. To make this restoration possible, substantial physical changes need to be made both to the river and to facilities downstream of the dam. For instance, it will be necessary to rehabilitate and in some places restore the river channel so the water can flow and fish will have

habitat sufficient for their several life stages. In addition, it will be essential to protect the downstream water systems and the adjacent private property and livelihoods of the farmers and other citizens along the river.

Among the changes to the river that will be needed are in-stream improvement measures, rehabilitation of miles of existing levees to prevent flooding and seepage, the construction of new levees where none exist, reconstruction of water diversion facilities and small dams that were not constructed in a manner consistent with the new operating regimen that will be required under the settlement, improvements to some of the downstream flood by-pass structures, and the construction of fish screens.

The restoration of the San Joaquin River has far reaching impacts for all the residents of the San Joaquin Valley and the State. It is imperative that the third parties have a voice in this complicated, lengthy and costly process. For example, it is of vital importance that the landowners along the San Joaquin River in the area known as Reach 4b have a voice in the restoration process. The San Joaquin River holds to a defined channel in its upper reaches, but in the Reach 4b area historically it would spread into many "braided" channels as it reached the flat valley floor. The flows called for in the Settlement are exponentially greater than the existing capacity of Reach 4b and other reaches and if the river floods in the areas it will severely impact the families that live and farm along this stretch. To address this concern, the bill requires that the impacts of restoration in Reach 4b be studied carefully and completely, and that prior to introducing any high level flows a report on the feasibility of restoring this section of the river be submitted.

Cost-benefit is one measure that will have to be considered when studying the feasibility of using Reach 4b. It is also important that Congress understand the challenge of moving fish through this reach. Among these challenges will be the acquisition of 1000's of acres of farmlands in order to create a stream channel of sufficient width and depth to convey flow of at least 4500 cfs. In addition, new levees will be have to be constructed to protect the adjacent lands from surface flooding and subsurface seepage, and a new stream channel will need to be constructed in a fish friendly manner.

The San Joaquin River stretches for miles below the Friant Dam and every reach has its own unique characteristics. The proposed restoration will affect every mile of the San Joaquin River and there are many landowners who will be affected. Therefore, it is essential that adequate funds be appropriated from both the federal government and the State of California. It is also essential that the affected third parties have a place at the table to make sure this program is implemented in a manner that mitigates the impacts it causes on adjacent private property and facilities owned by others.

It was a central condition of the Settlement Agreement that there be no adverse impacts to third parties. The original draft of the proposed legislation accompanying the Settlement Agreement would have adversely impacted the Exchange Contractors and others. Fortunately, we were able to address these concerns in a constructive manner. With the assistance of Senators Dianne Feinstein and Barbara Boxer and House Members Radanovich, Cardoza, Costa and Nunez, and former Member Pombo, the third parties, the settling parties, representatives from the State of California, representatives from agencies of the Departments of Commerce and Interior, and the Justice Department, developed over the course of weeks of intensive negotiations the key terms of the legislation that you are currently considering. As you can appreciate, these negotiations were intensive, but we believe have resulted in a balanced program.

The areas of major concern to the Exchange Contractors were:

- protection of the Exchange Contractors' senior water rights;
- coordination and protection of the continued operation of our water supply facilities in a way that would not conflict with the Endangered Species Act;
- the provision of adequate funding for the proposed restoration program so that there would not be a partially completed program similar to the half-completed drainage program; and
- that the third parties would be given an opportunity, on par with that of the settling parties, to provide input into the development and implementation of the restoration program.

As I stated in my prior testimony before the House Subcommittee, "inclusion of the above protections in the . . . legislation is essential for our support . . ." I believe we have essentially achieved these protections. In addition, in February of this year we completed a memorandum of understanding with the Bureau of Reclamation that will provide us with the opportunities for input into the implementation

of the settlement that we seek. Completion of this MOU was an essential component of our support.

In sum, I believe all of the parties to the legislative negotiations and settlement will agree the legislation you are considering is a balanced proposal that addresses both the needs for fishery restoration and reliable water supply. Of course, in order to maintain this balance, it is essential that sufficient funds be appropriated to achieve the goals of the restoration program.

While I will not recite to you here those areas of the legislation that are of particular concern to the Exchange Contractors and downstream landowners, my written testimony does specifically identify those provisions that are essential to our support of this program. I will note that other parties have provisions that are essential to their support, and as such, this legislation is a package. If the substance of the legislation is significantly changed, parties may no longer be in a position to remain supportive.

The provisions of key importance to the Exchange Contractors are:

- Water supplies above that contributed by the Friant Unit will only come from willing sellers and not by eminent domain. (Sec. 4(a)(3))
- The subsequent use of water released from the Friant Unit will be made in a manner consistent with California water law. (Sec. 4(a)(4)(B))
- The Secretary of the Interior will enter into a MOU with the third parties. (Sec. 4(b)(2))
- Prior to implementing measures to construct, improve, operate or maintain downstream facilities, the Secretary will identify the impacts and mitigation measures that must be implemented in order to mitigate impacts on adjacent and downstream water users and landowners. (Sec. 4(d))
- The settlement will not have any impact on, amend or modify the rights of the Exchange Contractors under their exchange contract. (Sec. 4(g))
- If the Secretary needs to acquire property in order to implement the settlement, in the first instance, the Secretary will seek to acquire property from willing sellers. And, if after acquiring property through an eminent domain it is determined that the property is not needed, the Secretary will offer the property back to the owners from whom it was taken. (Sec. 5(b)(1) and (2) and Sec. 5(c)(2))
- The recognition in section 7 that the settlement comprises the comprehensive plan for the reestablishment of fisheries in the San Joaquin River pursuant to Section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992, commonly referred to as the Central Valley Project Improvement Act or CVPIA. (Public Law 102-575; 106 Stat. 4721) (Sec. 7)
- The legislation authorizes funds that together with funds from the Friant contractors and the State of California should be sufficient to address rehabilitation of that portion of the San Joaquin River upstream of the area known as Reach 4b. (Sec. 9)
- The legislation prohibits the shifting of costs to implement this restoration program to third parties. (Sec. 9(a)(3))
- Reach 4b will not be developed for the passage of fish until a full study of the feasibility and practicality of expanding this stretch of the river is completed, including cost estimates, and addressing the question of whether it is cost-effective. (Sec. 9(g))
- Designation of the spring run Chinook salmon to be reintroduced into the San Joaquin River as an experimental population pursuant to Section 10(J) of the Endangered Species Act. (Sec. 10(b))

One item that I did not list above, but which is relevant to the successful implementation of this legislation is that in the event the Secretary acts in an unreasonable manner, we will have a right to challenge that action under the Administrative Procedures Act. (Sec. 8(b))

In conclusion, it is the view of the Exchange Contractors that S. 27 is a balanced bill that protects the fish and the farmers. We are appreciative of the Subcommittee's consideration of this legislation and your attention to the issues of concern to us. For your convenience, I ask that both my testimony before the House Subcommittee on Water and Power and my letter of March 1, 2007 be included in the record.* I have provided the Subcommittee with both hard copies and an electronic version of those documents.

Thank you again for the invitation to testify before this Subcommittee today. If you or any of the Members have questions I will be happy to answer them.

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*The items have been retained in subcommittee files.

Senator CANTWELL. Thank you, Mr. Chedester, for your testimony. We appreciate you being part of this panel today.

Mr. Robbins.

STATEMENT OF KENNETH M. ROBBINS, GENERAL COUNSEL, REPRESENTING MERCED IRRIGATION DISTRICT, MERCED, CA

Mr. ROBBINS. Good morning, Madam Chair, Senator Corker, we appreciate the opportunity to talk to you this morning.

My name is Kenneth Robbins, I am the general counsel to the Merced Irrigation District. I also represent a group of agencies known as the San Joaquin Tributary Association—these are agencies that hold water rights and facilities on the Merced River, the Tulare River, the Stanislaus River North of the area affected.

Much has been said about the San Joaquin River having been interrupted for 5 or 6 decades, however, not all of the San Joaquin River has been dried up. It actually begins again at the confluence of the Merced, where our projects provide a water that begins the river again.

Our projects involve dams that are on those facilities that provide both agricultural and urban water, recreation, hydropower, flood control—all of the usual things that local public agencies do for their citizens in these kinds of projects.

Our concern with the settlement was, initially—I mean, the San Joaquin River system is a very complex system—when you wiggle one part of it, obviously it's going to affect the other part.

Our rivers sustain a fall-run Chinook salmon, which has a different life cycle than the spring-run, which is about to be reintroduced into the system. Our concern was the interplay of these two species, and the different needs for habitat they had, that they both be accommodated.

Through the negotiation process, we believe that we have achieved that balance, and are firmly in support of S. 27, and appreciate the opportunity to express that support.

We have been able to place a couple of provisions into the bill as it currently stands, that will protect all of the agencies—not just ours—but all of the agencies from the potential adverse impacts that an endangered species designation might have from the reintroduction of a threatened species, spring-run species, onto the system. It's being reintroduced as an experimental population, which is exactly what it is.

We're also to be protected under the legislation for the duration of the settlement, or until 2025, I believe it is, when the settlement itself may be re-looked at in terms of water supply. So that all of the other tributaries to the river will essentially achieve the same protections. Our concern has also been how the process will actually be implemented, for instance, the timing of water arriving at the confluence of the Merced is an issue because of temperature differentials, needs at different times of the year for different species.

We have successfully negotiated a Memorandum of Understanding, as Mr. Chedester's indicated, with the Bureau, which will allow us to input to the process that's been set up by the settlement for being able to adapt the process of restoring the river, and when flows will be achieved, et cetera, so that all of the species on

the river—not just the spring-run—will be accommodated, and that's possible to do by simple adaptations that occur relative to timing of flows, the implementation of physical fixes to the River, and protections that are necessary for reintroducing the species.

Finally, I think it's very important to understand that the third-parties are very much sympathetic to the settling parties in this issue. I mean, it has long been a concern of ours—particularly in Merced—that we were the new head waters, essentially, of the San Joaquin River. And that imposed burdens upon the tributaries that were out of proportion to their size.

The reintroduction and the reopening of the San Joaquin River will spread the burdens that are associated with water operations on the San Joaquin amongst all of the parties, and if the mitigation projects that are suggested by Friant are able to be implemented, most of the parties will be reasonably whole—both from a water-supply standpoint, and from a regulatory operations standpoint.

So, once again, on behalf of the third-parties, the tributary agencies on the other rivers that tributary to the San Joaquin, we support the bill, and the balance in the bill, and are available for questions.

[The prepared statement of Mr. Robbins follows:]

PREPARED STATEMENT OF KENNETH M. ROBBINS, GENERAL COUNSEL, REPRESENTING MERCED IRRIGATION DISTRICT, MERCED, CA

Good morning, Acting Chairwoman Cantwell and members of the Subcommittee. My name is Kenneth Robbins. I am General Counsel for Merced Irrigation District. I am pleased to have the opportunity to testify today regarding S. 27, the San Joaquin River Restoration Settlement Act, introduced by Mrs. Feinstein, that would implement the settlement agreement reached by the parties to the Friant litigation.

The Merced Irrigation District is part of the San Joaquin Tributaries Association (SJTA), a group of five associated eastside Irrigation Districts with water storage and hydroelectric facilities located on the three principal tributaries to the San Joaquin River. These agencies, in various combinations and partnerships, provide flood control, urban, agricultural and environmental water supply, retail electric service, and recreation facilities to California's northern San Joaquin Valley.

The SJTA, including the Merced Irrigation District, is supportive of the goals of the settlement. The Districts are confident the settlement can be implemented in a manner that ensures both the restoration of the San Joaquin River and the mitigation of impacts from such an undertaking on third parties. The District believes the settling parties when they say they do not intend to impose impacts on third parties.

I testified previously on this subject before the House Water and Power Subcommittee last fall and again in March of this year. Much of my earlier testimony contained background information that is pertinent to the issue before you. Rather than repeat that information, I respectfully request that my earlier testimony and that of Mr. Allen Short, General Manager of the Modesto Irrigation District, be incorporated as part of the record of this hearing. The testimony is hereafter attached. We stressed at that time that the third parties were supportive of the settlement. We continue to support the efforts of the settling parties and the legislation as introduced.

The legislation before you is the product of months of hard work by the parties to the litigation as well as the third parties, and could not have been successfully negotiated without the efforts of Senators Feinstein and Boxer, Congressmen Radanovich, Cardoza, and Costa, and their excellent staffs. We are grateful to them for their support of this legislation that is so vital to the San Joaquin Valley.

The settlement package negotiated by the parties to the NRDC v. Rodgers litigation included proposed legislation to implement the settlement. While we felt that the legislation was a good start, it did not, by itself, provide the kind of third party protections needed to make good on the promise by the settling parties that the settlement not impose substantial third party impacts.

Speaking for my client, the Merced Irrigation District, and the SJTA, S. 27 as it now stands provides the protections that are necessary for us to support the settlement.

I want to now focus my discussion on Section 10 of the Act. The third parties offered language to amend the legislation originally proposed by the settling parties. These amendments were made to protect the Eastside districts, as well as the San Joaquin River Exchange Contractors, other water users on the mainstem San Joaquin River, and the U.S. Bureau of Reclamation and the California Department of Water Resources and their contracting agencies, from the unintended consequences of introducing a federally-listed threatened species of Chinook salmon into the San Joaquin River. Section 10 was added to provide for the reintroduction of Central Valley Spring Run Chinook Salmon without impacting the third parties and to permit the restoration of the San Joaquin River to move forward in a cooperative manner.

The first thing to note is that Section 10(a) makes a finding that the settlement and the reintroduction of the Central Valley Spring Run Chinook Salmon is a unique and unprecedented circumstance requiring clear Congressional intent to ensure that the goals of the settlement are accomplished. Section 10(b) of the Act states that the reintroduction of Spring Run Salmon shall be made pursuant to Section 10(j) of the ESA, provided that the Secretary of Commerce makes the requisite regulatory findings.

Section 10(j) of the ESA authorizes the Secretaries of Commerce or the Interior to release "experimental populations" of threatened or endangered species outside the current range of the species in order to further the conservation of the species. 16 U.S.C. § 1539(j). At the present time, NMFS has not adopted regulations concerning experimental populations, although it is permitted to do so under the ESA. The U.S. Fish and Wildlife Service (USFWS) however, has adopted regulations under Section 10(j).

"Experimental population" means a designated population, including subsequent off-spring, which can be introduced into an area where it is "wholly separate geographically from nonexperimental populations of the same species." 16 U.S.C. § 1539(j)(1); 50 C.F.R. § 17.80(a). When a population is designated "experimental," it is treated as if it were listed as a threatened species, rather than endangered. 16 U.S.C. § 1539(j)(2)(C); 50 C.F.R. § 17.82. A "nonessential experimental population" means an experimental population whose loss would not appreciably reduce the likelihood of the species' survival in the wild. 50 C.F.R. § 17.80(b). If an experimental population is deemed nonessential, no critical habitat designation is made for the population. 16 U.S.C. § 1539(j)(2)(C); 50 C.F.R. § 17.81(0. In addition, for purposes of Section 7 consultations, nonessential experimental populations are treated as species proposed to be listed under Section 4 of the ESA, rather than threatened or endangered. 16 U.S.C. § 1539(j)(2)(C)(i).

The SJTA believes that in order to protect third party interests from unintended impacts of the settlement, it is both reasonable and essential for the Secretary of Commerce to issue a final rule pursuant to Section 4(d) of the ESA that will govern the incidental take of the Central Valley Spring Run Chinook Salmon prior to its reintroduction in the San Joaquin River. Included in the final 4(d) rule should be a provision to ensure that third parties not suffer water supply impacts as an indirect effect of the San Joaquin River restoration and that current lawful operations in the San Joaquin River watershed—including tributary water supply and hydroelectric operations on which the SJTA districts and their citizens are critically dependent—would not be subject to "take" under the ESA. S. 27 contains a provision that provides that the reintroduction of the Central Valley Spring Run Chinook Salmon not impose more a than de minimis water supply reductions, additional storage releases, or bypass flows on third parties. We support this language as it is currently written.

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

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

This protects all San Joaquin River and tributary water, power and flood control operations in three ways. First, if the experimental reintroduction of Central Valley Spring Run Chinook Salmon cannot be sustained based upon the actions of the settling parties, the Eastside Districts will not be required to release additional water, change operations, or commit resources to make up the shortfall. Second, if the experimental reintroduction is successful, such success will demonstrate that the current lawful operations of the five Eastside districts have no detrimental effect on the reintroduced Central Valley Spring Run Chinook Salmon. Third, the designation of the reintroduced Central Valley Spring Run Chinook Salmon as a nonessential experimental population protects the water users while the experiment is in effect and allows an opportunity for the third parties, the State of California, the settling parties and the federal government to develop a longer term Habitat Conservation Plan.

S. 27 also protects the Merced, Turlock and Modesto Irrigation Districts from having to mitigate impacts to the experimental population of Central Valley Spring Run Chinook Salmon prior to 2026 when their hydroelectric projects are relicensed by the Federal Energy Regulatory Commission (FERC) in 2014 and 2016. The Merced Irrigation District and the other eastside districts need the same level of protection as is afforded to the U.S. Bureau of Reclamation under the terms of the settlement. Under the settlement there is no re-opener for twenty years, until 2026, for the release of additional water from Friant Dam. The Third Parties need this same protection for their FERC relicensing. Merced Irrigation District's current FERC license expires in 2014, while Modesto Irrigation District and Turlock Irrigation District will seek to relicense their Don Pedro Project in 2016. The National Marine Fisheries Service has mandatory conditioning authority under Section 18 of the Federal Power Act and Section 7 of the ESA to condition these licenses with terms and conditions related to the reintroduced, experimental population of Central Valley Spring Run Chinook Salmon. The Districts are agreeable to have a reopener clause in their new FERC licenses to specifically address the population's status when the experiment is concluded or reviewed in 2024.

In recognition of this unique circumstance, S. 27 provides that the Secretary of Commerce exercise its authority under Section 18 of the Federal Power Act by reserving its right to file prescriptions until after the settlement terminates or December 31, 2025. This protects all FERC projects on the San Joaquin River and its tributaries from potential unreasonable mandatory conditions placed in their licenses to protect a reintroduced, experimental population. The time to address this issue is when flows on the entire river system may be revisited for Spring Run Salmon as set forth in the Settlement Agreement.

Following the agreement on the legislation which is now S. 27, the Stipulation of Settlement was approved by Judge Karlton on October 23, 2006. The SJTA filed an amicus curiae brief supporting the proposed settlement and also identifying for the judge the potential third party impacts from the settlement as proposed. Those concerns have been satisfactorily alleviated by S. 27.

The third parties, including the SJTA, plan to be active participants in the restoration efforts on the San Joaquin River. The final major activity involving the third parties was the development of a Memorandum of Understanding (MOU) with the United States Bureau of Reclamation. The settlement and the draft legislation did not provide a direct vehicle for third party participation. To that end we have approved a MOU that will allow the third parties to provide meaningful input into the restoration activities and to coordinate our ongoing operations on the tributaries and mainstem with those of the Restoration Administrator and the other restoration participants.

The MOU is necessary because the five eastside irrigation districts of the SJTA have expended substantial amounts of water and money to restore the Fall Run Chinook Salmon fishery on the Merced, Tuolumne and Stanislaus Rivers. These efforts include active participation in, and funding for the San Joaquin River Agreement, the Vernalis Adaptive Management Plan (VAMP), Federal Energy Regulatory Commission (FERC) proceedings, on-going district funded fishery and habitat studies and monitoring and restoration activities, and the Merced River Fish Hatchery. These efforts were covered in my September 21, 2006, testimony to the House Water and Power Subcommittee.

This concludes my testimony. Madam Chairwoman, thank you for the invitation to testify before this Subcommittee today. I will be happy to answer any questions members of the Subcommittee may have.

Senator CANTWELL. Thank you, Mr. Robbins.

Mr. Ishida, thank you for being here.

STATEMENT OF ALLEN ISHIDA, CHAIRMAN, TULARE COUNTY BOARD OF SUPERVISORS, VISALIA, CA

Mr. ISHIDA. Madam Chair, Senator Corker. My name is Allen Ishida, I am a third-generation Tulare County citrus farmer, Friant water user, and the chairman of the Tulare County board of supervisors.

I appreciate this opportunity to appear before you to provide my perspective of the San Joaquin River settlement. I'm not representing a third-party, we were not invited to the party. So, we're just out in limbo.

As an elected official, we look at this settlement differently. It is not just a settlement between farmers and environmentalists, it's a bigger issue to us than farmers and environmentalists.

In the documents that I placed into the record earlier, there are resolutions supporting mitigation for loss of the surface water from Tulare and Kern County Boards of Supervisors, and all eight of our Tulare County incorporated cities. There are also resolutions requesting specific mitigation measures.

There are letters supporting mitigation from the Community Water Center/the California Rural Legal Assistance Foundation, Self-Help Enterprises, and the Plain View Mutual Water Company.

There are some maps, which are very vital to understanding the issues of our residents in Tulare County which pertain to nitrate contamination of our groundwater.

Tulare County does not want to impede the implementation——

Senator CANTWELL. Mr. Ishida, do we have a copy of that map?

Mr. ISHIDA. It was submitted.

Senator CANTWELL. It's been submitted to staff, we will try to—we have a larger map, but I think you're indicating something more—if staff could get a copy of the map from Mr. Ishida, that would be helpful. Thank you.

Thank you, Mr. Ishida, sorry to interrupt your testimony.

Mr. ISHIDA. The top couple are representations of the nitrate contamination issues we have in Tulare County.

Tulare County does not want to impede the implementation of the settlement, but as I will outline in my testimony, we're very concerned about water supply, and the economic impacts within our county that will result from the implementation.

The county has suggested a number of mechanisms, for inclusion in the legislation to mitigate those impacts, at best, our suggestions have been rejected by the settling parties.

However reluctant we may be to initiate some action, we may have to explore the rights and remedies that can enforce to enjoin the settlement's implementation.

Water, food, shelter are the three basic elements to life. We, as elected officials, have a responsibility to secure safe drinking water for our residents.

Tulare County is in one of the fastest-growing regions in California. Our population will increase from 400,000 to 600,000 people within the next 20 years. Over 53 percent of our population is Latino, over one-third of our population, according to the 2000 Census, is under the age of 19. It is currently estimated that our population right now is about, over 60 percent of our population is

under the age 27. So, we are a very young county, and we will grow substantially just from the residents that we currently have.

The future of Tulare County will depend on the quality and quantity of water available to our residents. We have 288 public water systems in our unincorporated areas, and 42 percent of the systems currently have nitrate problems. And, please refer to the map.

Most of these water systems are within 3 miles of the current Friant Canal, and approximately 70 percent of our Latino population lives within this zone.

The result of the proposed water released from the settlement will have a significant negative impact on our communities. The resulting overdraft will further decrease our water quality.

In closing, I must emphasize that any changes to surface water delivery from the Friant Dam, absent mitigation, will undermine the very foundations of our economic success and prosperity.

Thank you.

[The prepared statement of Mr. Ishida follows:]

PREPARED STATEMENT OF ALLEN ISHIDA, CHAIRMAN, TULARE COUNTY BOARD OF SUPERVISORS, VISALIA, CA

My name is Allen Ishida, a third generation citrus grower in the Lindsay—Strathmore area and the Chairman of the Tulare County Board of Supervisors. I have spent over 20 years in the commercial real estate business selling farm and subdivision properties in California before returning to our family farm. I appreciate the opportunity to appear before you to provide my perspective of the San Joaquin River Settlement.

Let me begin by saying that this settlement threatens to turn back the clock on an economic and environmental decision that was deliberately made by your predecessors to address regional water reliability. Therefore, the legislation being debated today represents a significant departure from the seventy years of public policy that created the most productive agricultural region in the world. Let me also say that I do not oppose the efforts of the settling parties to resolve the San Joaquin River dispute. I believe the restoration of the river is a noble goal.

The original lands my family began farming were once dry land barley fields. My father, uncles and grandfather developed this land into citrus because of the availability of the new surface water from the Friant Dam and the micro climate that is ideal for citrus. The citrus industry in Tulare County is now a 500 million dollar business. Our original properties are still solely reliant on the surface water provided by Friant because the underground water is not available in sufficient quantities. My family and I felt confident in the federal government's implied promise to continue supplying water. We therefore have invested our future in farming. During the 1970's and 80's, with my father and brother, we purchased additional lands that had available underground water. Whatever shortfall in water delivery from the San Joaquin River Settlement, we will hopefully be able to make up the difference by pumping from the underground aquifer.

The previous statement is from my perspective as a farmer. My perspective as an elected official in one of the fastest growing regions in California and my experience in the commercial real estate profession is very different. 1 am very aware of the negative impact pumping water from the under ground aquifer will have on the future development and quality of life in my county and neighboring counties. This settlement has a far greater impact on more than 400,000 Tulare County residents who were not direct participants to this settlement. Tulare County's population is projected to increase to over 600,000 in the next 20 years. The future of our county will depend on the quality and quantity of water available to our residents.

One of the main reasons for building the Friant Dam was to secure an additional water supply to address ground water depletion due to pumping water for agricultural and domestic uses, which resulted in the 1920's and 1930's. The new surface water provided by Friant reduced the depletion of our underground water. However, this situation is not static, and the demand for water to meet the growing demands of urban, agricultural and environmental uses in the San Joaquin Valley now means that the Valley currently experiences a water supply deficit of 1.1 million acre-feet in an average year, and 2.6 million acre feet in a drought year. This deficit will grow

if the Settlement is adopted as proposed with out any mitigation plan for water supply losses. These numbers show that we need additional surface water, not less.

In fact, I call your attention to three studies * from the Northwest Economic Associates, University of California, and Friant Water Users Authority that came to the conclusion that ground water levels would nearly double in depth and pumping costs would significantly increase as a result of the water releases required in the Settlement. According to the studies, there would be serious economic impacts to the region due to the loss of jobs and the reduction of agricultural production.

Providing water in the quantity and quality to our communities is one of the major challenges we are currently facing in Tulare County. We have significant water quality issues with saline and nitrate levels above California State water quality standards.

For example, the City of Lindsay (population 11,000), which receives approximately 60% of its water from Friant, had to locate its supplement water well 3 miles outside of the city limits because of water quality. We currently are looking for new well sites for several of our unincorporated communities whose water quality does not meet state standards. The result of these proposed water releases from the Settlement will have a significant negative environmental impact on our communities. The potential increased overdraft of our underground water table will further decrease our water quality.

In closing, I must emphasize that any changes to water deliveries from the Friant Dam, absent mitigation, will undermine the very foundation of economic success and prosperity in the Central Valley. A promise to mitigate the loss of surface water from the San Joaquin River Settlement is not adequate for my constituents. We are asking for concrete mitigation language in the implementation legislation.

Thank you for this opportunity to express our concerns.

Senator CANTWELL. Thank you, gentlemen, for all of your testimony. And, as I said earlier, we're taking testimony from other people that aren't here, just submitted statements and exhibits, and we'll obviously leave the record open for 2 weeks, too.

But, Senator Corker, did you want to start with a round of questions?

Senator CORKER. Actually, I wanted to thank you for a great hearing, and thank our witnesses for their testimony. I'm going to need to step out, our staff will remain, and I'm certain, especially with the last witness, there will be a lot of questioning from you, and we look forward to the answers. But, thank all of you for being here, and thank you for working so hard on a very complex settlement.

Thank you.

Senator CANTWELL. Thank you, Senator Corker.

Mr. Candee, I think I'll start with you, if I could. Why do you think the Restoration Plan in the settlement will be successful in restoring a sustainable salmon run?

Mr. CANDEE. Well, first of all, this is not the first time that the parties to the litigation tried to reach settlement. In the late 1990's there was an earlier attempt to reach settlement, we actually put the case on hold for 4 years, and with some support from the State of California and the Federal Government, the Friant Water Users and the environmental plaintiffs jointly commissioned a number of studies. One of the things we studied is how to accomplish a complete restoration effort, involving the fisheries and riparian restoration, et cetera. A lot of scientific work was done, and from that work we, I think, both sides came to the conclusion that spring-run salmon was actually a very good species to focus on as the primary opportunity for restoration.

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*The studies and other attachments submitted by Allen Ishida have been retained in subcommittee files.

As Mr. Grindstaff indicated, there are a lot of aspects about the San Joaquin system that will support San Joaquin salmon restoration, and spring-run salmon restoration, and, in fact, I think a lot of the fishery agencies, and certainly a lot of the fish biologists in the academic community think that this may be one of the best chances to bring back this species.

So, we're optimistic, we think that the flows that are called for in the settlement, the hydrographs are designed to increase our chances of success with the least amount of impact to the water supplies to the Friant farmers, and part of the reason that the flows are being delayed, they're not going to be implemented right away, is so that additional work can be done on fish passage improvements, and other channel improvements, to again, increase the likelihood of success.

Senator CANTWELL. So, you think all of those things, is that what you're saying?

Mr. CANDEE. Exactly.

Senator CANTWELL. Restoration, fish passage, the flows.

Mr. CANDEE. Right.

Senator CANTWELL. You think it is a combination of all of those.

Mr. CANDEE. Yes. I mean, I think that fundamentally it's the water that's been missing. The salmon species is incredibly resilient, and as I mentioned in my testimony, even after Friant Dam was built and it started to go into operation, the spring-run salmon came back, and the State Department of Fish and Game was successful in keeping the spring-run salmon going, so the water is the most critical thing. These other things are additional measures that will help—not only with the restoration effort, but will, in particular, help reduce the necessary amount of water, and therefore the water supply impact.

I think one reason why there was a settlement was that it was clear that it was in everybody's interest to try to work on those other measures, but the key thing is the flows, and the flows that are in the settlement have not only the flows that we think as a base are necessary, but there's additional flexibility for adding a buffer flow, when needed, and then there's additional flexibility to purchase additional water, when needed, from willing sellers.

Senator CANTWELL. What about section 10? I'd like to ask you about that, because the bill specifies a number of protections for third-parties in declaring that spring-run Chinook shall be reintroduced as an experimental population pursuant to the ESA—so, does that diminish the discretion of the Secretary of Commerce, what they would normally have in reintroducing a species as an experimental population? Do you think that impacts their discretion?

Mr. CANDEE. The National Marine Fisheries Service was actually in the room when that section was revised, in Senator Feinstein's conference room, and the question that the Justice Department, the Commerce Department, the Interior Department were asked repeatedly, is: Can you live with this? This approach?

One of the things that they told us in those negotiations was that there has not been a lot of experience at the National Marine Fisheries Service with reintroduction of listed species, but there has been more experience at the Fish and Wildlife Service, and they look to the Fish and Wildlife Service for guidance. And their own

internal review indicated that the experience of the Fish and Wildlife Service indicated that they would probably do exactly what's mapped out in section 10, anyway. That that would be the course of action they would be likely to act on.

So, we in the environmental community, and I think the Government people as well, and Senator Boxer's staff and Senator Feinstein's staff were all trying very hard not to constrain the implementation of the Endangered Species Act, and elsewhere throughout the settlement bill, it's clear that this is supposed to be implemented consistent with Federal law.

Senator CANTWELL. Okay, Mr. Dooley, obviously representing the Friant Water Users—there's an article in the *Sacramento Bee* that referenced a study that said that the settlement requirement put about 3,000 people out of work, as a result of agriculture production falling, 159 million annually. Do you believe that study? And if you do, why did you agree to the settlement?

Mr. DOOLEY. Well, let me restate what I said earlier. We agreed to the settlement because the alternative of letting the judge determine the result was likely to be far worse. And, so, quite candidly, it was a business decision that the way to minimize the impacts of restoration of flows to the San Joaquin River was through a negotiated settlement as opposed to the meat cleaver approach that the judge was likely to impose upon us.

And, the judge was likely to retain jurisdiction and if fish didn't come back in year one, he had the flexibility to increase the flows in the following year, so we would not know from year to year how much water would be required.

That study was prepared by our expert, and it assumed that if you restored the flows contemplated by this settlement, or that were proposed by the Plaintiff's expert, and made no other changes in the way the project was operated, assumed that it was operated as it has been historically operated, that's what the impacts were likely to be.

Of course, we don't intend to operate as we historically have, and included in the settlement are provisions that provide for recapture of some of the water that's released for restoration, and for implementation of other water management measures that would substantially reduce the impacts over time.

We fully expect that many of those measures will be in place before the full restoration flows begin in 2014. So, in my humble opinion, and I should emphasize that I'm a fifth generation Tulare County farmer, and certainly our family's operation is in the area impacted by the delivery of Friant supply, I have a keen personal interest in making sure that there aren't longstanding, significant, adverse effects of this settlement.

But I fully believe that before it's all said and done, there will be no land taken out of production as a result of the implementation of this settlement, that the—that my clients, the water managers within the Friant Water Authority, will be as creative in the future as they have been in the past, and implement programs that will effectively mitigate the impacts of the restoration of flows on the river.

Senator CANTWELL. What about the concerns raised by Mr. Ishida?

Mr. DOOLEY. Well, I would say this—all of my clients share the basic concern about not having longstanding water supply losses in the area. The question is: How do you address those losses? We have shared some concerns with Mr. Ishida about his proposed amendment, because it presupposes a particular fix on recirculation, which we're not prepared to say, at this stage, to say is the, necessarily, the right fix. We certainly think it's one of the things that should be evaluated by the Secretary of the Interior in preparation of the plan that's required by the settlement and the legislation.

There are agricultural concerns about groundwater quality, certainly, that are existing today, and quite candidly, in my opinion, are unrelated to whether there's a settlement or not.

Those water quality issues need to be addressed, and regardless of whether there's a settlement of this longstanding litigation, I think one thing can be said for sure, that the Friant Water Users Authority intend to push very hard to make sure the water management goal of the settlement is fully implemented. And we believe that if it is, that there will be substantial, if not complete, reduction or mitigation of the water supply impacts of restoration of flows.

But, the bottom line is that we were able to negotiate a settlement that results in about a 15 percent reduction in our water supply and we were fearful of a 30 or 35 percent reduction in our water supply, if the judge was left to make the determination. So, we think in terms of the long-term future, certainty of water supply, this settlement goes a long ways to providing that certainty and gives us a lot of tools to make sure we can develop additional water management programs to offset the losses.

Senator CANTWELL. Thank you for that answer. I think it's safe to say there's a lot riding on the water management plan in this settlement agreement.

Mr. DOOLEY. Of course there is.

Senator CANTWELL. Mr. Ishida, what specific language are you looking for?

Mr. ISHIDA. I believe we're looking for concrete mitigation solutions in the litigation. I believe as Mr. Dooley does, I believe we can solve the loss of the surface water through mitigation efforts, it depends on how much money the Federal Government and the State government and the county government has to mitigate, to spend for the mitigation.

I would like some concrete assurance in the legislation stating that there will be mitigation for this water loss. We've had, experienced in the past where the Bureau has promised mitigation efforts, and they still haven't been built. So, I'm just trying to protect our residents.

Senator CANTWELL. Thank you. If I could, Mr. Robbins, you mentioned that the irrigation districts that you represent are trying to address the related issues to the fall Chinook run. Are these decisions that, or actions that you're taking based on the biological opinions?

Mr. ROBBINS. No, the biological opinion doesn't apply to the fall-run, it's not either threatened or endangered, it is a species of concerned.

But, of course, if spring-run comes back into the system, and is reintroduced, that changes the mix entirely. The needs, the timing of water, the temperature of water, a change—there is a different between spring-run and fall-run. So, our issue was to make sure that whatever was implemented would be adaptable, so that it could be managed, that both species could survive and flourish, and that one would cancel the other out.

Now, we fully expect to see a spring-run back on our tributaries, not just on the San Joaquin—I mean, that would be a natural function of the reintroduction of the species, and that's why eventually, we would expect to deal with them on the tributaries as well. And that's why you see in the legislation the experiment, the 10(j) language, followed by the Federal Power Act language, to ensure that the protections afforded in the settlement go all the way through the experiment period, or at least through 2025 are present. But, we will have to address this at some point in the future.

Senator CANTWELL. Okay, Mr. Grindstaff, your testimony indicates that California is prepared to spend, or will spend, I should say, $18.3 million for the 2007-2008 budget in support of the settlement.

Mr. GRINDSTAFF. That's correct.

Senator CANTWELL. What is the extent of the channel restoration, levy reinforcement, water management and mitigation efforts?

Mr. GRINDSTAFF. Well, the first thing we really need to do is to develop the plan more substantively. So, this $18 million goes a long ways towards getting the plan to the place where we can implement it. The State of California probably has upwards of a couple hundred million dollars that could be dedicated towards the purposes of this restoration.

First, there's $100 million specifically dedicated in Prop 84, there's additional money for water management activities for the San Joaquin Basin, it's a part of Prop 84, we have a number of pots of money that will be specifically available.

We have, in what's called Proposition 1E, money available for dealing with levies and plug management. So, our expectation is that there are a lot of resources available, they will need to be matched with Federal funding, and the State legislature, as you can imagine, they are asking us, is the Federal Government willing to step up and be apart of this, so that when we dedicate our State resources, we can be assured that the Federal Government will be a part of this effort? But, we have money available that's allocated to the San Joaquin, and we have the potential for significant additional resources, provided, of course, that we really have the Federal Government step up.

So, moving ahead on this bill is really important from that perspective. I personally have been asked the question by members of our State legislature: Are you really going to get support on the Federal side? They haven't felt that the Federal Government has always come through and I think we have agreement this year that $18 million is going to go through, and we're going to fund this, but they really would like to see something move, so that there is that commitment.

Senator CANTWELL. Having been a former State legislator, I can understand that question, but now being in this body——

Mr. GRINDSTAFF. Now you're on the other side.

[Laughter.]

Senator CANTWELL. I want to know that they're going to put up the resources.

Mr. GRINDSTAFF. They are, they are going to, and they have, in fact, for this coming year, committed to the $18 million.

Senator CANTWELL. Thank you.

Mr. Chedester, can you tell me about Reach 4b and your concerns and what we need to do there? And, can we achieve that? Can we achieve the flows and capacity that we need to?

Mr. CHEDESTER. Coming from a technical background, you just need enough money, you can build anything. So, yes, is it possible. But, I think to your question, is that Reach 4b today cannot handle the flows, the restoration flow. There's no doubt. The flows that are required in the settlement are about 4,500 cubic feet for second, the flow of that channel today is probably 100 or 200. So, substantial changes in the system will be required, or at least studied.

The settlement in the legislation contemplates that Reach 4b might be the path that gets used for the fish passage, or there's a corresponding levy system, it's called a flood-bypass system that exists that might also be used.

Legislation says we need to do a study in that area to see what, if it's feasible to use 4b, because of those flow issues that you would take so much resources, money, to mitigate, design and build a flood, deconstruct a river there, and maybe it's better to use another pathway. That's one of the first things that in the legislation that we have to take a look at. That study then comes back to the Secretary and they take a look at that with all the other costs, and make sure that they have enough resources to go forward, and then decide which way to go.

So, the answer to the question today, can we handle it? No. If we try to put those kind of flows down there today, it would flood out tens of thousands of acres.

Senator CANTWELL. So, what do we do if we find out that we can't enhance that section of the river to the capacity we'd like?

Mr. CHEDESTER. I believe there is a flood bypass system that is in existence, and it's called the East Side Bypass, and it could be used to push the flows through, and actually today—if you did nothing today, flows go down that river, not in Reach 4b, but right where that bypass begins, again, it's kind of a complicated system, but flows of that magnitude go through that part of the river, the bypass, today. So, you could handle those flows, today, through that system, the problem is, it's not designed for fish habitat, it is designed as a flood bypass, which means it has no vegetation in it.

Senator CANTWELL. Mr. Grindstaff, is there a dollar amount that you've looked at for this part of the project?

Mr. GRINDSTAFF. There's not a dollar amount that I am aware of, it is something that we need to look at closely, and figure out how we would deal with the issue.

Senator CANTWELL. But would you say it's a significant portion of the settlement? Improvements that need to be made?

Mr. GRINDSTAFF. It may be, I'm not an expert in this area.

Senator CANTWELL. Mr. Dooley.

Mr. DOOLEY. Madam Chair, if I could respond, I think all of the settling parties, and certainly the Department of Water Resources, have taken a look at sort of gross cost numbers, and there's a significant range that was developed which is dependent, in part, on what standards you have to build levies to.

But, everybody's estimate is that, the Reach 4b issue is a significant part of the cost, whether it's the high estimate, or the low estimate, it's—proportionally, it's a significant part of the cost for a lot of the reasons that Mr. Chedester mentioned. And, I think one of the reasons the legislation has the provisions in it, is none of us want to have that Reach consume all of the available funds for implementing the settlement. If it isn't feasible to restore the historic channel, then I think we all believe it would be significantly less expensive to do the work necessary in the bypass channel to manage the flows in that section of the river.

But, the point is, we're not in a position to make that determination until additional design and engineering work is done to determine whether it is feasible or not.

Senator CANTWELL. Well, I want to thank all of you for your testimony today, I'm sure that my colleagues will appreciate you being here today, we will leave the record open, as I said, for 2 weeks for additional questions from members, and if you could respond expeditiously to that, I would appreciate it.

I thank you for your work in working together to achieve this settlement. I think that you are on the doorstep, though, of a tremendous amount of continuing work. I'm not sure what this portends for the rest of us who deal with these challenges throughout the Pacific Northwest, hopefully you will pioneer some good, successful results that we can learn from, and certainly we can learn from the fact that 18 years bringing us to where we are today, there probably are some paths to shorten that for other communities.

So, thank you for sharing your experiences with us today, the Committee is adjourned.

[Whereupon, at 11:55 a.m., the hearing was adjourned.]

APPENDIXES

APPENDIX I

Responses to Additional Questions

RESPONSES OF DANIEL M. DOOLEY TO QUESTIONS FROM SENATOR BINGAMAN

Question 1a. Your testimony indicates that the average annual impacts to the Friant Water Users from the settlement will be a shortage of 170,000 acre-feet.

Do you think that the Water Management Goal in the settlement is certain enough to mitigate a substantial portion of this shortage?

Answer. The Water Management Goal contained in paragraph 16 of the Settlement requires the Secretary of the Interior to "develop and implement" a plan for recirculation, recapture, reuse, exchange or transfer of the Interim Flows and Restoration Flows required by the Settlement for the purpose of reducing or avoiding impacts to water deliveries to all of the Friant Division long-term contractors. Paragraph 16 also requires the implementation of a Recovered Water Account to make water available to Friant Division long-term contractors at reduced prices during wet hydrologic conditions.

At the public hearing on May 3, 2007, I provided the Subcommittee with a report entitled, "San Joaquin River Restoration Program, Water Management Goal, Potential Programs and Projects" that was prepared by members of the Friant Water Users Authority. Implementation of programs and projects of the nature outlined in the Friant report can substantially mitigate the impacts of providing Interim Flows and Restoration Flows required by the Settlement.

It is the Friant position that the Water Management Goal is equal and parallel to the Restoration Goal of the Settlement and that it will require significant attention and effort as the Settlement is implemented. Unfortunately, not all of the potential measures to implement the Water Management Goal have been identified, which is why the Secretary is directed to develop the plan. The plan must provide the detail to provide certainty that the Water Management Goal is fully implemented.

Question 1b. Will the Water Management Plan address the concerns being raised by Mr. Ishida in his testimony (Tulare County)?

Answer. If the Water Management Goal is fully implemented, most of the concerns expressed by Mr. Ishida at the hearing will be addressed. As I noted in response to a question during the hearing, some of the groundwater quality issues raised by Mr. Ishida are unrelated to whether the Settlement is implemented or not.

Question 1c. Given the limited amount of storage in the basin, how will surplus water be made available to your water users pursuant to the "Recovered Water Account" called for in the settlement?

Answer. There are two critical components to effective utilization of the Recovered Water Account. First, existing capacity limitation in the Friant-Kern and Madera Canals must be addressed to create or restore conveyance capacity to transport significant volumes of water during wet hydrologic conditions. Second, existing groundwater recharge and banking capacity must be expanded so that Friant long-term contractors have sufficient storage capacity to take advantage of such water. Many of the programs and projects identified in the report prepared by Friant and referenced above are designed to do precisely that.

While additional surface storage is not part of the Settlement, the members of the Friant Water Users believe additional storage is a critical component of long-term water security for the San Joaquin Valley.

Question 2. 3406(c)(1) of the CVPIA, established the Friant surcharge and states that the contractors are required to pay the surcharge "until such time as flows of

sufficient quantity, quality, and timing are provided . . . to meet the anadromous fishery needs . . .".

Do the restoration flows called for in the settlement constitute "flows of sufficient quantity, quality, and timing". If so, absent the extension of payments in S. 27, would the Friant surcharge continue to be paid until 2014 when the restoration flows are implemented?

Answer. The flows called for in the Settlement are specifically designed to be "flows of sufficient quantity, quality, and timing" to restore a salmon fishery to the San Joaquin River. They are based upon hydrographs (included in the Settlement as "Exhibit B") prepared by plaintiffs' expert fishery biologists. The Settlement also provides for "buffer flows" and timing flexibility to assure that the flows can be optimized for fishery purposes.

If "flows of sufficient quantity, quality, and timing" were released pursuant to CVPIA section 3406(c)(1), the Friant surcharge would be eliminated. As a part of negotiating the Settlement, the Friant contractors agreed to continue making the surcharge payment even though an argument could be made that the surcharge payments should be eliminated. The Settlement requires Friant to continue the payments. S. 27 requires the Secretary to continue to collect the surcharge and dedicate the proceeds to implementation of the Settlement.

RESPONSES OF DANIEL M. DOOLEY TO QUESTIONS FROM SENATOR SMITH

Question 1. S. 27 includes a provision directing NOAA Fisheries to designate the reintroduced salmon on the San Joaquin River as an nonessential, experimental population under section 10(j) of the Endangered Species Act. I understand this designation would exempt that population from the prohibition on "take" in section 9 of the ESA.

Including this provision in S. 27 implies that section 10(j) can be utilized to designate a population as nonessential, experimental, even when that population will later intermingle with non-designated populations in its lifecycle. And that it can be implemented before the reintroduction of a threatened species.

Is this your understanding of the provision in S. 27?

Answer. Section 10 of S. 27 was written in consultation with NOAA Fisheries and is intended to memorialize how the agency indicated it would undertake the reintroduction. It provides for the reintroduction of California Central Valley Spring Run Chinook salmon provided the Secretary of Commerce finds that a permit to do so may be issued pursuant to section 10(a)(1)(A) of the ESA. Assuming the Secretary finds that such a permit can be issued, the Secretary shall issue a final rule pursuant to section 4(d) of the ESA governing the incidental take of such reintroduced California Central Valley Spring Run Chinook salmon. Section 10 of S. 27 provides that such rule shall not impose more than de minimis water supply impacts on third parties as that term is defined.

Neither I nor the Friant Water Users are in a position to judge whether the use of Section 10(j) as provided in the ESA in this instance creates any implications as to other applications.

Question 2. If Congress were to enact this bill, don't you agree that it should promote the use of the 10(j) provision as an essential tool to accelerate the reintroduction and recovery of threatened anadromous fish like salmon and steelhead?

Answer. Section 10(f) of S. 27 specifically provides that Section 10 is not intended to modify the ESA or set a precedent with respect to any other application of the ESA. While noting Section 10(f) of the legislation, it is important to note that Section 10(j) of the ESA provides a statutory mechanism that is intended to be used in some circumstances. Its application in other cases should be determined by the facts of those cases.

RESPONSES OF ALLEN R. ISHIDA TO QUESTIONS FROM THE SUBCOMMITTEE

Question 1. Why doesn't the Water Management goal of the settlement address your concerns? Answer

Answer. In every article I read addressing the San Joaquin River Settlement and in the testimony that I have witnessed, no one has addressed the cost of mitigating the loss of surface water for the residents in the Friant Service Area. It is also clear to me that no one is sure that $500 million in federal funds will accomplish the stream restoration and reintroduction of salmon exclusive of the costs of mitigation projects. The cost to mitigate the surface water loss could potentially be greater than the river and salmon restoration.

Question 2. Have mitigation options been sufficiently developed in your area to mandate their inclusion in this legislation?

Answer. I believe that there are options sufficiently developed for inclusion in this legislation. I have been assured by the Friant Water Authority that they have many mitigation projects that could be implemented in fact that list was entered into the subcommittee record on May 3, 2007. To this date I have not received a copy of the Friant Water Authority potential mitigation projects nor have they offered to share the information with me.

In item 2 you made the statement as follows: Some of the water quality concerns you raise in your testimony would seem to be ongoing problems that are not directly related to the settlement. You are correct that we have been addressing ongoing problems with water quality in Eastern Tulare County. This settlement directly impacts water quality issues for almost all of our 400,000 plus residents in Tulare County. For example I am a citrus grower in a county that has approximately 100,000 acres of mature citrus tree. The citrus industry is highly dependent on Friant Water. Please refer to the crop maps that I entered into the record on May 3, 2007. A 15% reduction in surface water, just in the citrus industry, will result in pumping approximately 42,000 acre feet from the underground water table every year. If we experience prolonged drought conditions which we have in the recent past, farmers will pump even greater amounts of groundwater because the federal government will not be able to deliver contracted amounts of Class 1 Water. Pumping underground water will accelerate and diminish the water quality for our residents that depend on groundwater. I assure you as a farmer, I will supplement my surface water loss by pumping from the underground water table to keep my farm economically viable. If in 2025 the salmon run is not re-established and more surface water is taken, this settlement will put thousands of farmers out of business and our rural communities will fail.

Question 3. What current actions are being undertaken by Tulare County, local water providers, and the State of California to address those water quality concerns?

Answer. The Tulare County Board of Supervisors re-instated our county water commission to address issues such as groundwater recharge and water quality. The water commission will serve in an advisory commission for the board of supervisors. They will be charged to find solutions for our immediate and long term water needs. This commission will have a great influence on the future growth of our county. This commission will consist of local water experts and concerned residents. Tulare County Board of Supervisors is on record to support a new water storage facility on the San Joaquin River.

The Governor of California is advocating a new surface water storage facility on the San Joaquin River. A new surface storage facility will greatly enhance mitigation efforts resulting from the San Joaquin River Settlement, but a new water storage alone will not solve all of our water quality and quantity problems. That is why we have re-activated our county water commission. The voters of California voted in 2006 to bond money for water studies and flood control.

RESPONSES OF P. JOSEPH GRINDSTAFF TO QUESTIONS FROM SENATOR BINGAMAN

Question 1. From the testimony, it's clear that a number of water quality issues currently exist in Tulare County notwithstanding this settlement. What is the State currently doing to help address the water quality issues in Tulare County? Will Tulare County be a focus in the Water Management Plan called for in the settlement?

Answer. The State has been and continues to be very active in funding water quality improvement projects in Tulare County. In recent years, the State has provided over $1.4 million to the Upper Kings River Water Forum, in which the counties of Fresno, Kings and Tulare, water agencies, and cities are partnering to develop an Integrated Regional Water Management Plan (IRWMP). The purpose of the IRWMP is to define projects and programs to manage and develop both surface and groundwater supplies for long-term sustainability. Improved water quality is a major focus of the plan.

Additionally, another $1.4 million in Proposition 13 and Local Groundwater Assistance grants has been awarded to agencies within Tulare County to fund groundwater data collection, recharge and well monitoring.

Tulare County is hydrologically separate from the San Joaquin River Basin, therefore, water quality issues in Tulare County will not be a focus in the Water Management Plan. However, a number of possible water management actions involve Tulare County, such as the Trans-Valley Canal and other interties, as well as water transfers and groundwater banking both in and adjacent to Tulare County. None of the actions proposed in the Water Management Plan will negatively impact

water quality in Tulare County. Conversely, if proposed actions can provide water quality benefits to Tulare County, those actions would be given a higher priority for implementation than others.

Question 2. What will be the State's priority for expending funds given the extent of channel restoration; levee reinforcement; & water management and mitigation efforts needed as part of the settlement?

Answer. The State intends to spend funds on restoration actions identified and prioritized in the Settlement Agreement. Each of these actions is being evaluated from the State's perspective to make sure that State priorities are taken into consideration. The criteria being used to evaluate each action include answers to the following questions:

- How well will implementation of this action help the State meet our flood protection goals?
- How closely does this action follow the 2005 State Water Plan?
- How will implementation of this action benefit the people of California?
- How will implementation of this action improve water quality in the Delta and facilitate continued operations of the pumps?
- How will implementation of this action protect, restore, and enhance the natural and human environments?

Additional considerations for prioritizing implementation of actions include the leveraging of funds and the timing of funding availability. State funds are currently being leveraged through coordination with other programs and agencies. One illustration of such coordination is that the USBR has funds to provide aerial mapping and DWR has funds to establish ground control. Through this joint effort, one foot topographic maps are currently being finalized for Reach 1 of the San Joaquin River, below Friant Dam. This map will be used by both the Restoration Program and the Division of Flood Management. The timeline for when funds are available and also for when they might expire is also taken into consideration when prioritizing actions.

Question 3. How does San Joaquin Restoration fit into the overall "Delta Vision" process, if at all?

Answer. Any actions on the San Joaquin River that improve the quality of water entering the Delta are consistent with the objectives of the Delta Vision process. The foremost of these actions is the addition of flows for restoration purposes. The volume and the quality of water that will reach the Delta via restoration flows have the potential to improve water quality in the Delta itself. Additionally, the restoration of tributary habitat for anadramous fish proposed by the Settlement will contribute to an overall healthier Delta ecosystem.

MASON, ROBBINS, BROWNING & GODWIN,
Merced, CA, May 21, 2007.

Hon. JEFF BINGAMAN,
U.S. Senate Committee on Energy & Natural Resources, Dirksen Office Building, Washington, DC.

Re: Question arising from the Senate hearing on S. 27 dated May 3, 2007

DEAR SENATOR BINGAMAN: Thank you for your kind letter of May 7, 2007. The San Joaquin Tributary Agencies generally, and the Merced Irrigation District specifically, appreciates the opportunity to appear before the Water and Power Subcommittee of the Energy and Natural Resources Committee.

As a result of that hearing you posed the following question:

> How might your operations be further affected by the reintroduction of Spring Run Chinook were it not for the protections provided by Section 10 of the bill?

Merced Irrigation District operates its Exchequer Project on the Merced River for water supply, power generation, flood control and recreation. In addition, the River is managed for the beneficial use of fisheries in the Merced River which include Fall Run Chinook Salmon amongst others.

Fall Run Salmon have a different life history than Spring Run. Fall. Run Chinook leave the ocean and migrate into the fresh water spawning grounds in the fall primarily from late October until late December. They are therefore in the river system when natural side flows from small tributaries as well as winter flood control releases are present. It is not normally necessary to make releases from storage to provide suitable habitat for Fall Run Salmon. except in the driest years. Also, the temperature of the water is usually satisfactory for spawning and rearing purposes.

The salmon generally out-migrate from the system to the ocean the following spring having spent only the winter in fresh water. The spring flows when combined with regulated flows are generally sufficient for the species well being. There are those, of course; who will disagree on flow requirements but those disagreements are generally within limited range.

Spring Run Chinook move into the system as adults in the spring during high spring flows. Historically they would move high into the mountains to spawn and not remain in low foothill and valley floor areas as their life cycle includes summering over in fresh water and then spawning in late summer or early fall. Spring Run can then either migrate out in the spring or spend another entire year in the system migrating out the following spring. Although this behavior can happen with the Fall Run, it is much more prevalent with Spring Run. The net effect is that as Spring Run Salmon approach dams that block access to the higher elevations they begin to spawn in the lower elevations. Water temperatures during the summer may be to high for their survival at low elevations though most dams provide cold enough water for survival, nevertheless, successful spawning is very problematic without additional cold water flows in the summer for fishery protection.

As a result, a threatened species such as Spring Run could have the eventual requirement of significantly greater volumes of water that would otherwise be placed to other beneficial uses. In addition management activities on the river would be subjected to added oversight because of the presence of the species. With both species Salmon will be present all year not just winter and spring. Water could be required at different times of the year than is currently present shifting the time for generation of electricity and therefore potentially impacting the value of the power. Water levels in the reservoir could be impacted reducing recreational opportunities. Finally, Spring Run and Fall Run will be spawning on the same grounds below large dams on the San Joaquin and its tributaries.

With respect, to relicensing the project before the Federal Energy Regulatory Commission (FERC), the presence of Spring Run Salmon would authorize the Department of Commerce through the National Marine Fishery Service to impose mandatory conditions for fishery protections on the District licenses regardless of its water supply or economic impacts. Since Merced Irrigation District relicensing will occur in 2014 these impacts could be imposed long before other agencies on the San Joaquin would need to deal with Spring Run Salmon based upon the 10(j) designation of the species.

With the reintroduction of Spring Run under Section 10(j) of the Endangered Species Act and the FERC protections provided under the Federal Power Act included in Section 10 of the bill, Merced Irrigation District, and eventually all other FERC license holders on the San Joaquin River, wilt eventually have to deal with the issue of Spring Run Salmon but not until we know if the experiment is successful and then only in 2025 as all other agencies subjected to this regulatory activity as well.

I hope this adequately answers your inquiry. I am of course available for further questions as they might arise.

Very truly yours,

KENNETH M. ROBBINS.

NATURAL RESOURCES DEFENSE COUNCIL,
San Francisco, CA, May 22, 2007.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

Re: S. 27—San Joaquin River Restoration Settlement Act

DEAR CHAIRMAN BINGAMAN: Thank you for your letter of May 7, 2007 requesting our answers to the Committee's additional questions to witnesses from the May 3, 2007 hearing of the Subcommittee on Water and Power regarding S. 27, the San Joaquin River Restoration Settlement Act. Attached please find the responses of the Natural Resources Defense Council (NRDC) to the additional questions submitted to us with your letter.

In addition, we appreciate the Subcommittee's offer to all witnesses to supplement the record from the hearing and are attaching some new materials re S. 27 that were not available at the time of the hearing which we ask be included in the record of the hearing:*

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*The attachments can be found in appendix II.

- Letters from Association of California Water Agencies to Sen. Feinstein and the House Subcommittee on Water & Power (May 3, 2007) supporting S. 27/H.R. 24
- Letters from National Water Resources Association to Sen. Feinstein and the House Natural Resources Committee (May 16, 2007) supporting S. 27/H.R. 24
- Letters from Contra Costa Water District Board of Directors to Sen. Feinstein and Rep. Radanovich (May 22, 2007) supporting S. 27/H.R. 24
- Press Release by Congresswoman Grace Napolitano (May 17, 2007)
- "Water: San Joaquin River restoration plan could fall apart, witnesses warn," Environment and Energy Daily (May 4, 2007)

Thank you for providing us this opportunity to provide additional information to the Committee about S. 27.

Sincerely,

HAMILTON CANDEE,
Co-Director, Western Water Project.

QUESTIONS FROM SENATOR BINGAMAN

Question 1. Hal Candee (NRDC)—The Administration's testimony indicates that feasibility-level designs have not been done on the actions needed to restore the salmon runs, particularly channel restoration work such as that required in Reach 4B.

If additional funding is necessary to complete the actions called for in the settlement and such funding is not provided (i.e. actions cost more than direct spending available from the settlement bill & appropriations are not forthcoming), has the U.S. breached the settlement?

What is the remedy in the event of a breach?

Answer. The Settlement and the pending Legislation contemplate a combination of State and Federal funding sources, including the use of various payments by Friant Water Users to the Federal Government. Some of those funding sources are already available to the Department of the Interior through existing authorized appropriations and have been used by Interior to initiate Settlement implementation actions since the Settlement was approved by the Court on October 23, 2006. In anticipation of this fact, the United States stated explicitly in the Settlement:

> Prior to the enactment of the legislation . . . the Secretary may exercise *any existing authority* to initiate the planning and design of the improvements specified under Paragraph 11, subject to the availability of appropriations. Paragraph 23 (emphasis added).

The United States also agreed as follows:

> The Secretary shall promptly commence activities pursuant to applicable law and provisions of this Settlement to implement the provisions listed in Paragraph 11, provided that funds are appropriated by Congress *or available from non-federal sources* for that purpose. Paragraph 9 (emphasis added).
>
> In undertaking the implementation of these improvements, the Secretary may enter into such appropriate agreements, memoranda of understanding . . . *cost-sharing agreements,* or other relationships . . . as may promote the timely and cost-effective completion of the improvements. Paragraph 10 (emphasis added).

On the same day as the United States approved the Settlement and filed it with the Court, i.e. September 13, 2006, it also executed an MOU with the State of California (and the other Settling Parties), which provides *inter alias:*

> The State has expressed strong support for this Settlement and has pledged cooperation and the financial resources of the State to help it proceed. (Part A—Preface)
>
> * * *
>
> DWR and DFG each intend to assist the Settling Parties in identifying State funding sources which may be available to implement the Restoration Goal and the Water Management Goal of the Settlement . . . (Part C. 4c.)
>
> * * *
>
> An initiative known as [Proposition 84] . . . [provides] that $100,000,000 shall be available to the California Resources Secretary for the purpose of

> implementing a court settlement to restore flows . . . to the San Joaquin River, and specifies that the funds shall be available *for channel and structural improvements* and related research *pursuant to the court settlement.* (Part C. 4d; emphasis added).

Similarly, the Parties clarified in the Settlement that not all actions in the Settlement require additional action by Congress:

> The Parties acknowledge that *certain actions* to be undertaken to implement this Settlement will require additional authorization or appropriations by Congress, or both. Paragraph 8 (emphasis added).

Finally, the United States also made other relevant commitments that were essential to the Parties reaching Settlement of the litigation, including but not limited to:

> The Secretary shall diligently pursue implementation of the Restoration Goal and the Water Management Goal as set forth in this Settlement. Paragraph 4
>
> The dedication of funds as provided in Paragraph 21(a) shall not preclude the Secretary from attempting to seek to secure the appropriations of additional funds by Congress for the implementation of this Settlement. The Secretary anticipates seeking such appropriations through the appropriate administrative process. . . . Paragraph 21(c).

In sum, although the issues of appropriations, conditions precedent, force majeure, dispute resolution, and remedies for breach of the agreement are extensively addressed in numerous sections, see for example Paragraphs 23, 24, 25, 26, 27, 33, 35 and 36, and are too extensive and voluminous to summarize here, they are to be read in the context of the overarching provisions of the Settlement, and the separate MOU with the State, concerning the mixture of new, existing and non-federal funding sources to understand the vision of a joint federal-state restoration effort.

Question 2. Hal Candee NRDC—The Subcommittee received testimony for the record from Kole Upton, Chairman of the Friant Water Users Authority. His statement indicated that the Friant Water Users wanted to include new surface water storage as part of the settlement but that the environmental coalition rejected this option.

Does NRDC oppose new storage as a potential measure to mitigate the water supply impacts?

Given the change in water allocation and the need for mitigation, not to mention the impacts that climate change is having on water supply, should all options at least be considered and analyzed?

Answer. The settlement negotiations were the subject of a Court Order requiring confidentiality, so I am not at liberty to describe them but I will say that Mr. Upton's characterization is misleading. NRDC does not oppose economical and environmentally benign new water storage facilities. In fact, we have devoted considerable effort and resources to supporting public funding of new ground water storage and other new water management measures to benefit Friant water users and other California water districts, even before the Settlement was achieved, including our support for various state propositions totaling billions of dollars that have helped to fund San Joaquin Valley farmers and water districts seeking to expand their own storage capabilities and obtain other water supply benefits. However, the idea that a settlement of an 18 year old lawsuit focused on the federal government's abuses of California's environment in its operation of an on-stream surface storage facility should include building yet another environmentally harmful on-stream surface storage facility is absurd on its face and was never seriously considered by the Settling Parties. As for mitigating water supply impacts of the Settlement, I would note that I am unaware of any equivalent mitigation provided by the Friant water users or the Bureau of Reclamation over the last 60 years to address the egregious third party impacts caused to Delta farmers, Delta communities, North Coast fishing communities, and numerous other critical interests caused by the illegal operation of the Friant Unit of the CVP and its resulting degradation of California's second longest river. Perhaps that is the mitigation element that is missing from this legislation. As for mitigating the impacts to those who have benefited over the past 60 years from operation of the Friant Unit, such mitigation has already been addressed: the Settlement and the pending legislation contain numerous measures intended to reduce, avoid or mitigate water supply impacts, and the Friant farmers and their districts and the federal and state agencies have all approved those mitigation provisions. In addition, the Friant water users have indicated that they intend to devote

their own resources, and seek additional public resources, to pursue other water management measures to meet their water supply needs, as they have always done and would presumably continue to do whether or not there is a settlement.

QUESTIONS FROM SENATOR SMITH

Question. S. 27 includes a provision directing NOAA Fisheries to designate the reintroduced salmon on the San Joaquin River as an nonessential, experimental population under section 10(j) of the Endangered Species Act. I understand this designation would exempt that population from the prohibition on "take" in section 9 of the ESA.

Including this provision in S. 27 implies that section 10(j) can be utilized to designate a population as nonessential, experimental, even when that population will later intermingle with non-designated populations in its lifecycle. And that it can be implemented before the reintroduction of a threatened species.

1. Is this your understanding of the provision in S. 27?

2. If Congress were to enact this bill, don't you agree that it should promote the use of the 10(j) provision as an essential tool to accelerate the reintroduction and recovery of threatened anadromous fish like salmon and steelhead?

Answer. 1. No, that is not my understanding of the provision. Section 10 of S. 27 sets out a provision, similar to the normal application of section 10(j) of the ESA for designating experimental populations and the handling of take limitations for such experimental populations. Due to the carefully negotiated terms of section 10 of S. 27, I believe it would be unwise and unhelpful for me to try to paraphrase its terms. However, I would note that the US Department of the Interior did provide the Settling Parties with an informal "section by section analysis" of S. 27, which includes a description of Section 10 and which we understand has been submitted to the Committee and may be helpful in this regard.

2. Whether Congress should use or promote any particular tool to accelerate reintroduction or recovery of threatened anadromous fish ultimately depends on the unique factual situations around the country. In general, we believe Congress should be promoting more aggressive water conservation, sensible market pricing of federal water supplies, sensible market pricing of the power derived from federal water projects, and vigorous implementation of existing provisions of the ESA, NEPA, the Clean Water Act, applicable state laws, and other environmental protections if Congress is to be serious about helping our beleaguered anadromous fish species. As for Section 10 of S. 27, it states explicitly that the situation on the San Joaquin River "is a unique and unprecedented circumstance" and that "Nothing in this section is intended or shall be construed . . . (2) to establish a precedent with respect to any other application of the [ESA] or the Federal Power Act (16 U.S.C. 791a et seq.)." That language was essential to reaching agreement on S. 27 and without it there would not have been consensus support for the legislation. Accordingly, if the intent of the question is whether Section 10 of S. 27 should be used as "a precedent with respect to any other application of the Endangered Species Act," clearly that would be directly contrary to the intent and language of S. 27 and we would have to oppose such an approach.

SAN JOAQUIN RIVER WATER AUTHORITY,
Los Banos, CA, May 29, 2007.

Hon. JEFFREY BINGAMAN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Re: S. 27

DEAR SENATOR BINGAMAN: I am writing in response to your questions relating to the above-referenced hearing and legislation. I am responding to you in my capacity as the Executive Director of the San Joaquin River Exchange Contractors Water Authority, a joint powers agency comprised of four California water agencies (hereafter "Exchange Contractors").

I have paraphrased each of your questions and respond as set forth below.

Question 1. Are the Exchange Contractors confident that the $900 million in state and federal funding is sufficient to implement the settlement in a manner that protects the interest of the Exchange Contractors?

Answer. The Exchange Contractors participated actively in the efforts to negotiate the subject legislation. Our support for the legislation to restore salmon to the upper San Joaquin River was contingent upon the restoration program not having an adverse impact on the Exchange Contractors' member agencies, their water supply customers or landowners adjacent to the San Joaquin River. These farmers, whose

properties abut the San Joaquin River, would be severely impacted if the restoration program is not conducted in a manner that mitigates, up front, the impacts that will occur once water flow is restored to the San Joaquin River and endangered species are present.

As I testified previously, our greatest fear is that only a portion of the project would be built, similar to the failed efforts by the Bureau of Reclamation to construct drainage facilities in the San Joaquin Basin. Therefore, we insisted the legislation include a provision requiring that any portion of the existing levee system and any future levees to be constructed be implemented on a project by project basis. (See Section 9(a)(2)) This provision will require Reclamation to analyze how the program will be implemented, identify each key phase and implement each project in such a manner that it can be pursued to completion before proceeding to the next phase. For example, if the upper most reach of the San Joaquin River below Friant Dam, referred to as Reach 1, is to be restored, then the restoration should be done pursuant to an implementation plan that addresses all issues in that reach of the River before allowing water for fisheries to be restored to lower reaches.

We expect, from a practical perspective, that Reclamation will develop Reaches 1, 2 and 3 essentially at the same time. However, before doing so, it will be essential that they determine all of the steps necessary to create habitats sufficient to protect the various life stages of the reintroduced spring run salmon and to protect the adjacent landowners from any flooding or water seepage that may occur once the restoration flows are released. It will also be essential that downstream bypasses are utilized to divert water out of those portions of the stream that have not been protected. In addition, until channel improvements and all mitigation measures are completed in each particular reach, the flows must be limited to existing capacity of the river channel.

The legislation also requires that Reach 4B be treated separately from the other portions of the River. (See Section 9(g)) Reach 4B is particularly challenging because its current channel capacity is between 20 and 50 cfs, and yet the restoration program would require flows as high as 4,500 cfs. Reach 4B will be studied and funded separately from the rest of the project if there are not sufficient funds remaining to address the needs in that Reach. Further, Reach 4B is likely the most expensive portion of the project. In the Reach 4B area, significant amounts of acreage will have to be taken out of production and acquired either from willing sellers or through eminent domain. (See Section 5(b)) In addition, levees and slurry walls will be necessary in order to prevent the adjacent farmland from being either flooded on the surface or causing the groundwater basin to rise to a level such that the root zone is flooded, thereby making it impossible to productively farm the area.

Question 2. Do the Exchange Contractors believe that the settlement requires that levee protections be incorporated with channel restoration works? If so, how might this affect the cost estimates that currently exist for the settlement?

Answer. Levees are an essential part of the restoration program. In fact, levees are the main cost component of the restoration effort. While the in-stream measures to create habitats are costly, their cost is dwarfed by the mitigation measures that will be needed to protect adjacent landowners and water users from the impacts of the restoration program. As I stated in my testimony:

> To make this restoration possible, substantial physical changes need to be made both to the River and to facilities downstream of the dam. It will be essential to protect the downstream water systems and the adjacent private property and livelihoods of the farmers and other citizens along the River.
>
> Among the changes to the River that will be needed are in-stream improvement measures, rehabilitation of miles of existing levees to protect flooding and seepage, the construction of new levees where none exist, reconstruction of water diversion facilities and small dams that were not constructed in a manner consistent with the new operating regimen that will be required under the settlement, improvements to some of the downstream flood by-pass structures, and construction of fish screens.

All of the parties understood that the aforementioned work was integral to the restoration program.

The Exchange Contractors relied on engineering work by the firm of CH2MHill in preparing their cost estimates. CH2MHill had recent experience on the Sacramento River constructing levees. We know that levee construction costs and levee rehabilitation vary by site. We have assumed that there are no special conditions existing along the San Joaquin River that would drive levee restoration and levee construction costs higher than those anticipated. Therefore, based upon what we know today, we believe that the identified state and federal funding of $900 million

is an appropriate estimate for the various reaches of the San Joaquin River, with the exception of Reach 4B.

If you have any further questions, I would be pleased to respond.

Very truly yours,

STEVE CHEDESTER,
Executive Director.

APPENDIX II

Additional Material Submitted for the Record

PLAINVIEW MUTUAL WATER COMPANY,
Strathmore, CA, February 16, 2007.

Supervisor ALLEN ISHIDA,
Chairman, Tulare County Board of Supervisors, 2800 West Burrel, Visalia, CA.

DEAR SUPERVISOR ISHIDA: Plainview is a very poor community with residents depending primarily on farm labor to support their families. On behalf of the Board of Directors of the Plainview Mutual Water Company, I wish to express my concern regarding the imminent loss of water from the Friant Kern canal to our area. Our community water system serves about 200 families with drinking water. One of our two water wells has already been shut down due to high nitrate and DBCP levels. We are totally dependent on our remaining 50 year old well which currently meets drinking water standards. As you know we are in the process of designing a new well with funding approved by USDA Rural Development.

Though we are not against the settlement, our concern is that the effects of the settlement between the US Bureau of Reclamation and the National Environmental Defense Council will reduce the supply of surface water in our area via the Friant-Kern canal. This will likely result in the area's farmers pumping more groundwater which will further lower our water table. This will result in increased pumping costs and may increase the concentration of contaminants in our existing and new water wells.

Attached are graphs from the State Department of Water Resources indicating the level of water in three wells in our area that have been monitored since the early 1960's.* As you can see, the ground water level has improved considerably since Friant water was imported into our area by the Lindmore Irrigation District. We are very concerned that this level will continue to drop as a result of the loss of water to our area.

We ask that you take steps to help us and other communities protect our water resources and our community's future. Thank you for your assistance.

Sincerely,

FRANCISCO MARTINEZ,
President.

COMMUNITY WATER CENTER,
CALIFORNIA RURAL LEGAL ASSISTANCE FOUNDATION,
Visalia, CA, February 19, 2007.

Senator BARBARA BOXER,
Hart Senate Office Building, Washington, DC.

Re: Mitigation to address water loss as a result of the San Joaquin River Settlement

DEAR SENATOR BOXER: The Community Water Center is a non-profit organization based in Visalia, California, that works to ensure that all communities can have access to safe, clean and affordable drinking water. The Community Water Center and the California Rural Legal Assistance Foundation write to you today on behalf of our many client communities to ask for inclusion of a mitigation program to address the impacts that the San Joaquin River Settlement will have on communities in the Southern San Joaquin Valley.

As you may already know, there are hundreds of thousands of residents in the San Joaquin Valley that do not have access to safe thinking water in their homes. Most of these Californian's are low-income people of color and live in small, unincor-

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*The attachments have been retained in subcommittee files.

porated areas of the valley and have either contaminated private wells or are served by a small public water system whose wells cannot meet safe drinking water contaminant limits.

In addition, there are many more communities that live on the verge of loosing safe drinking water. In Tulare County alone, 30% of the public water systems are just below maximum contaminant levels and rely on a few groundwater wells to provide all of their drinking water. Should groundwater contamination levels rise even slightly, many more communities will be unable to provide safe drinking water to their residents. This is true for Tulare County, but also for the other counties of the Southern San Joaquin Valley.

The San Joaquin River Settlement will result in very real, direct and indirect impacts on many of our states most disadvantaged communities. While we support the settlement and the restoration of the San Joaquin River, we urge Congress to include a "third-party" mitigation program to address its impacts on those of us not at the negotiating table, and unable to fund mitigation on our own.

Specifically the Settlement will result in a reduction of clean surface water deliveries to the Southern San Joaquin Valley through the giant Canal system, as water is diverted back to the San Joaquin River. This reduction will affect communities in the following three primary ways:

1. Less fresh water will be put into our groundwater aquifers to dilute contaminated groundwater supplies causing contamination levels to increase. Last month the Hydrogeology Journal published a study on the nitrate contamination in groundwater in the eastern San Joaquin Valley, which found that "surface water supplied for irrigation has low nitrate concentrations and using this water would result in lower concentrations in recharge than groundwater-derived irrigation water. . . . (R)ecycling of groundwater through groundwater pumping and reapplication of irrigation water was likely a dominant process in the study area . . . (and) is likely to result in increasing concentrations of nitrate even without increasing fertilizer applications."[1] Even small increases will push many communities over legal limits of common contaminants, such as nitrates, meaning millions of dollars in new infrastructure costs and health impacts and emergency bottled water costs for many of California's poorest families.

2. With less water coming into our aquifers, agricultural operations, our growing cities, and industrial water uses will turn towards increased groundwater pumping, drastically increasing the overdraft that already affects our region. Overdraft will mean that many private wells will go dry and many of our poorest families may suddenly have no water at all. Additionally, small communities will have to drill deeper wells, which not only will cost far beyond the means of these systems, but may result in having to use supplies with natural contaminants that occur at deeper levels, such as arsenic, manganese and sulfur.

3. Communities, such as Tonyville, Strathmore, Orange Cove, Terra Bella and Lindsay, rely on treated canal water for their primary drinking water supplies; reduced surface water supplies will likely cause these systems to use contaminated groundwater, which often has levels of nitrates far above legal limits. Furthermore, given that the current contract allocations of surface water are not meeting the existing drinking water needs of all the communities within the place of use, the settlement does not address the exacerbated need for surface water of these groundwater dependent communities whose groundwater will be further harmed through the settlement.

While California has passed bond measures that are helping small drinking water systems with contaminants already over legal limits, these bonds will do nothing to mitigate the impact this Settlement will have on small, disadvantaged communities in the San Joaquin Valley. For that we are asking Congress to create a series of mitigation programs that will address these very real, both direct and indirect impacts that this Settlement will have.

The following are programs that should be included in a mitigation program:

1. *Groundwater Quality Improvement Program for the Southern San Joaquin Valley.* This program should fund groundwater improvement programs to mitigate the reduction in clean surface water into our aquifers. The primary projects under this program would include, but not be limited to, infrastructure for local and regional wastewater and drinking water treatment systems. Pri-

[1] "Temporal trends in concentrations of DBCP and nitrate in groundwater in the eastern San Joaquin Valley, CA, USA", Hydrogeology Journal, January 2007.

ority funding should be for disadvantaged, low-income communities to lessen the input of common groundwater contaminants, such as nitrates and salts. Complementary to the infrastructure investments are the pollution prevention investments including regulatory and educational programs to require and promote best management practices for irrigated agriculture, food processors, and dairies, all of which contribute to our most problematic drinking water contaminant (nitrate) in our region's aquifers. Currently there is estimated to be over $4.4 billion needed for wastewater and drinking water infrastructure projects in the San Joaquin Valley.[2]

2. *Groundwater Overdraft Mitigation Program for the Southern San Joaquin Valley.* This program would fund projects that reduce groundwater pumping in the region's over-drafted groundwater aquifers. It should fund recycled water or dual plumbing programs that enable less water to be used overall by utilizing highly treated wastewater for irrigation and similar applications. It should also fund water use efficiency programs, both urban, rural and agricultural, and conjunctive use or water banking programs that result in mitigating overdraft. In addition, it should fund small systems and low-income private well owners who have to drill further to access clean water.

3. *Community Water Access Program for the Southern San Joaquin Valley.* This program would fund feasibility studies and implementation of regional projects that enable small, disadvantaged communities to exchange groundwater for cleaner surface water and build regional surface water treatment plants. Ultimately to be sustainable, communities must have a diverse source of water, including groundwater and surface water supplies. Surface water is often owned by agricultural interests and only a handful of small communities can access those cleaner water supplies. Most communities cannot afford the inflated cost of purchasing this water, or to construct the necessary surface water treatment plants on their own. Through this program and local, state and federal initiatives these projects will finally provide sustainable solutions for local communities that have been unable to access the surface water that runs straight through canals bordering their homes, and used for irrigation or sold to Southern California cities.

While we support the San Joaquin River Settlement, we urge any implementation package to include these vital mitigation programs to address the very real direct and indirect impacts on many of our State's poorest communities.

Thank you for your consideration of our request. Should you have any questions or concerns please feel free to contact Laurel Firestone at (559) 733-0219 or Martha Guzman at (916) 446-7902. We look forward to working with you to ensure that all Californian's can have access to safe, clean and affordable drinking water.

Sincerely,

LAUREL FIRESTONE,
Co-Director & Attorney at Law,
Community Water Center.
MARTHA GUZMAN,
Legislative Analyst,
California Rural Legal Assistance.

SELF-HELP ENTERPRISES,
Visalia, CA, February 26, 2007.

Supervisor ALLEN ISHIDA,
Chairman, Tulare County Board of Supervisors, 2800 West Burrel, Visalia CA.

Re: Local Mitigation needed as a result of San Joaquin River Settlement

DEAR SUPERVISOR ISHIDA: Self-Help Enterprises (SHE) has over 42 years of experience in providing housing and community development services in the San Joaquin Valley. SHE has assisted in the development of over one hundred water and wastewater projects in disadvantaged communities providing nearly 20,000 families with potable drinking water and environmentally safe wastewater systems.

Basic access to an adequate supply of clean water is a priority concern for all Californians, including residents of the small, low-income, rural communities in Tulare County and the rest of the San Joaquin Valley. There are already significant water supply and quality issues in the Valley including Tulare County. These issues are especially relevant to small communities and unincorporated areas where small

[2] This number is based on estimates for water projects eligible under the California Partnership for the San Joaquin Valley's Water Recommendations.

public water systems exist or where residents are dependent on private domestic wells, many of which cannot meet safe drinking water contaminant standards.

We recognize the value of the settlement between the US Bureau of Reclamation and the National Environmental Defense Council and support the settlement. At the same time, we are deeply concerned about the adverse impacts the settlement will have on the local communities we care about. The settlement will significantly reduce the supply of surface water to Tulare County via the Friant-Kern canal. The likely result will be increased pumping of more groundwater which will further lower our water table. We are concerned that the net result will exacerbate the water supply and quality conditions that already affect economically disadvantaged communities.

There are many communities that already cannot provide safe drinking water and many that are on the verge of loosing safe drinking water. Should groundwater contamination levels rise even slightly due to a reduction of the availability of fresh surface water, many more communities will be unable to provide safe drinking water to their residents. Now that the settlement is virtually a reality, we believe it is necessary to move ahead and deal with these issues.

Attached are some graphs from the State Department of Water Resources indicating the level of water in some wells in the Lindsay-Strathmore areas.* As you can see, the ground water level has improved considerably since Friant water was imported into eastern Tulare County and made available in 1950. We are very concerned that this level will drop significantly as a result of the settlement and that the water future of our County and its disadvantaged communities will be in jeopardy.

Therefore, we ask that you take steps to help these communities. We understand that a combination of resources including federal and state will be needed to help mitigate these local impacts. We ask that you contact the appropriate state and federal bodies to help our area which has depended on and built its economy on this water for over a half a century.

Sincerely,

PETER CAREY,
President/CEO.

ASSOCIATION OF CALIFORNIA WATER AGENCIES,
May 3, 2007.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Washington, DC.

Hon. NICK RAHALL,
U.S. House of Representatives, Washington, DC.

Hon. GRACE NAPOLITANO,
U.S. House of Representatives, Washington, DC.

Hon. DON YOUNG,
U.S. House of Representatives, Washington, DC.

Hon. CATHY MCMORRIS RODGERS,
U.S. House of Representatives, Washington, DC.

Re: S. 27 and H.R. 24—San Joaquin River Settlement Act

DEAR SENATOR FEINSTEIN AND REPRESENTATIVES: The Association of California Water Agencies, a statewide association of public agencies whose 440 members are responsible for about 90 percent of the water delivered in California, is pleased to write in support of S. 27 and H.R. 24 the San Joaquin River Restoration Settlement Act. If passed, this legislation will approve and fund the recent landmark settlement on the San Joaquin River.

S. 27 and H.R. 24 authorizes the Secretary of the Interior to carry out a comprehensive restoration program on the San Joaquin River. Settlement parties have informed ACWA that the agreement addresses third-party impacts and has the possibility to improve water quality conditions in the Delta. During the implementation phase, ACWA looks forward to working with Interior and other responsible entities to see that the protections in the legislation are carried forward.

This settlement ends 18 years of difficult litigation and is broadly supported by leaders throughout California, including Governor Schwarzenegger, Senators Feinstein and Boxer and a bipartisan group of the California congressional delegation. S. 27 and H.R. 24 are also supported by the National Water Resources Association,

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*The graphs have been retained in subcommittee files.

the Friant Water Users Authority, Natural Resources Defense Council, the Bureau of Reclamation, the Department of Water Resources, and numerous other federal, state, and local entities.

ACWA requests your leadership in moving this important legislation forward to help restore a major tributary to the San Francisco Bay-Delta Estuary.

Sincerely,

STEPHEN K. HALL,
Executive Director.

CONTRA COSTA WATER DISTRICT,
Concord, CA, May 22, 2007.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Hon. GEORGE RADANOVICH,
U.S. House of Representatives, Rayburn House Office Building, Washington, DC.

Subject: Support on S. 27 and H.R. 24—San Joaquin River Restoration Settlement

DEAR SENATOR FEINSTEIN AND REPRESENTATIVE RADANOVICH: The Board of Directors of the Contra Costa Water District (CCWD) has adopted a position of Support on S. 27 and H.R. 24—San Joaquin River Restoration Settlement. This bill authorizes the implementation of the San Joaquin River Restoration Settlement. The purpose of the settlement is to fully restore the San Joaquin River and to mitigate the impact of water losses on those who have long-term contractual rights and obligations to the Friant system within the Central Valley Project.

The settlement resolves years of litigation and represents a landmark accord between environmental and fishing groups, Central Valley farmers, and the state and federal governments to undertake one of the most significant river restoration projects. CCWD has a long history of concern over water quality in the San Joaquin River and its impacts on the Delta. This legislation would give the Secretary of the Interior the authority to take the actions to restore the San Joaquin River which may ultimately lead to improved water quality in the Delta.

The District commends your leadership on this issue and appreciates your hard work and dedication to your constituents.

Sincerely,

JOSEPH L. CAMPBELL,
President.

MANY IN TULARE CO. CAN'T COUNT ON CLEAN WATER

By Mark Grossi / *The Fresno Bee*

EAST OROSI—The peaks of Sequoia National Park offer a breathtaking backdrop for this farmworker town, but resident Maria Elena Orozco would gladly trade the view for the pristine snowmelt from those mountains.

She and the other 400-plus residents of East Orosi periodically get notices reminding them not to drink the water from their taps.

The town's two wells have dangerous levels of a banned pesticide and nitrates, which come from fertilizers, septic tanks and sewage plants. Many residents worry about the health of their families.

"A lot of kids are having problems," said Orozco, 45, who has three daughters. "They're hyperactive and sick."

The problem is common for residents in eastern Tulare County at the foot of the Sierra Nevada.

Cutler, next door to East Orosi, is under a state order to clean up nitrates in the town's drinking water.

There have been contamination problems with wells in Woodlake, Lemon Cove, Tooleville, Woodville and Yettem. Other towns, such as Strathmore and Lindsay, have a history of ground-water contamination, though they have alternative water sources now.

"The east side of Tulare County has had historical high nitrate and [pesticide levels] due to the citrus industry's pesticide and fertilizer practices in the past," said Richard Haberman, supervising sanitary engineer for the state Department of Health Services.

It is time for elected officials to deal with "a drinking water crisis here," said Laurel Firestone, co-director of the Water Community Center, a Visalia-based nonprofit group.

"The contamination has been confirmed," she said. "It's not a mystery. So far, we don't have the political will to do something about it."

The center has organized residents in Cutler, East Orosi, Ducor, Tonyville and other communities.

They push to clean up the water, drill new wells or hook up to other sources of water, such as river supplies.

A new well can cost more than $150,000, and the price tag on a new water-treatment plant is in the millions. Small communities must rely on government grants and low-cost loans, most experts said.

East Orosi is in line for federal money that has been dedicated to cleaning up water across the country.

But the problem is not just affecting public water systems, such as the one in East Orosi. Firestone cites a state study that last year revealed about two of every five private wells tested in Tulare County had nitrate contamination. About 180 private well owners volunteered for the study.

Tulare County's contamination appears to be far more widespread than in northern Central Valley counties where the State Water Resources Control Board tested private wells, state officials said.

Yuba, El Dorado and Tehama counties had a combined total of 11 wells with high nitrate levels. Tulare County had 75.

The most effective solution has been simply to pipe in river water, as Lindsay and Strathmore do, said consulting engineer Dennis Keller, who works for many area water districts. He has been involved in Tulare County ground-water issues for 36 years.

River water—also called surface water—must go through a treatment process before it can be used in homes. The price tag for water treatment in the Cutler-Orosi area would be about $16 million, Keller said.

"Over time, we've seen [public water] systems beginning to change over from ground water to surface water," he said. "We're studying the feasibility of building a treatment plant for Cutler, Orosi and the surrounding area."

Water center co-directors Firestone and Susana De Anda are working with Cutler-Orosi area residents to lobby for improvements.

Bertha Diaz, 37, of East Orosi has become active in the campaign.

Diaz spends $57 a month for water service, she said, and an additional $61.25 a month for bottled water so her four children can have safe drinking water.

The freeze last month created more misery for her family, depriving Diaz of work in the citrus industry. She said she receives about $300 in state assistance, which does not cover her family's bills.

"It is a heavy burden," said Diaz, a single parent of a blind child who has diabetes.

Other area residents said they are beginning to wonder whether contaminated water is connected to unexplained stomach ailments among children, cancer deaths and aborted pregnancies.

No medical studies have been conducted to show whether any of those East Orosi-area health problems are related to water contamination.

But nitrates have been linked with cancer, pregnancy risks and a blood disorder called methemoglobinemia, or "blue-baby syndrome."

Health experts said they have not received reports of blue-baby syndrome in the area.

The banned farm pesticide DBCP, or dibromochloropropane, also is a problem in east county wells.

The chemical, considered a cancer risk, can remain in ground water for many decades after being applied.

Geology also makes the east-county towns more susceptible to underground water problems, said Mark Bairstow, environmental health specialist for Tulare County.

East-side wells are shallower than wells to the west. There is less space for water in the soil between the ground surface and the bedrock below the Valley.

"You're getting higher concentrations of nitrates because there is less water," Bairstow said.

"As you move west, there's a larger volume of water."

Activists also suspect dairies might be fouling wells with nitrates.

Tulare County is the No. 1 dairy county in the nation, with more than 800,000 animals—twice the number of people who live in the county.

Authorities said nitrates can come from dairy waste, which soon will be more strictly regulated by the Central Valley Regional Water Quality Control Board.

But in East Orosi, authorities suspect the nitrate contamination comes from surrounding orchards and possibly private septic systems.

No one knows for sure, but Elijio Adame, 71, said he is tired of it.

"I've lived here since I was 13," he said. "It wasn't like this years ago. We need help now."

STATEMENT OF CANNON MICHAEL, LOS BANOS, CA

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

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

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

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

For those of us located in Reach 4b, having a voice in the restoration process is of vital importance. The San Joaquin River holds to a defined channel in its upper reaches, but historically it would spread into many "braided" channels as it reached the flat valley floor in our area. The flows called for in the Settlement are exponentially greater than the existing capacity of Reach 4b and could severely impact the families that live and farm along this stretch. S. 27: San Joaquin River Restoration Settlement Act, calls for the restoration's impact on Reach 4b to be studied carefully and completely prior to introducing any high level flows.

I understand that restoration of Reach 4B will cost in the range of $400 million. Cost-benefit is one measure that will have to be considered when studying the feasibility of using this reach of the river. It is important that you understand the challenge of moving fish through this reach. First of all, a sizeable amount of privately held land will have to be acquired in order to create a stream channel of sufficient width and depth to convey flow of at least 4500 cfs. The valley floor here is very flat and the water table is high, so highly engineered levees will be needed to protect the adjacent lands from surface and sub-surface flooding. The new stream channel will also need to be constructed in a fish friendly manner. Even after that, this stretch of river has little elevation change, the slow moving water will be warm—approaching 80 degrees during the summer, no matter how much is released from Friant Dam. Reach 4b will, at best, be a hostile environment for fish.

The San Joaquin River stretches for miles below the Friant Dam and every reach has its own unique characteristics. The proposed Restoration presents challenges for every mile of the San Joaquin and there are many landowners who will be affected. We all need a reliable water supply and our lands need to be protected from flooding. We are mindful of the experience of water agencies and farmers in our area regarding the federal government's failure to complete the San Luis drain. We do not want to see a repeat of a half-finished project in this restoration program. If our water supplier agencies are adversely affected, we will be too. Therefore, it is essential that adequate funds be appropriated and that the third parties have a place at the table to make sure this program is implemented in a manner that doesn't cause us harm.

In conclusion, this bill was crafted out of a collaborative effort by the parties to the litigation, state and federal agencies and the third party interests. This is the

same type of collaborative effort that will be needed if the restoration of the San Joaquin River can ever truly be a success. Any changes to this bill could potentially subvert the positive results that it represents. I respectfully ask that you do not entertain any changes to this legislation.

STATEMENT OF CHRIS ACREE, EXECUTIVE DIRECTOR, REVIVE THE SAN JOAQUIN, FRESNO, CA

Thank you for the opportunity to comment on S. 27 regarding the implementation of the Settlement Agreement. Revive the San Joaquin is a non-profit stakeholder organization representing citizens, community groups, and businesses that depend on the San Joaquin River as a vital public resource. The restoration Settlement Agreement marks a major shift in the management priorities for the river that will promote stewardship and balanced management to ensure the vitality of one of the State's most valuable natural resources. Support of this agreement will recognize an emerging spirit of cooperation within a region struggling to regain a healthy environment and build a vibrant economy.

Revive the San Joaquin is looking forward to the San Joaquin River Restoration Program (SJRRP) and the Public Involvement Plan as a means to begin open and constructive talks about how best to restore this valuable public resource. It is only through this type of technical coordination and public participation that we can begin to explore the benefits of a revived river system, and get past the misconceptions that keep our region divided and cut-off from our public resources. The SJRRP will be the first attempt to manage an already productive water supply system in a way that can realize mutual benefits for a wide variety of users.

The San Joaquin Valley is in the midst of a crisis over water as we inadvertently pollute and overdraft our groundwater aquifers and destroy the last remaining remnants of our riparian ecosystems. Returning water to the river channel will recharge aquifers more efficiently than any off-site recharge basin, and simultaneously revive river ecosystems. Without approval of the widely supported Settlement Agreement, we will pass up a monumental opportunity to improve our agricultural water supply, provide clean drinking water for communities, expand recreational opportunities, and reinvigorate an economy based on a lost and almost forgotten resource. Revive the San Joaquin promises to be involved in the restoration of this resource and contribute to the solutions that will build a stronger economy and a healthier environment.

STATEMENT OF CLIFFORD L. MARSHALL, CHAIRMAN, HOOPA VALLEY TRIBE, HOOPA, CA

For thousands of years the Hoopa Valley Tribe has resided on the Trinity River. The Trinity River is the focal point of our culture, religion and economy. In its natural course the river rises in the Trinity Alps, flows through the heart of our reservation in Humboldt County to its confluence with the Klamath River and then to the Pacific Ocean. With the Bureau of Reclamation's completion of the Trinity River division of the Central Valley Project (CVP) in 1963, the Trinity River has effectively become an artificial tributary of the Sacramento/San Joaquin watershed and the only source of imported water to the Central Valley. The construction and operation of the Trinity River division diverted up to 90 percent of the annual flow of the Trinity River through a tunnel into the Central Valley for use as far south as the San Joaquin Valley. For 45 years, that diversion has brought astonishing wealth to water and power beneficiaries in the Central Valley. It has also provided significant benefits to California and the Nation.

The price of that wealth was severe reductions in Trinity River fish populations and economic and cultural devastation to the Hupa people and the north coast communities who rely on the Trinity River. The seriousness of this situation is evidenced by the Secretary of Commerce's July 2006, declaration of a Fishery Resources Disaster for California's north coast and southern Oregon fishery under section 308(b) of the Interjurisdictional Fisheries Act of 1986 that includes the Trinity River fishery. The disaster was caused by severely reduced Klamath/Trinity River fall Chinook fish populations.

Decades of bipartisan effort by our Tribe and many others, supported by past and present members of Congress and successive Administrations, has produced critical legislation intended to restore our river and the natural environments elsewhere in California that have been severely damaged by the construction and operation of the CVP. The centerpiece of the restoration effort is the Central Valley Project Improvement Act (CVPIA) (Public Law 102-575 Title XXXIV, October 30, 1992, 106 Stat.

4706). The CVPIA establishes environmental restoration as a CVP project purpose and requires CVP water and power contractors pay for restoration costs.

My testimony addresses the relationship between the San Joaquin River restoration program that would be authorized by S. 27 and the Trinity River restoration program authorized by section 3406(b)(23) of the CVPIA. We support fishery restoration efforts generally in California. However, adoption of the San Joaquin River settlement should not come at the expense of, or in opposition to, the CVPIA's other environmental restoration provisions, particularly the Trinity River restoration program which is intended to protect fishery resources that the United States holds in trust for our Tribe. We are committed to work with the Department of the Interior and House and Senate members on a legislative plan that honors the trust responsibility, secures needed restoration funding, and assures timely implementation of restoration. We have discussed this with Interior Department representatives and believe that there is a path to fair and feasible protection of our tribal trust resources. We urge that S. 27 not be enacted until the legislation along the lines we have described for the Trinity River is in place.

The 2000 Trinity River Restoration Record of Decision (ROD)implemented section 3406(b)(23) of the CVPIA. It identified a suite of actions whose goal is effective restoration of fisheries critical to the Hoopa Valley Tribe and the economic stability of the fisher-dependent communities of northern California and southern Oregon. The ROD established an administrative infrastructure including an inter-governmental management council (Trinity Management Council (TMC)), and stakeholder advisory group to assist the Secretary with implementation. However, after six years of implementation, the program suffers for lack of sufficient funding that has compromised restoration science and program management.

In 2004, the TMC published its Trinity River Restoration Program Evaluation, Final Report (29 March 2004). Among its findings were that ROD implementation was being poorly documented, hindering the ability to assess the relationships between program outputs and resultant outcomes. Many of the findings were to be addressed by following specific recommendations made by a TMC sub-committee in June 2006. In March, regional officials for the Bureau of Reclamation and the U.S. Fish and Wildlife Service pledged to provide administrative solutions for the issues raised in the TMC report.

Chronic under-funding for the Trinity Program undermines that pledge, however. It has led to delays in construction of habitat projects; site construction will only be 40% completed relative to the ROD's benchmark for 2007. Under funding also has compromised collection of scientific data necessary to support the Adaptive Environmental Assessment and Management (AEAM) portion of the program mandated by the ROD. Under funding has stalled development of the Integrated Assessment Plan (IAP), the cornerstone of the Trinity River restoration science program's scientific component. Year after year the Tribe has taken stop gap measures to fund restoration. In the first seven months of Fiscal Year 2007 alone, the Tribe has advanced approximately $700,000 of its own funds to carry out key scientific components of the restoration program because funding was not made available by the Bureau of Reclamation in a timely fashion. In effect, the federal trustee's decisions not to request adequate funding in the budget process results in the tribal trust beneficiary assuming a burden that the CVPIA intended water and power contractors to bear.

We believe that S. 27 will have a substantial impact on the Trinity River restoration program and the fishery resources that the United States holds in trust for our tribe. Specifically, the San Joaquin settlement would affect the financial structure established in the CVPIA to fund environmental restoration programs identified in that act. Section 3406(b) identifies 23 discrete environmental restoration activities, one of which is the Trinity River restoration program, section 3406(b)(23). The Trinity River restoration program was developed over the course of decades, adopted by the Secretary of the Interior with the concurrence of the Hoopa Valley Tribe in 2000, and judicially confirmed following challenges by CVP water and power contractors, who now stand to benefit from S. 27 at the expense of Trinity River restoration.

The linchpins of the CVPIA's financing mechanism for environmental restoration are appropriations to the Bureau of Reclamation's Water and Related Resources account and the CVPIA Restoration Fund established by section 3407 of the CVPIA. The CVPIA identifies a number of revenue sources to be deposited into the CVPIA Restoration Fund, including charges assessed to water and power contractors. With respect to the CVPIA Restoration Fund, the CVPIA requires the Secretary of the Interior (Secretary) to collect assessments for the CVPIA Restoration Fund sufficient to make available $50,000,000 annually on a three-year rolling average basis (October 1992 price levels). Once the fish and wildlife restoration activities identified in

section 3406(b) of the CVPIA are completed, the three-year rolling average balance in the CVPIA Restoration Fund is to be reduced to $35,000,000 and the payment ceiling for water and power users reduced to $15,000,000.

Section 3406(c) of the CVPIA specially provides for the development of a fishery restoration program for the San Joaquin River between Friant Dam and the Mendota Pool. During the program's development the CVPIA directed the Secretary not to release any Friant Division water for restoration purposes. Instead, the CVPIA imposed a surcharge on Friant water use, which was deposited into the CVPIA Restoration Fund. The Friant surcharge and CVPIA Restoration Fund charges paid by CVP water and power contractors are treated as offsets against, not limits on, the contractors' cost share obligations created by the CVPIA. See sections 3407(a) and (b).

The San Joaquin settlement involves litigation that has been pending for 18 years. *Natural Resources Defense Council* v. *Kirk Rodgers,* Civ. No. S-88-1658-LKKIGGH (E.D. Calif.). Although the litigation predates enactment of the CVPIA, the proposed settlement is integrally involved with the CVPIA and would affect the CVPIA's key provision for financing environmental restoration, including Trinity River restoration. Nonetheless the Tribe was never given an opportunity to participate in or even observe the negotiations. Section 7 of the San Joaquin settlement stipulation, which was filed in federal court in September 2006, states that it will benefit third parties who use San Joaquin River or Sacramento-San Joaquin Delta water. Section 7 also states that the settlement parties have neither the intention nor belief that the settlement will adversely affect third parties. However, after the settlement was finalized and made public, the Tribe raised the funding impact issue and the Department of the Interior concluded that the San Joaquin settlement will harm third parties including the Hoopa Valley Tribe and other beneficiaries of the Trinity River Restoration program by causing annually up to a 25 percent reduction in funds available from the CVPIA Restoration Fund. This impact results from the accounting provision in section 7 of S. 27 by means of which the extended Friant surcharges, though deposited into the San Joaquin River Restoration Fund, will be credited as if they had been deposited into the CVPIA Restoration Fund. The CVPIA provides that upon the termination of the Friant surcharge the water and power contractors will be obligated to fill the gap in receipts to the CVPIA Restoration Fund with increased assessments up to the statutory ceiling in section 3407 of the CVPIA.

Section 7 of S. 27 was included at the behest of some third party CVP water and power contractors who represented that the CVPIA did not anticipate the termination of the Friant surcharge and that the attendant increase in CVPIA Restoration Fund charges to water and power contractors was inadvertent and unintended. The text of the CVPIA contradicts that suggestion. Moreover, if financing for CVPIA environmental restoration is modified according to section 7 of S. 27, third party CVP contractors will reap a financial windfall and a key funding feature of the CVPIA's environmental restoration program will be nullified. The reduction in CVPIA restoration funding that would result from S. 27 comes at a time when the restoration programs identified in section 3406(b) of the CVPIA, including the Trinity River program (3406(b)(23)), are experiencing substantial funding reductions and substantial delays in implementation. The consequences have been severe. In some cases, recent budgets have produced funding at less than 50% of program needs.

The reduction in funding that would be caused by enactment of S. 27 will create a conflict of interest between the Secretary's fiduciary duty as trustee for tribal fishing rights in the Trinity River and the interests of water and power contractors in the Friant Division. This conflict is set forth in the stipulation for settlement of the San Joaquin litigation. Section 30 states that if any third party challenges "the terms and conditions of the settlement, Plaintiffs and the Friant Parties agree to cooperate with the Federal Defendants in a vigorous defense of such action as necessary." This essentially puts the United States in opposition to its fiduciary responsibility to the Hoopa Valley Tribe. Moreover, it requires the federal trustee to stand in conflict with its tribal beneficiary on an issue of fishery restoration that also affects thousands of non-Indians who are dependent on fishing. This commitment by the United States to the San Joaquin settlement is in direct conflict with judicial conclusions on the government's duty to Trinity River restoration:

> As a part of its harms-balancing analysis, the district court concluded that "the government is also in breach of its general and specific independent federal trust obligation to the Hoopa and Yurok Tribes." Order, 275 F. Supp. 2d at 1232. It also stated that the purpose of the CVPIA § 3406(b)(23) was to "fulfill[] the federal government's trust obligation to the Indian Tribes." Id. at 1234. These statements are significant in that they

provide support for the court's order implementing portions of the Preferred Alternative as injunctive relief.

Westlands Water Dist. v. *U.S. Dept. of Int.,* 376 F. 3d 853, 877 (9th Cir. 2004).

Regarding Pay-As-You-Go (PAYGO), the Tribe understands and support the concepts of this initiative and its goals of dealing with a requirement to make the Federal Government operate within its means. However, I am very concerned that this initiative may have negative and unintended consequences to fulfilling federal trust obligations that the United States owes to Indian tribes. This seems to be exactly the problem that we are experiencing regarding restoring the Trinity River fishery resources that is required by law. PAYGO effects as they relate to Indian trust obligations must be kept in the proper context. Water-related breach of trust issues were almost always the result of improper exploitation and over allocation of water resources, as in the case of the Trinity River. There is no doubt that the United States, the State of California, private water and power contractors and the citizens of the Nation gained tremendous benefits and wealth from the diversion of Trinity River flows to California's Central Valley. Unfortunately, the very Congressionally-mandated standards to protect the fishery resources of the Trinity River as a condition of diverting annual flows to the Central Valley were violated year after year by federally-authorized water diversions. It is clear from the administrative records of the Trinity River Division that, while Congress only authorized slightly more than half of the annual flows be diverted, in fact as much as 90% of the annual flows were diverted to the Central Valley. Only after decades of studies, Indian legal challenges and even legal challenges by water and power contractors, in 2000 actions were taken to restore 47% of the annual flows and to carry out critical habitat restoration activities needed to restore the fishery to pre-Trinity River Dam levels.

Despite the fact that section 3406(b)(23) is the only Indian trust provision in the CVPIA and that the ROD approved between the Tribe and the United States in 2000 identifies a minimum funding level of $14 million annually (in February, the Bureau of Reclamation revised the funding need to approximately $16.5 million) to fulfill the federal trust obligations to the Tribe, only half the funding has been made available for this obligation. Instead, appropriations and funding generated by Trinity flow diversions has been primarily spent on activities in the Central Valley. Now, PAYGO seems to be the most recent excuse not to restore the Trinity River fishery or fulfill the federal trust obligations to our Tribe. PAYGO was never intended to become a mechanism to undermine or set aside the Federal Government's trust obligations to Indian tribes but this seems to be the result. If PAYGO is applicable to Trinity River fishery restoration activities then it must be applied based on a standard of providing appropriated funding for the federal trust obligations first. This is the only way that the United States can continue to honor and enforce its federal trust obligations to Indian tribes.

The Subcommittee's attention to this testimony is appreciated. If you have questions or are in need of further information please contact me at the above address.

STATEMENT OF KOLE UPTON, CHAIRMAN, FRIANT WATER USERS AUTHORITY AND DIRECTOR, CHOWCHILLA WATER DISTRICT

Madam Chairman and members of the subcommittee, it is an honor and privilege to appear before this Committee and testify on the San Joaquin River Restoration Settlement in support of the San Joaquin River Restoration Settlement Act, S. 27. I am Kole Upton, Chairman of Friant Water Users Authority, a Director of the Chowchilla Water District and a family farmer in Merced and Madera counties, California. My family for decades has relied on, and beneficially used, Central Valley Project water delivered from Friant Dam to grow food and fiber for the people of the world.

Along with Mr. Daniel M. Dooley, a partner in Dooley Herr & Peltzer, LLP, I was a principal negotiator of this Settlement resolving the 18-year-old lawsuit known as NRDC, et al. v. Rodgers, et al. Mr. Dooley recently testified before the House of Representatives on this Settlement and his written testimony is included as part of my written submission. Mr. Dooley is with me today and is available to respond to questions regarding the Settlement.

The Friant service area consists of approximately 15,000 mostly small family farms on nearly one million acres of the most productive farmland in the world along the southern San Joaquin Valley's East Side. The Friant Division also has one and one quarter million people embedded in the cities within its service area. The surface water from Friant Dam sustains the underground aquifer necessary for continued the viability of these cities. Friant water is also delivered directly to some of the cities and towns, such as Fresno, Friant, Orange Cove, Lindsay, Strathmore,

and Terra Bella. The Friant Water Users Authority consists of 22 of the agencies that receive water from the Friant Division of the Central Valley Project.

BACKGROUND

Why would negotiators for the Friant service area agree to a Settlement giving up so much of this precious water and costing society so much money? I will try to put the situation in the context of the options available to us.

First, previous negotiations with the coalition of environmental plaintiffs that initiated the San Joaquin River litigation 18 years earlier had broken down several years ago. The primary cause from our perspective was "lack of certainty." For our communities and farms, it is imperative that we have a reasonable certainty of receiving enough surface water to grow our crops and sustain our communities. We were unable to obtain that certainty in the previous negotiations.

Therefore, the case returned to U.S. District Court Judge Lawrence K. Karlton. He indicated some impatience with the length of time being taken to resolve this case and scheduled a trial to beginning February 14, 2006. He made several rulings and comments indicating that it was not a case of whether he would order water released from Friant Dam, but of how much water. Judge Karlton also ruled that the resulting fishery must resemble the historic San Joaquin River fishery. This meant water releases from Friant Dam would, of necessity, have to be sufficient to maintain a self-sustaining salmon fishery. Our experts felt this would result in a loss of approximately one third of our historical supply.

The Judge's opinion affirmed the environmental coalition's position in the previous failed negotiations in which the plaintiffs were adamant that the solution to the case required re-establishment of a salmon fishery. We had suggested an extension downstream of the current warm water fishery that exists nearly 40 miles below Friant Dam. This option would have required far less water, and a fraction of the cost that will be required to re-structure the river for salmon restoration. However, the environmental coalition rejected this suggestion and the Judge affirmed its position.

Thus, we prepared to go to trial and find out how bad the judgment would be. Senator Feinstien and Congressman Radanovich stepped in to this scenario and suggested we try once more to work out a compromise with the environmental plaintiffs. They added a condition of "capping" required flows as part of the negotiations. Both sides agreed to the condition, and the negotiations proceeded. What you have before you today is the product of those efforts.

On September 13, 2006, the Friant Water Users Authority, Natural Resources Defense Council and U.S. Department of the Interior cooperatively reached agreement on the San Joaquin River Restoration Settlement. Congressional action is required to implement the Settlement.

THE SETTLEMENT AGREEMENT

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

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

Mr. Dooley thoroughly covers both of these goals and the legal parameters for both in his written comments that are included as an additional submission with my testimony. Senator Feinstein also requested our program for mitigation measures and it is also included as part of my written submission.

I would like to concentrate on the importance of the effective implementation of the Water Management Goal to the San Joaquin Valley and its future. There are two parts of the Water Management Goal: One is re-circulation, and the other is the Recovered Water Account (RWA). In order for both of these techniques to be effective tools for mitigating our losses, they must have the full support and commitment from the appropriate federal agencies and the settling parties. This must be a long-term commitment that can transcend changes in administrations and personnel.

It would be of great comfort to our Valley if we could get a realistic estimate from the appropriate agencies of the approximate mitigation potential of both of these water management tools. Should either or both of these tools prove to be ineffective, it may be necessary to consider more draconian options, such as land fallowing, in order to achieve salmon restoration without inflicting economic and social chaos on the communities and residents along the southern San Joaquin Valley's East Side.

MITIGATION MEASURES NOT AVAILABLE

As negotiators for the Friant interests, Mr. Dooley and I are frequently questioned as to why we ended up with this Settlement, and why other options were not considered or included. I previously covered the rejection of the warm water fishery option, and now will address the other major question—why new surface water storage was not a part of the Settlement.

Why was a new dam, such as that currently being studied for a site known as Temperance Flat above Friant Dam and Millerton Lake, not considered as part of the solution?

Would not such a dam provide significant water for mitigating the losses? Would not such a dam also provide more cold water for longer durations enhancing the potential for successful salmon restoration? Would not a new dam provide drought protection for subsequent year salmon runs? Would not a new dam provide the flood protection for the enormous investment society is being asked to make to re-structure the San Joaquin River for salmon restoration? Would not a new dam provide additional funding by enabling the government to fulfill existing contract shortages with water now lost because of the small size of Friant Dam and Millerton Lake?

In my opinion, the answer to all the above questions is a resounding, YES! However, the environmental coalition adamantly rejected this option early in the process and indicated the plaintiffs would not continue negotiations if we demanded inclusion of a new dam.

CONCLUSION

So, I appear before you today with the only option available to us other than the expected U.S. District Court ruling from Judge Karlton. This option requires Congressional implementation. Under the terms of the Settlement and the subsequent agreement in Senator Feinstein's office, no change can be made to the Settlement unless there is unanimous consent by all of the parties.

I urge the Committee to move forward on this legislation. Thank you for the opportunity to submit written testimony, and I would be happy to respond to questions.

[PRESS RELEASE]

HON. GRACE F. NAPOLITANO, U.S. REPRESENTATIVE FROM CALIFORNIA

NAPOLITANO COMMENDS PASSAGE OF FISCALLY RESPONSIBLE BUDGET RESOLUTION ADDRESSING HISTORIC RIVER RESTORATION

Washington, DC—Rep. Grace F. Napolitano (D-Norwalk) today voted to approve a 2008 budget resolution through the passage of the conference report on S. Con. Res. 21. The House and Senate have each now approved the Budget Resolution Conference Report, laying appropriate groundwork to begin passage of the necessary budget bills for 2008 and beyond.

"We have passed a budget blueprint that we can be proud of, providing tax cuts to middle-class families, reducing the deficit, following 'pay as you go' principles, and balancing the budget in just five years. It invests in the future though innovation in energy independence, education for our children, and recognition of critical environmental concerns," explained Rep. Napolitano.

Rep. Napolitano, Chair of the House Natural Resources Subcommittee on Water & Power, is especially pleased that the Budget Resolution includes language to help ensure the passage of the San Joaquin River Settlement Act, H.R. 24. Enacting H.R. 24 means that the San Joaquin River, the second longest river in California, will once again have the water it needs to support a viable salmon fishery.

The language included in S.Con.Res.21 will make it easier for Congress to secure funds to pay for the fishery restoration and water management goals outlined in H.R. 24 by giving Congress more options to identify where the funding source would come from.

The Democratic Budget resolution passed also includes the groundwork for the following:

- Balances the budget in five years.
- Strengthens our national security with a commitment to military readiness, historic investments in veterans' health care, better homeland security, and ending waste, fraud and abuse at the Defense Department.
- Provides health care for millions of additional uninsured children.
- Increases education funding by 7 percent.

- Expands renewable energy and energy efficiency to reduce global warming and dependence on foreign oil.
- Protects 20 million middle-income American families this year from a tax increase and makes way for a long-term fix for the Alternative Minimum Tax (AMT).
- Accommodates fiscally responsible middle-class tax cuts, including the child tax credit and marriage penalty relief.

[ENVIRONMENT & ENERGY DAILY, MAY 4, 2007]

LUCY KAFANOV, *E&E Daily* Reporter

WATER: SAN JOAQUIN RIVER RESTORATION PLAN COULD FALL APART, WITNESSES WARN

California's two senators were joined yesterday by a coalition of environmentalists, farmers and other parties in urging Congress to pass legislation that would restore much of California's San Joaquin River and its threatened spring-run Chinook salmon.

Speaking before a hearing in the Energy and Natural Resources Committee, witnesses yesterday stressed that speed is of the essence when it comes to enacting S. 27, which would implement a settlement agreement reached late last year by the Natural Resources Defense Council, the Friant Water Users Authority and the departments of Interior and Commerce that ended 18 years of litigation between farmers and environmental interests.

"If we do not pass this legislation, and the settlement is not enacted, then the future of the San Joaquin won't be charted by the people who use its water," said Sen. Dianne Feinstein (D-Calif.), the author of the bill. "It will be decided by a judge who will demand that far more water be released than is envisioned by the current settlement agreement, with far less certainty on how it will be used."

In an interview outside the hearing room, NRDC's senior attorney Hal Candee elaborated on Feinstein's point.

"Any party can dissolve the entire settlement if the legislation is not passed," Candee said. "But more seriously, if the funding is not made available . . . the federal government may be constrained in how much they can start implementing without additional funding."

Moreover, the state of California made its funding contingent on Congress passing the bill, Candee said. And the California Legislative Analyst's Office suggested that state lawmakers zero out all state funding, even though it has been committed, until Congress acts.

"There is a concern in California that the federal government is not always a reliable partner," Candee added. "The clear message coming back from the state Legislature is that if Congress doesn't pass this by next year, it will be very hard to justify continued state funding."

Some initial funding already exists for the federal government to work with California to initiate planning and environmental review activities, said Bureau of Reclamation's Assistant Secretary for Water and Science Mark Limbaugh.

PAYGO CONCERNS

Feinstein and Rep. George Radanovich (R-Calif.) introduced identical legislation in the 109th Congress, but lawmakers ran out of time to move the bill. The House Natural Resources Committee already looked at Radanovich's H.R. 24, while the Senate Water and Power Subcommittee took up Feinstein's bill yesterday.

While there has been almost no opposition to the legislation, some have questioned why passing the legislation is taking so long.

According to one source involved with the agreement, the committees had meant to take up the bills earlier but were waiting for the Congressional Budget Office to release its score of the bill amid PAYGO concerns.

When CBO finally released its analysis last month, it estimated the legislation would cost the federal government some $500 million over the next 19 years.

Under House PAYGO rules, which require offsets for increases in direct spending or decreases in revenue, lawmakers will have to find $240 million over the next decade to make up for the cost of implementing this legislation. Specifically, this means finding offsets for the $217 million in direct spending authorized by S. 27 and $23 million in lost revenues to the government over the same period of time.

While Limbaugh testified in support of the legislation, Corker expressed some concern about sustained funding for the agreement, asking Limbaugh whether the

Bush administration is willing to budget the amounts necessary to see the program through.

"I can't commit to additional budgets, but I can commit to supporting the terms of the settlement and supporting the authorization of the settlement through this legislation," Limbaugh said.

AN 18-YEAR BATTLE

The settlement was filed with the U.S. District Court for the Eastern District of California in September and requires federal legislation to become fully effective.

The San Joaquin River historically supported large salmon populations, but since the late 1940s, approximately 60 miles of the river have dried up, a trend the settlement-legislation hopes to reverse. The river's water depth was artificially lowered by the Bureau of Reclamation's Friant Dam, built in the 1940s to stimulate the San Joaquin Valley's agricultural growth. But it also dried up portions of the San Joaquin River in western Merced and Fresno counties and resulted in a dramatic decline in the salmon population that once flourished there.

Some 15,000 farms—which grow everything from citrus to tree fruits to grapes and almonds—rely on the Friant Dam water.

Third-party groups—including the Westlands Water District in Fresno and the San Joaquin River Exchange Contractors Water Authority—have expressed concern they would end up footing part of the bill for river channel improvements if the legislation goes through. Third parties are also concerned about potential liability under new Endangered Species Act burdens resulting from the reintroduction of the threatened spring-run chinook.

The San Joaquin is the state's second longest river and helps irrigate about 1 million acres of Central Valley farm land. The Sacramento-San Joaquin River Delta provides drinking water to more than 22 million people.

The settlement proposes restoring 153 miles of the San Joaquin River from Friant Dam to south of Stockton, requiring water releases in amounts that will help meet the various life stage needs of spring and fall run Chinook salmon. This means that the dam could release some 250,000 acre-feet of water in most dry years and more than 500,000 in wet years. One acre-foot is equivalent to 326,000 gallons, or roughly enough to meet the annual drinking water needs of five people.

Fishing advocates and environmentalists sued Reclamation in 1988 when water users' contracts came up for renewal. The suit alleged that Friant contracts violated California Fish and Game code, NEPA and ESA and sought to divert water from the Friant water users to restore the river for salmon runs.

SIERRA CLUB,
San Francisco, CA, July 20, 2007.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.

DEAR SENATOR BINGAMAN: We are writing to express our strong support for S. 27, the "San Joaquin River Restoration Settlement Act," and to urge you to move this bill as quickly as possible to a full Committee vote and to the Senate floor for final consideration. Enactment of S. 27 will initiate one of the largest environment restoration projects ever undertaken in the West.

This consensus legislation has widespread and bipartisan support from federal agencies, state agencies, farmers, conservation groups and numerous urban and agricultural water districts. The legislation is needed to authorize and approve a landmark Settlement agreement between the parties to NRDC v. Rodgers, an eighteen year case concerning the restoration of flows and native salmon populations to the San Joaquin River, the second longest river in California.

The settlement was approved by the federal court in October 2006 and the parties have been seeking Congressional authorization since last fall when the legislation was first introduced by Senators Feinstein and Boxer and Representatives Radanovich, Pombo, Miller, Napolitano, Costa and Cardiza. We are very concerned that lack of congressional action on the measure this summer could significantly delay implementation of the Settlement and the restoration of flows and fish in the River, as well as jeopardize over $100 million in State cost-sharing that has been pledged pending congressional approval of the Settlement. Further, failure to approve the legislation could jeopardize the protections currently provided for third parties and downstream interests that are not fully incorporated into the Settlement itself but were negotiated by the third parties under the auspices of Senator Feinstein, Rep-

resentative Radanovich and others for inclusion within the authorizing legislation. None of these requirements will remain in place if S. 27 is not enacted into law.

Many of the Settling Parties and affected third parties were among the witnesses invited to testify before the Subcommittee on Water and Power of the Senate Committee on Energy and Natural Resources on May 3, 2007. That hearing reconfirmed the strong, widespread and bipartisan support for the legislation and included testimony by the State of California reiterating its commitment of considerably more than $100 million of State funds to help with Settlement implementation once Congress approves S. 27.

For all of these reasons, we urge you to support and quickly approve S. 27. Thank you.

Sincerely,

GREG HAEGELE,
Conservation Director.

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