

# MISCELLANEOUS WATER BILLS

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
OF THE  
COMMITTEE ON  
ENERGY AND NATURAL RESOURCES  
UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

ON

**S. 1757**

**S. 1758**

**S. 1759**

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NOVEMBER 5, 2009



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# CONTENTS

## STATEMENTS

	Page
Bennett, Hon. Robert F., U.S. Senator From Utah .....	8
Boxer, Hon. Barbara, U.S. Senator From California .....	6
Candee, Hamilton, Altshuler Berzon LLP, Representing Grassland Water District, San Francisco, CA .....	29
Connor, Michael L., Commissioner, Bureau of Reclamation, Department of the Interior .....	11
Feinstein, Hon. Dianne, U.S. Senator From California .....	3
McIntyre, Martin R., General Manager, San Luis Water District, Los Banos, CA .....	20
Stabenow, Hon. Debbie, U.S. Senator From Michigan .....	1

## APPENDIXES

### APPENDIX I

Responses to additional questions .....	41
---	----

### APPENDIX II

Additional material submitted for the record .....	55
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## MISCELLANEOUS WATER BILLS

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THURSDAY, NOVEMBER 5, 2009

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

The subcommittee met, pursuant to notice, at 2:35 p.m. in room SD-366, Dirksen Senate Office Building, Hon. Debbie Stabenow presiding.

### OPENING STATEMENT OF HON. DEBBIE STABENOW, U.S. SENATOR FROM MICHIGAN

Senator STABENOW. It's my pleasure to call the subcommittee to order. Our Ranking Member Senator Bennett will be joining us right now. Welcome. That's wonderful. That was great timing.

Senator BENNETT. Thank you.

Senator STABENOW. Some great timing. It's my pleasure to welcome everyone to the hearing today. We have 3 separate bills pending before the subcommittee.

Senator Bennett is here as our ranking member. We'll hear about 2 bills that he is sponsoring. In addition we're very pleased to have Senator Feinstein, Senator Boxer here with us today, who have introduced a bill and will speak to the committee about that bill as well.

Our bills today cover several different subjects in the area of water resources management.

S. 1757 introduced by Senator Bennett will allow the prepayment of amounts due to repay the United States for construction costs relating to a portion of the central Utah project.

A second bill is Senator Bennett's and Senator Hatch's will reallocate certain costs associated with the development of hydroelectric power within the Bonneville unit of the central Utah project.

S. 1759 introduced by Senator Feinstein and Senator Boxer relating to transfers of water between water contractors within the Central Valley project in California.

So we look forward to your testimony. I now turn it over to Senator Bennett for his comments.

Senator BENNETT. Thank you, Madame Chairman. I will withhold, in deference to our 2 colleagues who are here. Let them talk about their bills first, or their bill. Then I'll launch into the fascinating description of the intricacies of the Central Utah project after they're through.

Senator STABENOW. Alright. We will take that. We're pleased to have Senator McCain here as well. If you had a brief opening comment, we would welcome that as well.

Senator MCCAIN. No, Madame Chairman. I thank you for having this hearing. I thank our witnesses.

This is a real emergency crisis in California of proportions the likes of which we have not seen in that State. Arizona and California share many challenges and water is one of them. This situation argues for action as quickly as possible.

I thank you for holding the hearing. I appreciate the witnesses, all of them, being here today.

Senator STABENOW. Thank you. Let's begin with Senator Feinstein. Welcome.

[The prepared statement of Mr. Costa follows:]

PREPARED STATEMENT OF HON. JIM COSTA, U.S. REPRESENTATIVE FROM CALIFORNIA,  
ON S. 1759

On October 7, 2009, I joined with Congressman Cardoza in the House of Representatives and Senators Feinstein and Boxer in the Senate to introduce the "Water Transfer Facilitation Act of 2009." This legislation builds upon and makes permanent the language that we passed in the Energy and Water Appropriations bill, which was originally limited to only two years. The Water Transfer Facilitation Act of 2009 is one step in a host of efforts to bring more water to the San Joaquin Valley amidst of a three-year drought and ongoing water crisis. Given the severity of California's water crisis and the need for short-term solutions to prepare for the coming growing season., I thank Chairwoman Stabenow for moving quickly to hold this hearing and I am pleased to participate by submitting this testimony today.

The immediate impacts of the Delta smelt biological opinion have directly contributed to the devastation of the Westside of the San Joaquin Valley in my Congressional District. Water supply reductions coupled with an economic downturn has led to overwhelming unemployment in Valley cities, reaching as high as 30% and 40%. With tens of thousands of jobs lost and approximately 500,000 acres of some of our nation's most productive farmland fallowed, the Westside has been absolutely devastated. Given that this region supplies the nation with nearly half of its fresh fruits and vegetables, this is a crisis that not only threatens our local communities, but also the security of our nation's food supply. Of equal concern to the farmers and farmworkers in the San Joaquin Valley is the shadow of the salmon, green sturgeon and steelhead biological opinion that will reduce future water deliveries, and the livelihood they depend on.

This legislation is intended as a critical lifeline to reduce unnecessary delays in water transfers at a time when San Joaquin Valley farmers have been hardest hit by water supply reductions due to both changes in hydrology and regulatory restrictions. It would allow for new water transfers of an estimated 250,000 to 300,000 acre-feet of water per year, depending on the water year. The bill would grant the Bureau of Reclamation the authority to approve voluntary water transfers between sellers and buyers within the Valley. It would also streamline environmental reviews for water transfers by ensuring that they occur on a programmatic basis, instead of the current project-by-project basis.

Transferring water between and within counties is a vital tool for water districts and individual farmers during periods of drought. While I have consistently maintained that the best solution would be to have the federal and state pumps fully operational, the inflexibility of the Endangered Species Act has left us with limited solutions until it can be successfully modified. This legislation makes permanent the ability to transfer water to our Valley's farms when it is most needed, therefore providing our farmers with interim solutions and allowing them to continue to grow crops and support our local economy. More will need to be done to protect the Valley's water on a short, mid, and long-term basis, and I will continue that fight.

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

Senator FEINSTEIN. Thank you very much. I appreciate being able to do this promptly as does Senator Boxer because I have to chair Intelligence at 3. I know she has commitments as well. So thank you very much.

Senator Bennett, good to see you again and Senator McCain as well.

The bill, this bill which is co-sponsored by Senator Boxer would facilitate additional water transfers of up to 250,000 to 300,000 acre feet in California's Central Valley which has been particularly hard hit by prolonged drought. It does so by granting new authority to the Bureau of Reclamation to approve voluntary water transfers. By simplifying and expediting environmental reviews for Central Valley water transfers.

I think this is a reasonable and timely way to mitigate the most important impacts of a water crisis in California. California is in its third year of a prolonged drought primarily caused by depleted seasonal rainfalls. Right now key supply reservoirs are at 42 percent of capacity. The forecast for next year's runoff are very uncertain and not good.

At the same time restrictions have been put in place that limit how much water can be sent south through the Sacramento-San Joaquin delta pumps because of concerns about endangered and threatened species in the delta. This summer agricultural users on the west side of the San Joaquin Valley, these are the most junior water rights holders, received only 10 percent of their allocation from the Federal Central Valley project. That's the lowest ever in history.

This week California legislators finally approved a viable water bond and a package of bills to address the water infrastructure problems of the State. Now that's a breakthrough. But it's going to take time. But the valley can't wait for a long term solution.

The one thing we can do and I think without litigation or harassment in the short term is to facilitate voluntary water transfers. Moving water from those regions in the valley, generally the east side that have extra water to those that need it most, namely the west side. This past summer some water users in the San Joaquin Valley received their full allocation of Federal water while others, particularly those on the west side, had to fallow fields and cut down trees because there wasn't enough water to sustain crops.

Westlands Water District for example, comprises more than a half a million acres of some of the most productive farmland in the country. But more than half, 220,000 acres were fallowed last summer. To date, the Bureau of Reclamation has authorized transfers of 600,000 acre feet of water around the Central Valley.

But more could have been available had the agency developed a more efficient process for considering and improving voluntary transfers. That's what this bill would do. There are 3 key parts.

The first would provide new authority for the Bureau to permit San Joaquin Valley water transfers. It removes 2 restrictions from the CVPIA, California Valley Project Improvement Act, for transfers of water. Those restrictions unnecessarily limit the amount of

water people can transfer even if they were all in the San Joaquin Valley or within the same division of project contractors.

This legislation eliminates those obstacles and allows those transfers to occur. So that water can be moved back and forth based on need, provided all other conditions of the CVPIA and other environmental laws, are met. These conditions are already waived for transfers within the same watershed. The Bureau estimates that this first provision could make up to 100,000 to 150,000 acre feet of water available for transfer.

The second key provision directs Interior to facilitate transfers throughout the Central Valley by doing programmatic environmental review rather than individual review on each transfer which only holds everything up. If you can evaluate it environmentally as a program, that makes the best sense. This past year the process was so complicated and uncertain that many water users just simply didn't apply for transfers. We need to ensure that willing sellers are not kept from willing buyers by red tape.

The Bureau has already committed to address this. And this bill ensures that it does so expeditiously without waving any environmental laws. Water users and Reclamation estimate that this provision could facilitate up to 150 to 200,000 acre feet of transfers a year.

The third and final provision requires the Department to make recommendations on how to facilitate future water transfers more efficiently and expeditiously.

Now I know that transfers alone cannot provide the entire solution. They're costly. They're still constrained by pumping restrictions, State law and the very real limits of our water supply infrastructure.

Yet, I really believe this legislation will provide much needed help at a time of great hardship and controversy. It is supported by many water users including and I'd ask that these letters, Madame Chairman, be put in the record.

Senator STABENOW. Without objection.

Senator FEINSTEIN. The San Luis Water District, The Conaway Preservation Group, The Westlands Water District, Reclamation District 2035 out of Woodland, California, The Association of California Water Agencies, The San Joaquin River Exchange Contractors, The San Luis and Delta Mendota Water Authority, The Banta Carbona Irrigation District, The Northern California Water Association, The Tehama Colusa Canal Authority, Friant Water Users, which is a main source of water transfer, Glen Colusa Irrigation District and 2 page letter, again Friant.

So if those could go in the record I would appreciate it very much.

Senator STABENOW. Without objection.

Senator FEINSTEIN. Now, just to conclude this is, in my view, after spending a great deal of time on this and other areas of water in California the most prudent thing we can do to handle a problem that may be more exacerbated next year. It's viable. It's voluntary transfers. It's from people who have enough water who are willing to transfer it to those who do not.

So there should be no objection to this legislation as a very practical kind of no nonsense way to facilitate water use in a valley that's really hard pressed as Senator McCain correctly stated.

[The prepared statement of Senator Feinstein follows:]

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

Chairman Stabenow, Senator Bennett and Members of the Subcommittee, let me thank you for holding a hearing on the "Water Transfer Facilitation Act."

This bill, which is cosponsored by Senator Boxer, would facilitate additional water transfers of up to 250,000 to 300,000 acre-feet in California's Central Valley—which has been particularly hard hit by the prolonged drought. It does so by granting new authority to the Bureau of Reclamation to approve voluntary water transfers, and by simplifying and expediting environmental reviews for all Central Valley water transfers.

I believe that this is a reasonable and timely way to mitigate the most urgent impacts of the water crisis in California. And I appreciate the opportunity to brief you on this critical bill.

THE PRESENT WATER SHORTAGE

California is in the third year of a prolonged drought, primarily caused by depleted seasonal rainfalls. Right now, key supply reservoirs are at only 69 percent of average and 42 percent of capacity. And the forecasts for next year's runoff are very uncertain.

At the same time, restrictions have been put in place that limit how much water can be sent south through the Sacramento-San Joaquin Delta pumps, because of concerns about endangered and threatened species.

This summer, agricultural users on the west side of the San Joaquin Valley—the most junior water rights holders—received only 10 percent of their allocation from the federal Central Valley Project, the lowest ever.

This week, California legislators finally approved a viable water bond and a package of bills to address California's water infrastructure problems. This was a major breakthrough. But the Valley can't wait for a long-term solution—they need help now.

WATER TRANSFERS CAN HELP

One thing we can do to help in the short-term is facilitate voluntary water transfers, moving water from those regions in the Valley that have extra water to those that need it most.

This past summer, some water users in the San Joaquin Valley received their full allocation of federal water, while others, particularly those on the Westside, had to fallow fields and cut down trees because there wasn't enough water to sustain crops. Westlands Water District, for example, comprises more than 500,000 acres of some of the most productive farmland in the country, but more than 220,000 acres were fallowed last summer.

To date, the Bureau of Reclamation has authorized transfers of 600,000 acre-feet of water around the Central Valley—but more could have been available had the agency developed a more efficient process for considering and approving transfers.

And that's exactly what this bill would do.

WAIVING RESTRICTIONS

There are 3 key parts to the legislation.

The first provision would provide new authority for the Bureau of Reclamation to permit San Joaquin Valley water transfers. It removes 2 restrictions from the Central Valley Project Improvement Act for transfers of water. Those restrictions unnecessarily limited the amount of water people could transfer even if they were all in the San Joaquin Valley, or within the same Division of project contractors.

This legislation eliminates those obstacles, and allows these transfers to occur, provided all the other conditions in the Central Valley Project Improvement Act and other environmental laws are met. These conditions are already waived for transfers within the same watershed.

The Bureau of Reclamation estimates that this first provision could make up to 100,000 or 150,000 acre-feet of water available for transfer.

## EXPEDITING AND STREAMLINING ENVIRONMENTAL REVIEW

The second key provision directs Interior to facilitate transfers throughout the Central-Valley by doing programmatic environmental review, rather than individual review on each transfer (as is current practice).

This past year, the process was so complicated and uncertain that many water users didn't apply for transfers. We need to ensure that willing sellers are not kept from willing buyers by red tape. The Bureau has already committed to address this. This bill ensures that it does so expeditiously without waiving any environmental laws.

Water users and Reclamation estimate that this provision could facilitate up to 150,000 or 200,000 acre-feet of transfers each year.

The third and final provision requires the Department to make recommendations on how to facilitate future water transfers more efficiently and expeditiously.

## CONCLUSION

I know that transfers alone cannot provide the entire solution—they are costly, and they are still constrained by pumping restrictions, state law, and the very real limits of our water supply infrastructure.

Yet I believe this legislation will provide some much needed help at a time of great hardship and controversy. It is supported by many water users—and I ask that their letters of support be included in the record. I recognize that some Valley stakeholders have concerns about specific language, but I am confident that we can resolve these issues by working together.

In the meantime, I will continue to work on additional short-term and long-term solutions, and I look forward to working with the Committee on them.

Again, I thank the Chair and the Members of the Subcommittee for devoting their time this afternoon to considering this legislation. Thank you.

Senator STABENOW. Thank you very much, Senator Feinstein. I know this is an extremely serious issue.

Senator FEINSTEIN. Thank you.

Senator STABENOW. Welcome Senator Boxer.

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

Senator BOXER. Thank you so much, Madame Chairman. Thank you very much, Senator Bennett, Senator McCain, for being here.

Yes, this bill S. 1759 is called the Water Transfers Facilitation Act of 2009. I'll try not to be repetitive. My colleague was very clear on what this does. Simply put Senator Feinstein and I have introduced this legislation to facilitate voluntary water transfers within the San Joaquin Valley.

Friends, this is about getting water where it is needed, when it is needed. It is common sense. It's about finding ways we can all come together to find pragmatic solutions to the crisis of the drought rather than everyone just going into their corners.

I want to point out that anyone who knows the history of California knows that when it comes to water people tend to go to their corners. We're trying to break through. In that regard I wanted to show some bipartisan support.

I can assure you that Senator Feinstein, the letters that you put in there, some of those individuals signing those are Republicans, some are Democrat, some are independent. We have a letter here today to both of us from Senator, from, I'm sorry, Governor Arnold Schwarzenegger writing to express his support for our bill. So we feel really good about this.

We feel this isn't the be all and end all. But this is a very good step. Three years of below average precipitation have restricted water supplies.

We know in agricultural communities in the San Joaquin Valley, where more than 500,000 acres of crop land have been fallowed, there's an economic struggle going on. And that's why we're moving and hopefully swiftly. We're deeply concerned about the crisis and the impacts of it.

This legislation, as we said, will facilitate these water transfers among some of the water users. You heard about some of them.

It will improve flexibility in water management.

It will provide water to those communities who need it most.

I want to thank Representatives Cardoza and Costa. They worked with us to include a measure in the Energy and Water Appropriations bill that temporarily allowed these voluntary water transfers between water users on the east and west side of the San Joaquin Valley. This provision became law last week.

All of the affected water districts negotiated and supported that amendment. Again, that's unusual. I'm very pleased.

In addition to being so grateful to my colleague, I am so grateful to Senator Bingaman. He worked with us on that amendment. He committed to hold these prompt hearings. Madame Chairman, you were so gracious to set it at a time that we could both be here.

This bill builds upon the provisions that we got in there for 2 years. It would make it permanent. The water users on the east and west sides of the valley, again, have written very, very strong letters that Senator Feinstein has put in the record. The Governor has, and as Senator Feinstein has stated, this is signaling kind of new day for us. We've had some breakthroughs in the legislature in California.

Farmers who have excess amounts of water now have to fallow their fields in order to transfer water to other farmers. Our legislation would provide flexibility to move water around the valley. The bill directs, as you heard, the Department of the Interior to use a more pragmatic approach to environmental review so that all the transfers will still have to undergo applicable reviews, but they'll be conducted in a more efficient and timely fashion.

I want to close just by reiterating that the Bureau of Reclamation has told us in writing through email that the Feinstein/Boxer legislation will transfer as much as 250,000 to 300,000 acre feet of water per year to communities in need. This is 130 to 150 percent more water than the west side got from the Federal water project last year. To put this amount into perspective 300,000 acre feet of water would serve 600,000 typical families for 1 year. So this is not a trivial transfer.

I am committed to working with the committee, the Administration, my colleagues and all of our stakeholders to advance this bill. I can't thank you enough, both of you. I feel, we feel, so strongly that this would send such a good signal to our people back home that we're thinking about them and we're going to take moves to ease their problems.

Thank you very much.

[The prepared statement of Senator Boxer follows:]

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

Madam Chairman, thank you for holding this hearing today to discuss S. 1759, the Water Transfers Facilitation Act of 2009. Senator Feinstein and I have intro-

duced this legislation to facilitate voluntary water transfers within the San Joaquin Valley.

This is about getting water where it's needed, when it's needed. It's about finding ways we can all come together to find pragmatic solutions to the water crisis, rather than everyone just going to their corners.

Three years of below-average precipitation have restricted water supplies for much of California. Drought conditions have particularly affected agricultural communities in the San Joaquin Valley, where more than 500,000 acres of cropland have been fallowed, further compounding existing economic struggles in this region.

I am deeply concerned about this crisis and the impact it is having on agricultural communities in the San Joaquin Valley. That's why Senator Feinstein and I joined to introduce the Water Transfers Facilitation Act of 2009. This legislation will facilitate voluntary water transfers among some water users in the San Joaquin Valley, improving flexibility in water management and providing water to those communities who need it most.

Senator Feinstein and I worked with Representatives Cardoza and Costa to include a measure in the Energy and Water appropriations bill that temporarily allowed voluntary water transfers between water users on the east and west sides of the San Joaquin Valley. This provision became law last week. All of the affected water districts negotiated and supported that amendment, and I am very pleased.

I am grateful to Senator Bingaman for not only working with us on that amendment but also for committing to hold prompt hearings on permanent legislation building upon that successful amendment. The Feinstein-Boxer Water Transfers Facilitation Act of 2009 permanently extends and builds upon the provisions in the 2-year Energy and Water appropriations amendment.

The water users on the east and west sides of the valley who will benefit from this legislation have written many strong letters of support for the Feinstein-Boxer bill, as has the Governor of California, and I ask unanimous consent that these letters be entered into the record.

Now, farmers who have excess amounts of water need to fallow their productive fields in order to transfer water to other farmers experiencing shortages. Our legislation provides more flexibility to move water around the valley.

The bill also directs the Department of the Interior to use a more pragmatic approach to environmental review for water transfers so that appropriate transfers can be approved more quickly. Transfers will still have to undergo all applicable reviews, but those will be conducted in a more efficient and timely way.

Finally, the legislation requires the Department of the Interior to prepare a report and submit recommendations on how to facilitate water transfers throughout California, including between the state and federal water projects. This will guide future efforts to improve the flexibility of water management statewide.

The Bureau of Reclamation has told us that the Feinstein-Boxer legislation will transfer as much as 250,000 to 300,000 acre-feet of water per year to communities in need. This is 130 to 150 percent more water than the west side got from the federal water project last year. To put this amount into perspective, 300,000 acre-feet of water would serve 600,000 typical families for one year.

I am committed to working with the Committee, the Administration, and our stakeholders to advance the Water Transfer Facilitation Act of 2009. I thank the Committee for considering this important legislation, and look forward to working with my colleagues to secure its passage through the Senate.

Senator STABENOW. Thank you, Senator Boxer. I look forward to working with Senator Bennett, with Chairman Bingaman as we move forward on this legislation. I know this is a crisis for California as well as surrounding areas.

So we thank you for your leadership on this important issue.

Senator BOXER. Thank you. Thank you.

Senator STABENOW. Given the time I know that both of you need to be excused. So we appreciate your coming and your testimony. Before moving on to Mike Connor, the Commissioner of Reclamation, I'd like to turn now to Senator Bennett to speak about the 2 bills that he's sponsoring before the committee.

**STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR  
FROM UTAH**

Senator BENNETT. Thank you very much, Madame Chairman.

S. 1757 grants prepayment authority to the Uintah Water Conservancy District for its contract with the U.S. Bureau of Reclamation for construction of the Jensen unit of the Central Utah project. Those that are familiar with Utah names will recognize all of those. Others will find them completely new.

But the Jensen unit provides municipal, industrial and irrigation water to the city of Vernal and surrounding areas. It's been, it was completed in the 1980s. Now in the 1980s we had the bust side of the boom and bust cycle in energy prices and exploration.

There's a lot of energy in the Uintah basin where Vernal is. We were in the bust. The conservancy district amended their agreement with the Bureau to reduce the amount of subscribed water.

Now we've gotten into the boom side when the price of oil went back up. The Uintah basin has seen unprecedented growth in energy development industry. That means an increased demand for municipal and industrial water.

Besides considering completion of the Burns Bench pump station, the district in this circumstance has re-evaluated its financial arrangement with the Bureau and decided that it would be beneficial to pay the remainder of its contract obligations to the Bureau early. That may be a little different than we usually hear around here that somebody wants to give the Federal Government some money.

But S. 157—pardon me, S. 1757 would allow the districts to prepay the contract by 2019 instead of requiring the payment be stretched out until 2037. Included in the bill is a requirement that the district pays the present value of the whole amount without early repayment. So that keeps the Federal Government whole on the issue.

It's good for the conservancy district. It's good for the Federal Government. I would hope it would not be particularly controversial.

Now the second bill, S. 1758, would indefinitely defer sunk costs assigned to power generation in the central Utah project. We would do this because it will allow for economical development of 50 megawatts of hydropower on the Diamond Forks system of the Bonneville unit. The Colorado River storage project allowed for power development and allocated system costs for repayment and these costs have grown over time and now make any hydropower facility developed at Diamond Fork \$161 million in the hole before any dirt has been turned.

So if we want the power and we do. S. 1758 would indefinitely defer power allocation costs similarly to the costs associated with municipal and industrial water which were deferred and then prepaid in 2005. This is a pattern that we've seen before. By permanently affixing and deferring system wide costs that have been allocated for repayment by power features, hydroelectric power generation at Diamond Forks system can go ahead and will become economic.

So that is the purpose of the second bill. As I said, I am sure everybody found that fascinating. But it is important to the people in Utah. I believe be a good deal for the Federal Government as well.

Thank you for allowing me to go through that explanation. I look forward to spending time with our witnesses on all 3 of these bills, the 2 Utah bills and the California bill.

Senator STABENOW. Thank you, Senator Bennett. Possibly the prepayment bill could start a trend. I don't know. But we——

Senator BENNETT. I'm not holding my breath.

[Laughter.]

[The prepared statement of Senator Bennett follows:]

PREPARED STATEMENT OF HON. ROBERT F. BENNETT, U.S. SENATOR FROM UTAH

- Thank you all for being here. It is with great pleasure that I have the opportunity to act as the ranking member of this hearing on 2 necessary Utah bills, S. 1757 and S. 1758, and S. 1759, that addresses some of the water challenges faced by farmers in the Central Valley of California.

*S. 1757*

- S. 1757 grants prepayment authority to the Uintah Water Conservancy District (UWCD) for its contract with the U.S. Bureau of Reclamation (BOR) for construction of the Jensen Unit of the Central Utah Project. The Jensen Unit provides municipal, industrial, and irrigation water to Vernal and the surrounding communities and has since its completion in the 1980's.
- Due to economic hard times in Uintah County in the mid- to late '80s, the conservancy district amended their agreement with the Bureau of Reclamation to reduce the amount of subscribed water.
- Since then, the Uintah Basin has seen unprecedented growth in the energy development industry and demand has increased for municipal and industrial (M&I) water from the UWCD. Besides considering completion of the Burns Bench pump station, the district has reevaluated its financial arrangement with BOR and found that it would be beneficial to pay the remainder of its contract obligations early.
- S. 1757 would allow the UWCD to prepay the contract by 2019 instead of requiring the payment until 2037. Included in the bill, is a requirement that UWCD pays the present value of the whole amount due without early repayment, thus keeping the federal government whole.
- S. 1757 is good for both the conservancy district and the federal government. The federal government would receive payment early and would be kept whole in relation to present value of the contract obligation, while UWCD would be allowed to reduce its long-term debt obligations.

*S. 1758*

- S. 1758 would indefinitely defer sunk costs assigned to power generation in the Central Utah Project, allowing for economical development of 50 megawatts of hydropower at the Diamond Fork System of the Bonneville Unit.
- The Colorado River Storage Project (CRSP) allowed for power development and allocated system costs for repayment. These costs have grown over time and make any hydropower facility developed at Diamond Fork \$161 million in the hole before any dirt has been turned.
- S. 1758 would indefinitely defer power allocation costs, similarly to costs associated with municipal and industrial water which were deferred and then prepaid by 2005.
- By permanently affixing and deferring system wide costs that have been allocated for repayment to by power features, hydro electric power generation at the Diamond Fork System will become economic.

*S. 1759*

- I appreciate that Senator Feinstein and Senator Boxer are here with us today.
- I recognize all the work that they have undertaken to find solutions for many of the water challenges that California is currently facing.
- S.1759 seeks to add some flexibility to California's water system by streamlining the water transfer process and allowing additional water transfers to occur within the central valley.
- Earlier this year, at their request, language was added to the Energy and Water Appropriations bill, to provide a temporary fix to allow water to be transferred in Central Valley of California.

- The bill before us today provides additional authority for these types of transfers to continue.
- As we discuss this bill today I look forward to hearing whether these water shortages are mainly caused by drought, or if, as we have heard on the Senate Floor several weeks ago, caused by federal regulations.

*Conclusion*

- Once again, I thank the witnesses for your presence and thank you, Senator Stabenow, for conducting this hearing. I look forward to hearing the testimony today.

Senator STABENOW. Thank you very much for your leadership on these 2 bills.

We welcome Mike Connor, the Commissioner of Reclamation, who is going to speak about all 3 of the bills that are on our agenda today. We welcome you, Commissioner Connor. We'd appreciate if you take 10 minutes to summarize your testimony. Then we will have a few questions.

Thank you.

**STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER,  
BUREAU OF RECLAMATION, DEPARTMENT OF THE INTERIOR**

Mr. CONNOR. Thank you. Madame Chairwoman, Senator Bennett, I'm Mike Connor, Commissioner of the Bureau of Reclamation and I'm pleased to provide the views of the Department of the Interior on the 3 bills before the subcommittee today. As you note I will quickly provide a summary of those 3 bills and I've submitted my written statements for the record.

The first bill is S. 1757, the Uintah Water District Repayment legislation mentioned by Senator Bennett. This legislation would allow for prepayment of the current and future repayment obligations of the Uintah Water Conservancy District in Utah. The Department supports S. 1757 and acknowledges improvements made to the bill since its passage by the House in September.

The District's current contract from 1992 requires them to repay about \$5.5 million through the year 2037 at the project interest rate of 3.2 percent with annual payments of about \$226,000. My written statement provides more detail on this legislation. But in summary, the Department believes that the proposed legislation will provide for terms favorable to both the District and the United States and provide flexibility to address any future situations that could affect the District's ultimate repayment obligation as determined by a final cost allocation for the Jensen unit of the CUP.

The second bill is S. 1758, the Bonneville Unit Clean Hydropower Facilitation Act. S. 1758 would facilitate the development of hydropower on the Diamond Forks system of the Utah project pursuant to the Central Utah Project Completion Act, otherwise known as CUPCA. The provisions of S. 1758 increase the likelihood of private hydropower development by indefinitely deferring repayment of \$161 million in reimbursable costs that would otherwise have to be repaid by a private developer of hydropower on the Diamond Forks system.

Current law requires repayment of this \$161 million in costs which were incurred in developing the Diamond Forks system and allocated to the power generation purposes of the project. Since S. 1758 would defer responsibility for these costs it would effectively reduce the cost of private hydropower development at this site. The

Department understands and appreciates the legislation's goal of facilitating the development of hydroelectric power on the Diamond Forks system.

Nonetheless, the Administration has serious concerns about losing the ability to recoup the Federal investment made in these facilities. The Federal Government may benefit in the midterm from annual payments from the use of facilities that would be paid if a leasee entered into a lease of power privilege arrangement as a result of this bill. We acknowledge that.

These payments are estimated at \$400,000 a year beginning the year of the project as completed continuing for the life of the project. However the long term fiscal implications are unclear as to how the Federal Government would be whole for the loss in repayment of the \$161 million in sunk costs. We estimate the loss would amount to approximately \$5.3 million a year for 50 years if hydro-power could be developed under the current law. This concern is consistent with the views expressed before the House Natural Resources Committee in May earlier this year.

The last bill I'll speak to is S. 1759, the Water Transfer Facilitation Act. The Department supports S. 1759 with minor modifications. The Central Valley of California is experiencing a third year of drought which has drained the resources of both the state water project and the Central Valley project.

The prolonged drought coupled with environmental needs in the California Bay Delta region has created severe hardship especially to farmers, farm workers and related economies on the west side of the San Joaquin River Valley. The Department is cognizant of the need for creativity and flexibility in meeting the water demands of those served by the Central Valley project. Particularly during this period in which we are working toward long term solutions to California's water crisis.

If enacted S. 1759 will strengthen Reclamation's ability to facilitate appropriate water transfers. This year in the CVP Reclamation has facilitated the transfer of over 600,000 acre feet of water by and among CV contractors as well as users of the State Water project. This has been a record for Reclamation since on average there are approximately 250,000 acre feet of transfers which are processed between the Central Valley project and the State Water project.

Specifically within the CVP itself Reclamation has approved a total of 168 individual transfers totaling approximately 435,000 acre feet of Federal contract water. All were accomplished within the accelerated water transfers program which are those within the same watersheds and counties. An additional 9,156 acre feet of water was transferred among Sacramento Valley contractors using transaction specific environmental documentation.

Separate from the transfer program Reclamation approved the delivery of a large volume of water that was rescheduled or held over in storage from the 2008 water year. This was approximately 390,000 acre feet of water. As clear from this year's activity the Department supports facilitating the transfer of water to areas experiencing shortages.

Reclamation does however have a continued obligation to ensure that transfers are not detrimental to the operations of the CVP, do

not cause harm to third parties, including tribal interests and does not create adverse environmental consequences. To that end if S. 1759 is enacted, Reclamation will review its procedures and put in place effective and efficient administrative guidelines to ensure that the water transfers addressed by the bill can't take place consistent with other legal obligations that exist within the Central Valley project. This review will not, however, apply traditional consumptive use and historic use criteria pursuant to the terms of the bill.

I would also like to note that S. 1759 may have some financial implications associated with its provisions. Because of the adversity of CVP contractors and the many different scenarios under which water transfers take place. However, Reclamation would only be able to fully calculate the financial impacts at the time of the given transfer. An example is provided in my written statement.

Finally the Department recommends several technical corrections to the legislation as set forth in my written remarks. One of these corrections however, has already been addressed recently in the recently enacted 2010 Energy and Water Appropriations bill. This concludes my prepared remarks. I'm happy to answer any questions the Subcommittee may have.

[The prepared statement of Mr. Connor follows:]

STATEMENT OF MICHAEL L. CONNOR, COMMISSIONER, BUREAU OF RECLAMATION,  
DEPARTMENT OF THE INTERIOR

S. 1757

Madam Chairwoman and members of the Subcommittee, I am Mike Connor, Commissioner of the Bureau of Reclamation. Thank you for the opportunity to provide the Department of the Interior's views on S. 1757. The legislation allows for prepayment of the current and future repayment contract obligations of the Uintah Water Conservancy District (District) of the costs allocated to their municipal and industrial water (M&I) supply on the Jensen Unit of the Central Utah Project (CUP) and provides that the prepayment must result in the United States recovering the net present value of all repayment streams that would have been payable to the United States if S. 1757 were not enacted. S. 1757 would amend current law to change the date of repayment to 2019 from 2037. The legislation would also allow repayment to be provided in several installments and requires that the repayment be adjusted to conform to a final cost allocation. The Department supports S. 1757.

The District entered into a repayment contract dated June 3, 1976, in which they agreed to repay all reimbursable costs associated with the Jensen Unit of the CUP. However, pursuant to Section 203(g) of the Central Utah Project Completion Act of 1992 (P.L. 102-575) the District's contract was amended in 1992 to reduce the project M&I supply under repayment to 2,000 acre-feet annually and to temporarily fix repayment for this supply based upon an interim allocation developed for an uncompleted project. The 1992 contract required the District to repay about \$5.545 million through the year 2037 at the project interest rate of 3.222% with annual payments of \$226,585. The net present value of the amount remaining from this income stream starting in 2009 is \$4,028,443.<sup>1</sup>

However, the costs allocated to the contracted M&I supply, and the M&I supply available through additional contract amendments, may be significantly revised in the future upon project completion and Final Cost Allocation. An additional currently unallocated cost of \$7,419,513 is expected to be allocated to the contracted 2,000 acre-feet.<sup>2</sup> These are the costs that paragraph 3 of S. 1757 requires to be included in the prepayment. Assuming that the costs allocated to the contracted 2,000 acre-feet will be increased by \$7,419,513 with the reallocation in 2019, the net

<sup>1</sup>All net present value figures cited in this testimony were calculated by discounting the payment stream to the year 2009 using the rate for 30-year Treasury constant maturities for the week ending October 9, 2009. The exact net present value will fluctuate based on the date of the calculation and the Treasury rate.

<sup>2</sup>This allocation will be subject to revision should there be additions to the project.

present value of the stream of benefits from this reallocation is \$4,924,701. Therefore, under Reclamation's assumptions, the net present value of the total stream of benefits anticipated under this contract is \$4,924,701 plus \$4,028,443, or \$8,953,144. The contracted M&I amount is \$4.1 million and the adjustment amount is \$7.4 million. In total non-discounted dollars, the Conservancy District owes the Federal government \$11.6 million.

Under Reclamation law, water districts are not authorized to prepay their M&I repayment obligation based upon a discounted value of their remaining annual payments.

This legislation would authorize early repayment by the Uintah Conservancy District to the Federal government. Because there is an interest component to the M&I repayment streams to be repaid early, early repayment without an adjustment for interest would result in lower overall repayment to the United States. To keep the United States whole, the Bureau of Reclamation would collect the present value of the whole amount that would be due without early repayment. Thus, given Reclamation's assumptions the present value of the payments collected under this legislation will be at least \$8,953,144, although the legislation allows some flexibility in the timing of the repayment and under some scenarios the total amount due could be higher.

The language in S. 1757 has been amended from the language contained in an earlier version of this legislation, H.R. 2950. The amended language clarifies that this legislation requires that the Federal government be paid what it is owed by the Conservancy District. Because the United States supports the goals of providing for early repayment under this contract, and S. 1757 clearly establishes that early repayment under this legislation must be of an amount equal to the net present value of the foregone revenue stream, the Department supports this legislation.

S. 1758

Madam Chairwoman and members of the Committee, I am Michael Connor, Commissioner of the Bureau of Reclamation. I am pleased to be here today on behalf of the Assistant Secretary for Water and Science who oversees the Central Utah Project Completion Act activities to present the Administration's views on S. 1758, the Bonneville Unit Clean Hydropower Facilitation Act. The proposed legislation is associated with development of hydropower on the Diamond Fork System, Bonneville Unit, Central Utah Project.

The Central Utah Project Completion Act (CUPCA) provides for the completion of the construction of the Central Utah Project (CUP) by the Central Utah Water Conservancy District (CUWCD). CUPCA also authorizes programs for fish, wildlife, and recreation mitigation and conservation; establishes an account in the Treasury for deposit of appropriations and other contributions; establishes the Utah Reclamation Mitigation and Conservation Commission to coordinate mitigation and conservation activities; and provides for the Ute Indian Water Rights Settlement.

Hydropower development on CUP facilities was authorized as part of the Colorado River Storage Project Act (CRSPA) under which the Central Utah Project is a participating project. The development of hydropower on the Diamond Fork System has been contemplated since the early days of the CUP. The 1984 Environmental Impact Statement on the Diamond Fork System described the construction of five hydropower plants with a combined capacity of 166 MW of power.

However, these hydropower plants were never constructed and the 1999 Environmental Impact Statement on the Diamond Fork System presented a plan which specifically excluded the development of hydropower, stating ". . . there are no definite plans or designs, and it is not known if or by whom they may be developed."

Although hydropower development was not included, construction of pipelines and tunnels for the Diamond Fork System were completed and put into operation in July 2004. Under full operation the Diamond Fork System will annually convey 101,900 acre-feet of CUP Water and 61,500 acre-feet of Strawberry Valley Project Water.

In 2002 CUPCA was amended to authorize development of federal project power on CUP facilities. With this new amendment plans for hydropower development at Diamond Fork were included in the 2004 Utah Lake System Environmental Impact Statement and the 2004 Supplement to the Definite Plan Report for the Bonneville Unit (DPR). These documents describe the construction of 2 hydropower plants on the existing Diamond Fork System for a total generating capacity of 50 MW.

Section 208 of CUPCA included provisions that power on CUP features would be developed and operated in accordance with CRSPA and CUP water diverted out of the Colorado River Basin for power purposes would be incidental to other project purposes.

There are 2 options for hydropower development on the Diamond Fork System: 1) federal project development or 2) private development under a Lease of Power Privilege contract with the United States.

Under the first option the CUWCD would construct the Diamond Fork hydropower plants under contract with the United States and contribute an upfront local cost share of 35 percent of the construction costs. In addition to the hydropower construction costs, the costs associated with conveyance facilities upstream of the Diamond Fork would have to be repaid by the non-Federal project sponsors.

The DPR allocates costs of the CUP according to project purposes. The reimbursable costs allocated to power are \$161 million based upon the costs of developed features upstream of the Diamond Fork System. It is anticipated that under this option, these allocated costs would be repaid through an arrangement among Interior, CUWCD, and the Western Area Power Administration (WAPA).

Under the second option, private hydropower could be developed. Although the DPR and 1999 EIS describe federal hydropower development, they also provide the option for a Lease of Power Privilege arrangement with the United States. Under this arrangement Interior would implement a competitive process to select a lessee for private development of hydropower at Diamond Fork. The lease arrangement would require repayment of the \$161 million of upstream costs plus annual payments to the United States for the use of the federal facilities, amounting to at least a 3 mil rate paid by the lessee to the United States.

S. 1758 does not preclude federal development of hydropower, but it does increase the likelihood of private development. If enacted, this bill would indefinitely defer the \$161 million in costs allocated to power development in the Diamond Fork System under section 211 of CUPCA, thus reducing the cost of hydropower development at this site. This bill would increase the likelihood that a private developer would pursue a Lease of Power Privilege arrangement because the private developer would not, under this legislation, be required to repay the \$161 million of construction costs that were allocated to power as would be required under existing law.

We understand and appreciate the goal of this legislation of facilitating the development of hydroelectric power on the Diamond Fork System.

However, the Administration has serious concerns about losing our ability to recoup the Federal investment made in these facilities as set forth in this legislation. The Federal government may benefit in the medium term from the annual payments for the use of Federal facilities that would be paid if a lessee entered into a Lease of Power Privilege arrangement for production of hydroelectric power on the Diamond Fork System. Assuming only a summer water supply as under current deliveries, these payments are estimated at about \$400,000 a year starting the year that the project is completed and continuing for the life of the project. However, because payment of \$161 million of allocated power costs would be postponed indefinitely, it is unclear what the long-term fiscal implications of enactment of this legislation would be and how the United States Treasury would be made whole. This legislation would potentially permanently postpone anticipated receipts to the U.S. Treasury at the expense of the Federal taxpayer. While it is not clear at this time whether a nonfederal developer would propose a hydroelectric project at Diamond Fork under current law, if this were to occur, repayment of the allocated power costs would begin after the hydroelectric project is completed and average \$5.3 million a year for 50 years.

Section 5 of S. 1758 would prohibit the use of tax-exempt financing to develop any facility for the generation or transmission of hydroelectric power on the Diamond Fork System. This provision was added to the bill to prevent any loss of revenue to the federal government as a result of the financing mechanism used for development of hydropower at this site.

Further analysis would help to determine whether this legislation to facilitate private development of hydropower at Diamond Fork would provide sufficient benefits to justify the costs.

S. 1759

I am Mike Connor, Commissioner of the Bureau of Reclamation. I am pleased to be here today to provide the views of the Department of the Interior (Department) on S. 1759, the "Water Transfer Facilitation Act." The Department supports S. 1759 with modification as explained below. Further analysis would help to determine the role that this bill could play in providing improved flexibility and efficiency for water management in the Central Valley.

The Central Valley of California is experiencing a third year of drought which has strained the resources of both the State Water Project under the jurisdiction of the State of California, and the Central Valley Project (CVP) operated by Reclamation.

The prolonged drought has created severe hardship especially to farmers, farm workers, and related economies on the west side of the San Joaquin River valley. The Department is cognizant of the need for creativity and flexibility in meeting the water demands of Californians served by the Central Valley Project. The Department supports facilitating the transfer of water from those areas having available water supplies to areas experiencing shortage to the extent that water transferred is not detrimental to the operations of the CVP, does not cause harm to third parties, and does not create adverse environmental consequences.

When they are done right, water transfers move water from willing sellers to willing buyers in transactions that can improve economic well-being, increase efficiency in water use, and protect against negative externalities. There are many situations where water transfers during periods of drought can be used to ensure that available water is used in areas where it is most needed, and S. 1759 is aimed at facilitating these efficient water transfers. We recognize the potential of voluntary water transfer as a mechanism to increase flexibility into our water management system and respond to changes in available water resources. However, we are also committed to implementing review processes for all water transfers that will effectively protect the broad range of interests that can be impacted by changes in water use. Our goals as a Department include ensuring efficient use of available water infrastructure as well as maintaining vibrant communities and protecting the environment.

Together with the California State Water Code, current Federal law in Section 3405(a)(1) of the Central Valley Project Improvement Act of 1992 (CVPIA) (Public Law 102-575, 106 Stat. 4709) prescribes those conditions under which CVP water is transferable. While the proposed legislation establishes that water transfers between and among specified South of Delta divisions are presumed to meet the historical and consumptive use requirements of subparagraphs (A) and (I) of section 3405(a)(1) of Public Law 102-575, the proposed legislation does not change the obligation of the Department to protect the public interest and the integrity of the CVP, and to otherwise act in accordance with the provisions of the CVPIA. To this end, if the proposed legislation is enacted, Reclamation will review its procedures and ensure that administrative guidelines are in place as necessary to assure that transfers of water continue to serve the overall public interest. Specifically, Reclamation will continue to ensure that transfers take place without significant adverse impacts to other water users, federal programs, Indian tribes, CVP operations, or the environment. We suggest that these guidelines be expressly incorporated into the items we report to Congress under Section 4(a) of the bill, under which Reclamation would submit reports to Congress on the status of efforts to help facilitate and improve the process for water transfers within the Central Valley and water transfers between the CVP and the State Water Project.

Under the CVPIA and contract provisions, Reclamation must approve proposed water transfers and cannot approve transfers unless the transfer is consistent with California water law. Transfers are on a willing buyer, willing seller basis, and Reclamation facilities can be used to deliver transferred water only when approved by Reclamation. Reclamation collects various charges, including operation and maintenance charges, incremental conveyance costs, and CVPIA restoration fund charges, together with the cost of service rates, as required by law from the entities that transfer the water (the transferors). Because of the diversity of CVP contractors and the many different scenarios under which water transfers take place, if S. 1759 were enacted there would probably be some financial impacts that Reclamation would only be able to fully calculate upon completion of a given transfer. For example, depending on the contract in place with specific CVP contractors, the legislation could generate additional revenue for the CVPIA restoration fund and for the San Joaquin River Restoration fund in some years in the Friant Unit of the CVP. In this area in 2008, Friant contractors could have transferred about 40,000 acre-feet to west-side CVP contractors in the San Luis Unit under the proposed legislation. The transferred water would have been subject to the CVPIA restoration fund charges (about \$9) under Title X of Public Law 111-11, Section 10009(c)(1)(B), as well as Friant surcharges, resulting in additional revenues to the Restoration Fund.

If enacted, S. 1759 could strengthen Reclamation's ability to facilitate appropriate water transfers. We would note, additionally, that Reclamation already has a robust water transfer program. This year in the CVP, Reclamation has facilitated the transfer of over 600,000 acre feet of water by and among CVP contractors, as well as users of State Water Project water. This has been a record for the Reclamation since on average there are approximately 250,000 acre feet of transfers which are processed by the CVP and State Water Project. For figures specific to only the federal CVP, Reclamation has signed off on a total of 168 individual transfers totaling approximately 435,286 acre feet of federal contract water. All were accomplished

within the accelerated water transfers program using programmatic environmental documentation. An additional 9,156 acre feet was transferred among Sacramento Valley contractors using transaction-specific environmental documentation.

Separate from the transfer program, a large volume of water was delivered that was "rescheduled," or held over in storage, from the 2008 water year. Of the 337,307 acre feet of water rescheduled in San Luis Reservoir from 2008 into 2009, approximately 12,518 acre feet were eventually transferred, approximately 50,000 acre feet remains in San Luis, and the remainder was delivered to the party rescheduling it. Friant Division contractors rescheduled approximately 55,615 acre feet in Millerton Reservoir, and of that, 11,848 acre feet were transferred. Cross Valley Contractors rescheduled 6,063 acre feet of water from 2008, all of which together with 11,550 acre feet of 2009 contract supply was transferred to Westside contractors. These transfers were in addition to the accelerated transfers described above.

In addition to the suggested change to Section 4(a) above, the Department would also like to offer a technical change to the proposed legislation. The Department suggests that the initial reporting in Section 4(a) be set at 6 months from the date of enactment to provide adequate time for meaningful information to be available to Congress. Accordingly, we suggest editing the reference in Section 4(b) to delete "Not later than July 15, 2010" and to call for Reclamation to update the report every 180 days after the date on which the initial report is submitted to Congress.

With regard to Section 3 of S. 1759, the Fish and Wildlife Service has confirmed that the Service could provide a programmatic biological opinion to Reclamation on water transfers if this is determined to be appropriate. The consultation process would begin with a request from Reclamation for consultation accompanied by a biological assessment that describes Reclamation's water transfer program and evaluates the potential effects of the program on listed and proposed species and designated and proposed critical habitat and determines whether any such species or habitat are likely to be adversely affected by the program. The Service could potentially expedite a programmatic biological opinion, subject to the availability of appropriations.

I would also like to note that Reclamation is currently working with the California Department of Water Resources in developing consistent evaluation criteria for a long-term, programmatic water transfer program designed to provide for water transfers from State and Federal contractors North of the Delta to contractors South of the Delta. These transfers will continue to be subject to the consumptive and beneficial use requirements in the State Water Code.

Senator STABENOW. Thank you very much, Commissioner. Let me first talk about S. 1758 and ask you if this legislation is enacted would the Department of the Interior initiate a competitive bidding process to issue a lease of power privilege for the right to develop hydroelectric power at the Diamond Fork system facilities?

Mr. CONNOR. Yes, that's typically the process to initiate an open competition or inquiry of interest amongst whoever wants to express that interest for at least a power privilege arrangement.

Senator STABENOW. What are your plans to develop green energy including hydroelectric power?

Mr. CONNOR. The Bureau, as Secretary Salazar has pointed out here in front of this Committee, the Department has a very broad agenda in the area of green energy, renewable energy resources. Reclamation, in particular, has put it in the category of 3 different areas that we're looking at hydropower development and another area that we're looking at renewable energy development.

With respect to the 3 areas of hydropower development, the first is we are conducting a review of our current facilities looking to those opportunities that we think exist for putting hydro generation units on those existing facilities. So new units on existing facilities.

There was a study done pursuant to the 2005 Energy Policy Act which required us to look at those opportunities. We were going to take another look at that study with its renewed emphasis on renewable energy development. We might have a few more identified

potential projects than these 6 that were—that came out of that particular report.

A second area is our long standing Reclamation program which we're going to give more emphasis to which is up rating and increasing efficiency at existing hydroelectric units. Over the last 30 years I think the figure is and if I'm wrong I'll correct it for the record, is something in the neighborhood of 1,800 megawatts in capacity has been created just through efficiency gains in up rating and re-building some of these units. 1,800 megawatts of capacity is approximately the capacity of Hoover Dam generation facilities.

As an ongoing effort right now we are up rating 2 units at Grand Coulee Dam which will result in a yield of 110 megawatts of additional capacity which is the equivalent of a large wind farm. So there's some pretty significant gains that could be made through the efficiency program.

Last we are looking at trying to facilitate low head, hydro, small hydro opportunities. We have a lot of creative thinking going on amongst our water user communities and power communities where they are looking at using drops in their canal structures since water is flowing through there putting in canal generation units. Through the 40 million dollars we made available through Recovery Act funding we allocated \$40 million for water conservation efficiency and renewable energy type projects.

We did one in Oregon that was a win/win for many projects—aspects. We invested \$2 million in to lining of about a mile of canal. Actually taking an unlined canal out of service, replacing with a pipeline, putting in a 0.75 megawatt unit turbine on that pipeline system saving 29 cubic feet per second of water that we allocated to the stream for fish purposes.

So those are the type of projects that we're going to do with respect to hydro power. We've already done some. We're going to look to expand that in fiscal year 2010.

The last area is just non hydro renewables whether it be wind, solar, geothermal. We are going to look to try and integrate some of those renewable energy opportunities into our water operations. If we can do that and use some of our project needs for power through those renewable energy resources we can save our hydro power resources and keep more on the grid.

Senator STABENOW. Great. Thank you very much. It'd be helpful to gain some understanding of some of the general mechanics of the legislation addressing the California water transfers.

I wondered if you might speak to what the bill does. For example, section 2 relates to certain conditions that the Bureau of Reclamation must follow in evaluating water transfers within the Central Valley project. That relates to transfers of irrigation water among certain projects and contractors within certain divisions.

Can you confirm that all of those divisions are located below the pumping stations in the delta that take water from the Sacramento Valley to the San Joaquin Valley?

Mr. CONNOR. The provisions of section 2 of the bill, our interpretation has been that they are south of delta facilities. That those are the districts and facilities indicated by the legislation there has been, I know, some discussion about that point. Maybe some clarification may be necessary.

But that's been our interpretation in looking at the bill.

Senator STABENOW. Ok. Thank you.

Senator BENNETT.

Senator BENNETT. Thank you very much. You make reference in your comment about the amount the Federal Government would lose under 1758. The amount they would lose if it were developed under present law.

But you acknowledge that the best way to facilitate hydro power development at Diamond Fork is to allow this bill to pass. Do you believe that if we do not allow this bill to pass that there will be hydro development there? Because you'll lose it all——

Mr. CONNOR. Right.

Senator BENNETT [continuing]. If there is no hydro development on at Diamond Fork.

Mr. CONNOR. Yes, Senator Bennett. Thank you for that question. I would just caveat, as you know, the Central Utah project and its operations are run out of the Assistant Secretary's office.

Senator BENNETT. Yes.

Mr. CONNOR. So, I may supplement some of these answers for the written record. But I think in reviewing this matter there has been some economic analysis in a definite plan report that the Department had done with respect to hydro power development. The economic analysis, as I understand, this is a 2004 definite plan report, did show that there was economic viability of a project that could take into account that \$161 million in sunk cost.

So that was the Department's perspective. That you could repay those costs, still develop sufficient hydro power resources and recoup that and make it a viable economic enterprise. So from that standpoint we think there should be able to be hydro power development.

Having said that, it's safe to say there was controversy or there was disagreement about that economic analysis.

Senator BENNETT. Yes.

Mr. CONNOR. There has not yet been hydro power development to date.

Senator BENNETT. So we've had 5 years of experience since the time someone opined that yes, it should go forward. We've had 5 years of experience without it going forward.

Mr. CONNOR. Yes, right.

Senator BENNETT. Is that a safe summary here?

Mr. CONNOR. That's correct.

Senator BENNETT. Ok. I'm leaning on that 5 years experience to say let's not let another 5 years go by without any money coming into the Federal Government. The \$161 million has been spent. It is indeed a sunk cost.

If we do not have any hydro power there as the 5 years we've had indicate we will not have. Then the 161 is never going to be repaid. But if we can indefinitely defer the repayment and thus lure somebody on to build the dam and create the power, then indefinitely deferred is not the same thing as cancel. The Congress can come back and say, alright, now you've got a viable activity going on and these are the terms we want.

Isn't that a viable thing to look forward to?

Mr. CONNOR. That certainly is a strategy that could play out. I certainly understand that. I think that in the interim as Congress decides how it will proceed with this bill we will continue to look at the economics and keep your office updated.

Senator BENNETT. I'm a businessman. I look at it in terms of cash-flow, Madame Chairman. The cash has already flowed. An opportunity to get some of it back is something that's attractive to me.

Thank you very much.

Senator STABENOW. Thank you, Senator Bennett.

At this point unless we have further questions I would thank Commissioner Connor very much for your testimony.

We would move to our second panel of Martin McIntyre, representing the San Luis Water District.

Hamilton Candee, representing the Grassland Water District.

So we welcome and again, appreciate very much you're traveling here today to be able to speak about what I know is a very important topic for both of you. Thank you very much.

Mr. McIntyre is you would take about 5 minutes to summarize your testimony we would appreciate it. Then Mr. Candee, if you would do the same as well, we would appreciate it. Then we will open it for questions.

Welcome.

**STATEMENT OF MARTIN R. MCINTYRE, GENERAL MANAGER,  
SAN LUIS WATER DISTRICT, LOS BANOS, CA**

Mr. MCINTYRE. Thank you, Madame Chair, Senator Bennett. I'm grateful to be here today. My name is Martin McIntyre. I am the General Manager for the San Luis Water District.

I would like to make clear, however, that today I represent more than just the San Luis Water District and its constituents. I'm carrying with me today the hopes, the needs of cities, communities, industry and thousands of family farms in the San Joaquin Valley. I consider that to be a substantial burden. Hopefully I will represent those interests fairly and effectively today.

I'm grateful to speak in support of S. 1759 and want in particular to thank Senators Feinstein and Boxer for their sponsorship of this bill. As you've heard previously and undoubtedly know from your own experience, the San Luis Water District, the San Joaquin Valley and indeed the entire State of California is experiencing a severe social and economic crisis driven by limited availability and reallocation of water supplies throughout the state. The decisions that we make in the next year or 2 will have a profound impact on the economy and the people of California.

I'd like to tee up my comments very briefly, if I might, by referring you to a map that I believe was handed out to you earlier. So that perhaps we can become geographically oriented. I'm going to draw your attention to several features on the map.

If you look to the far left hand corner of the map you will see the state and Federal pumping plants identified as CVP and State Water Project Banks Pumping Plant. Just to the north or to the left off the map is the Sacramento San Joaquin delta of which there's been much information shared of late. All of our water supply on the west side largely comes through the San Joaquin delta.

It has become a choke point for both the state and Federal water projects.

So the west side of the valley is to the bottom of your page where the San Luis Water District is located. On the upper side of the map in green is the Friant unit. There are 2 critical lines both in a reddish color running from the pumps all the way along the west side and south as far as Los Angeles. That is the California aqueduct. It is one of the carotid arteries, if you will, of water supply and economic and social well being within the state.

To the north is the Friant Kern canal. They both converge down at the right side of your map. Those projects serve at least a significant portion of water supply to 25 million people within the state. They service to the north, Silicon Valley, to the south, all the way to Los Angeles commercial and industrial centers. It is indeed a critical artery through which water supply flows. So the bill before you would affect only those areas reflected on this map and not those areas north in the delta region.

The west side of the San Joaquin Valley is a consequence of environmental, regulatory actions in the delta have seen in the past 15 years their water decline from their contracted supply from an average approaching 100 percent of that contract supply all the way to an average of 35 percent of contract supply. Shockingly this year our allocation was 10 percent. That has led to some pretty extraordinary dislocation of families and economies in the Central Valley.

I have seen farmers with fear and anger in their eyes as they see their family legacies, second and third generation farms, at risk. We've seen food lines hundreds of feet long where unemployed farm workers are receiving food handouts to feed their families. We have tried to adapt to this changing environment.

We've done so with extraordinarily aggressive implementation of water efficiency programs, drip irrigation, lining channels, piping facilities, fallowing ground. We have, in San Luis Water District 100 percent of our agricultural water is metered. But none the less we have been unable to satisfy the water supply needs. We fallowed over 500 square miles of some of the most productive Ag land in the world.

In simplest terms this bill would simply help facilitate some transfers between the east side of the San Joaquin Valley on the map I referred to on the west side. In practice, however, water transfers are generally very complex. Can require 6 to 8, 10 months in order to accomplish and often miss the critical target for irrigation season or urban needs.

I was going to present to you today a brief summary of the extraordinary efforts we've gone through this year to move water 25 miles reflected on your map right in the center of the map with the red arrow from the green area to the blue area. As a consequence of limited facilities and other restrictions however, it was necessary to gain approvals from 5 different agencies to execute half a dozen agreements. To transfer that water all the way down the northerly artery, across the valley and wheel it back up all the way to the San Luis reservoir on the north end of the California aqueduct.

That process was fraught with risk, cost and in fact, took us 9 months to accomplish. We're still not certain the water will actually be received.

So this bill is a welcome aid in facilitating some portions of those complex transfers. But indeed the largest solutions, as expressed by both of the Senators that testified earlier, requires a much broader perspective and must address a declining bay delta area where food webs have collapsed, species populations have collapsed. We believe that the state and Federal pumps that provide the life blood to the state have been disproportionately blamed for the decline of species. We encourage a broad re-visitation of the biologic opinions that were issued for delta smelt in particular in view of recent science that has become available.

I thank you for the opportunity to speak today. I trust that we will be able to avoid some of the impending human tragedy that is on the horizon.

[The prepared statement of Mr. McIntyre follows:]

STATEMENT OF MARTIN R. MCINTYRE, GENERAL MANAGER, SAN LUIS WATER DISTRICT, ON S. 1759

Chairwoman Stabenow, honorable members of the Committee: Good afternoon, I am Martin McIntyre, General Manager of the San Luis Water District, and I greatly appreciate the opportunity to appear before you today.

I am here in support of S. 1759, the Water Transfer Facilitation Act of 2009. I frequently speak on behalf of the San Luis Water District but today I also represent the hopes and needs of a much larger constituency including cities, industry, thousands of family farms, their employees and many water districts served by the Central Valley Project (CVP).

I was asked to testify before this committee because the San Luis Water District will live or die by the success or failure of water transfers. In 2009, with only 10 percent CVP allocation, failure to transfer adequate supplies of supplemental water would have resulted in the loss of tens of thousands of acres of high value permanent crops. I have been personally responsible for oversight of numerous transfers and negotiating the withering gauntlet of agreements, administrative approvals, and regulatory processes required for a one time single year transfer.

The social and economic tragedy that has been unfolding for years is now upon us. In 2009, a combination of prior regulation, 3 years of below normal precipitation and new Endangered Species Act regulations have resulted in a meager 10 percent allocation of CVP contract supplies to districts lying south of the San Joaquin/Sacramento Bay Delta (Delta). Over 500 square miles of productive land has been fallowed, threatening farms, families, cities and counties with unprecedented economic hardship.

Worse still, the US Bureau of Reclamation has advised that in 2010 we will receive only 10 to 30 percent water supply allocation under average hydrology and only 25 to 40 per cent allocation in the wettest of years. Prior to Biologic Opinions (B.O.s) rendered in the past 2 years, south of Delta CVP allocations averaged 65 percent. Current hydrologic modeling forecasts a decline of average annual allocations to 35 percent as a consequence of the recent smelt and salmon B.O.

California's water supply is in crisis. The Delta is in crisis. Numerous species, habitat and levees are all in serious decline. Twenty-five million people and 3 million acres of prime agriculture depend on water supply from the Delta. There are many troubling causes for decline of Delta species including:

- Collapse of the food web
- Toxic runoff
- Invasive species
- Thousands of unscreened water pumps throughout the Delta
- Changes ocean conditions

Despite all these other critical impacts, decline of Delta aquatic species has been historically blamed on the State Water Project and Central Valley Project pumps that support much of the State's population and agriculture. Until we address the primary causes of Delta decline, California's water supply security will continue to erode.

Under these increasingly dire circumstances, we cannot survive without exercising all available tools, including the tools to be provided by S 1759, the Water Transfer Facilitation Act of 2009.

Central Valley Project water users support S. 1759 because it would expedite our ability to employ water transfers as one tool to make the best use of our limited supplies. We thank Senator Feinstein and Senator Boxer for introducing this legislation. Congressmen Jim Costa and Dennis Cardoza have introduced companion legislation in the House, and we urge Congress to move forward on these bills as soon as possible.

S 1759-WHAT IT WOULD DO AND WHAT IT WOULD NOT DO

In the Central Valley, irrigation districts and water agencies have for decades exchanged and transferred water to each other as a means of getting surplus water to water short areas. These water transfers are regulated by California water law and by federal and state environmental laws, including the Endangered Species Act (ESA) and the National Environmental Quality Act (NEPA). Transfers of water in federal Central Valley Project are subject to an additional level of regulation under the Central Valley Project Improvement Act 1992 (CVPIA).

One of the major purposes of the CVPIA was to “assist California urban areas, agricultural water users, and others in meeting their future water needs.” (CVPIA, Section 3405(a)). The law affected water transfers in 3 major ways. First, it allowed, for the first time, CVP water to be sold by individual water users to entities outside the CVP service area. The authors of the legislation intended this provision to “open up” CVP supplies to major urban areas, such as Los Angeles, and generate revenue for CVP environmental restoration through transfer fees. Second, it allowed certain water-rights holders in the San Joaquin and Sacramento Valleys to transfer water made available to them by the CVP under settlement contracts with the federal government. Third, the CVPIA made these newly-authorized transfers subject to review and approval by the Interior Department, through the Bureau of Reclamation, according to a set of criteria written into the Act.

The CVPIA has not achieved its goal of facilitating water transfers to help Californians meet their water needs. The envisioned transfers of water out of the CVP service area to urban water agencies have not occurred for several reasons, including environmental restrictions on the Bay-Delta pumps. Transfers among agencies within the CVP service area have been slowed and even discouraged by the Bureau’s application of CVPIA.

Before the Act, water agencies within the CVP routinely transferred water among themselves, often on short notice, in compliance with state law. Now, those transfers are subject to months of review by the Bureau. Moreover, CVP users believe that the Bureau is misinterpreting the CVPIA by applying the water transfers criteria intended only for the new transfers specifically authorized by the Act to historical transfers within regions of the CVP. The result is that some once-routine transfers are now not possible. S. 1759 is intended to facilitate water transfers among agencies within the CVP south of Delta service area by removing some of the bureaucratic impediments that discourage transfers or make them unnecessarily slow by doing the following:

- First, Section 2(a) of the legislation would deem that transfers among water districts within the same region of the CVP south of the Bay-Delta have met the two CVPIA criteria (3405(a) (1) A and I) that were originally intended for only transfers outside of the CVP, for transfers between the Sacramento and San Joaquin Valleys and transfers from the Settlement Contractors.

The purpose of the criteria is to ensure that agencies transfer only water that they actually have and could otherwise use so that transferring agencies do not impact the supplies of other water users. These “consumptive-use” and “historic-use” safeguards make sense for transfers that would move water through the Delta from the Sacramento Valley to the San Joaquin Valley or to a region entirely outside of the CVP service area. But they don’t make sense for transfers among agencies within the same region that are sharing the same limited regional water supply.

- Section 2(a)(1) of the bill deems that the CVPIA “consumptive-use” and “historic-use” criteria are met by transfers among CVP water agencies (“contractors”) in specific Divisions of the Project south of the delta. This would allow some south-of-delta agencies to make water available for transfer they otherwise may not have made available under the Bureau’s interpretation of the two criteria and in general are wet year excess water. This provision would apply only to transfers among agencies south of the Delta. Transfers through the Delta and transfers to outside agencies beyond the CVP service area would still have to meet criteria in (3405(a)(1)A and I) of CVPIA .
- Section 2(a)(1) of the bill deems that the criteria are met by transfers between CVP contractors and other agencies that are within the same CVP Division and

hold temporary CVP water supply contracts or once held temporary or long-term CVP water supply contracts. These are non-CVP irrigation districts within the service area of the Friant Unit of the CVP and intermingled with Friant districts. They receive water from the Kings, Kaweah and other rivers that flow through the Friant service area, and overlap the same groundwater aquifers as Friant districts. Temporary CVP contracts allow them to buy flood water from the CVP, when it's available.

Transfers among Friant CVP contractors and neighboring non-CVP districts have historically been used to make the best use of groundwater storage opportunities. The Bureau's application of the CVPIA consumptive-use and historic-use criteria to these water-management transfers has made them more difficult, and in some cases impossible. S. 1759 would ease this impediment and allow for improved management of surface and groundwater supplies.

- Section 2(b) (1) ensures that any transfer affected by S. 1759 not interfere with implementation of the San Joaquin River Settlement.
- Section 3 of the bill would facilitate transfers within the entire CVP by directing the Interior Department to use existing authority to develop a programmatic environmental review of CVP water transfers. All CVP water transfers are subject to review under ESA and NEPA and currently a new review, stand-alone environmental review for each transfer even though many of the elements examined are common to most transfers. A programmatic approach allows the regulatory agencies to develop a framework addressing these common elements so that they don't have to be examined anew for each transfer. Individual transfers would still be subject to separate environmental reviews, but reviews could be done faster within a programmatic framework.

S. 1759 would not create any new water transfer authorities.—It would not waive or shortcut reviews of transfers under federal or state environmental laws, and it would not reduce revenues from environmental fees paid into the Central Valley Project Restoration Fund. It does not affect reviews of north-south transfers through the Delta or outside of the CVP.

S. 1759 also does not create new water.—It removes some of the hurdles and expedites the efficient transfer and management of dangerously short and unreliable water supplies. Transfers help us buy time until long-term solutions are developed to return adequate and stable water supplies to California agriculture. But time is running dangerously short.

S. 1759 does not create "Paper Water".—When the transfer provisions of the CVPIA were being assembled, it was clear that transfers of CVP water that had historically been provided to certain CVP contractors in settlement of water right issues associated with the development of the CVP, were going to be in play in terms of the new transfer capabilities to be provided by the proposed changes in law. In particular, the ability to transfer Sacramento River water rights settlement water supplies, as well as water supplies provided in settlement or exchange of San Joaquin River water rights, were now proposed to be able to be transferred.

There was concern among existing CVP water service contractors from throughout the Project that some of this transfer potential for water rights settlement water supplies could adversely impact the availability of their CVP contract water supplies as some of the established water right settlement contract amounts had never been all put to use. To the extent this water hadn't been put to use, it would be available for use as Project contract yield to the CVP water service contractors. Similarly, there were Municipal and Industrial CVP contracts that were still in a "build up" period that had a history of not using all of their CVP contract entitlement which raised similar concerns among the other contractors relative to the potential for transfers to occur with water that did not have a history of being put to use (e.g. the term "paper water").

Thus, the conditions associated with both Sections 3405(a)(1)(A) and 3405(a)(1)(I) were intended to protect CVP contractors from the potential that water which never had a history of being used (and thus was available to become part of the CVP yield for the balance of the CVP contractors) could now be transferred. The proposed changes modifying the application of these two sections of the CVPIA contained in the subject legislation would only apply to transfers as between CVP contractors south of the Delta (San Luis, Delta-Mendota, Mendota Pool, Cross Valley, San Felipe and Friant Divisions). The potential for "paper water" transfers for CVP contractors south of the Delta has never existed and does not exist today. While temporary surpluses of water for an individual contractor may exist from time to time (due in particular to local annual hydrologic conditions) there are no contractors that have contract entitlement amounts that otherwise go unused unless trans-

ferred. This is especially true under the water shortage conditions that exist for all CVP contractors south of the Delta resulting from reduced Delta pumping for protection of endangered species or resulting from new releases of water for San Joaquin River restoration. Thus, the proposed language does not increase the potential for “paper water” transfers. However, it does remove a significant impediment that was inadvertently created with the passage of the CVPIA and the unfortunate application of Sections 3405(a)(1)(A) and 3405(a)(1)(I) to transfers that used to occur with limited review which now are virtually precluded from occurring, all at a time when a great need exists to move water within the Project due to the previously mentioned conditions of water shortage.

*The San Luis Water District-A “Westside” District*

The San Luis Water District (SLWD) serves 66,000 acres located on the western side of the fertile San Joaquin Valley (See Figures 1 & 2)\*. Historically, adequate supplies of water, fertile soils, an ideal climate and innovative farming practices have been combined to produce superior yields of high value crops which feed both the country and the California economy. In the past ten years there has been a growing shift from row crops to permanent crops (trees and vines).

SLWD irrigation facilities are among the most efficient anywhere. District facilities include 52 miles of pipelines, 14.3 miles of lined canals and only 3.3 miles of unlined canals. SLWD does not own or operate any wells. On-farm irrigation efficiency is estimated to average greater than 80%. Water use efficiency in San Luis Water District includes the following features:

- Over 96 percent of the distribution system is piped or lined
- Over 80 percent of the irrigated lands are served by drip or micro systems
- Less than 8 percent of irrigated lands are served by furrow and flood irrigation
- 100 per cent of District and grower turnouts are metered
- 100 per cent of on farm tail water retained/reused
- Zero spill at conveyance system terminus points

Despite this extremely efficient system, in 2009 about 25 percent of the District irrigable land has been fallowed and over 80 percent of annual crops have been abandoned due to cut backs in water supply. Even more ominous, the survival of permanent crops and family farms now hang in the balance.

San Luis Water District’s only long term source of water supply is a contract with the US Bureau of Reclamation (Reclamation) for up to 125,000 acre feet per year from the San Luis Unit of the Central Valley Project (CVP). Groundwater is extremely limited and generally of very poor quality. Due to factors discussed below, our CVP supply has become so unreliable that high value permanent crops are at serious risk. A single water short year could result in loss of permanent crops and associated capital investment.

*The Westside CVP*

The SLWD is situated roughly in the middle of a 3,300 square mile region of the California San Joaquin Valley generally known as the Westside of the San Joaquin Valley. This region (about the size of Delaware and Rhode Island combined) is located south of the California Bay-Delta (Delta) and extends roughly from the City of Tracy in the north to Kettleman City in the south and generally bordered on the east by the San Joaquin River and extending to the west into San Benito and Santa Clara (Silicon Valley) counties.

Common to SLWD and 28 other Westside water purveyors south of the Delta are CVP water supply contracts administered by the Reclamation. The CVP is the largest single water project in the Nation. The Project provides water for farms, homes, factories, and the environment. It produces electric power, and provides flood protection, navigation, recreation, and water quality benefits from California’s great Central Valley to major urban centers in the San Francisco Bay Area. Water provided by the CVP to the Westside serves more than 1.3 million acres of highly productive farm land, 1.7 million Californians from small rural towns to the “Silicon Valley”, and countless waterfowl dependent upon more than 100,000 acres of important wild-life management areas situated in the Pacific Flyway.

*West Side Water Supply Impacts*

For over 15 years, Central Valley Project contractors—particularly agricultural service contractors on the Westside of the San Joaquin Valley such as the San Luis Water District—have been experiencing a steady decline in both the volume and reliability of their water supply. Beginning with the listing of winter-run Chinook

\* Figures 1 and 2 have been retained in subcommittee files.

salmon in 1989, followed by implementation of the Central Valley Project Improvement Act and Clean Water Act, the region endured a gradual decline in average annual CVP water allocations from nearly 100% prior to 1989 to current estimates of only 35%. As discussed below, this has severely strained the social and economic fabric of communities throughout the Westside.

*Supply Management and Water Use Efficiency*

In order to cope with this water supply decline, water districts and farmers throughout the Westside implemented new management practices, technologies, and strategies to improve the efficiency of their water use, conserve supplies, and acquire supplemental water. These changes have garnered worldwide attention and have established the Westside as the most water efficient agricultural producing region in the world.

The following strategies have been widely adopted throughout the area:

**Conservation.**—Tens of millions of dollars have been invested to conserve water so that it can be spread to as many acres as possible. Drip irrigation for permanent crops is standard and is also being implemented on a broad scale for row crops. Canals and ditches have been lined to reduce losses; low interest revolving loan programs have been implemented to encourage investment in conservation and water reuse.

**Transfers.**—Transfers are active at the farm, district and Authority regional level. However many types of transfers require long lead times and entail uncertain approvals. Inter-region transfers are contingent upon Delta export pumping capacity, which has been virtually eliminated by recent B.O.s

**Crops.**—In order to afford the investments in conservation and to be able to compete in costlier water markets, farmers have had to convert to high value vegetable and permanent crops. Trends over the last 15 years have shown a gradual and consistent conversion.

**Groundwater.**—Unfortunately, groundwater in the region is generally spotty in both availability and quality. Monitoring programs have been implemented to track groundwater levels, drawdown, recovery rates and subsidence to determine sustainable yield and to maximize sustainable use.

**Land Following/Retirement.**—Unfortunately, even after aggressively implementing conservation, transfers, and groundwater programs there hasn't been enough water available to irrigate all of the 1.1 million Westside acres. 300,000-400,000 acres have been idled either by farmers consolidating their supplies or through district programs.

Despite the foregoing effort, recent, rapid, and successive federal Endangered Species Act actions have crippled the effectiveness of much of these prior strategies and investments due to severe operational limitations that have been imposed on the CVP by the FWS and NMFS to protect ESA listed delta smelt, Chinook salmon, green sturgeon, steelhead, and Southern Resident killer whales. These limitations dramatically reduce the Westside's ability to supplement its chronically short contract supplies of water with traditional transfers from the north to the south.

*Regulatory Actions and the Future of Westside Agriculture*

In December 2008, the FWS issued a new Delta Smelt opinion on the continued operations the CVP and SWP. No estimate has been produced as to the population level benefits of the actions imposed by the FWS; however, adverse impacts upon the water supply of the CVP and SWP are generally agreed to average approximately 750,000 acrefeet of water per year. Numerous suits have been filed over the new opinion.

In June 2009, the NMFS issued a new opinion Salmon, Steelhead and Green Sturgeon opinion further impacting the continued operations the CVP and SWP. No estimate has been produced as to the population level benefits of the actions imposed by the NMFS; however, adverse impacts upon the water supply of the CVP and SWP are estimated to average 450,000 acre-feet of water per year. Numerous lawsuits have been filed over the new opinion.

Many in the academic and non-federal scientific communities point to impacts being caused by factors other than the CVP and SWP exports, such as invasive species, pollution, the thousands of non-CVP and SWP diversions, legal and illegal harvest, ocean conditions, and climate change. Lately, the federal fish agencies have begun to acknowledge that these other factors are contributing to the decline of species. But despite a growing body of scientific evidence demonstrating the significance of these other factors, they have done nothing either to estimate their importance or, more importantly, to curb their impact.

While benefits to fish through the FWS and NMFS historical management practices have been elusive, the adverse impacts to water users have been immediate, widespread and devastating. In a span of less than 2 years, farmers south of the Delta have seen their CVP water supplies cut from 65 percent of contract to 35 percent on average, an almost 50% percent reduction.

In summary, the Westside's ability to supplement its chronically short contract supplies of water with traditional transfers from the north to the south is severely limited and thus the ability to more effectively transfer and/or exchange water between the Westside and Eastside of the San Joaquin Valley, as well as within divisions, is critical in order to meet immediate water needs.

Without tools that can provide immediate and meaningful relief to the Westside, the future of agriculture throughout the region is in extreme peril. The loss of agriculture throughout the region will disproportionately affect the small, rural communities that are based on this economy.

*"Eastside" CVP, (Friant Division)*

The Friant Division is located on the east side of the San Joaquin Valley and serves approximately 15,000 farms on nearly 1 million acres of highly productive agricultural lands (See Figure 2). A number of cities and communities, including Fresno, Orange Cove and Lindsay, receive all or a significant portion of their water supply directly from the Friant Division. The Friant Division's water supplies, which historically averaged about 1,250,000 acre feet per year, come from the San Joaquin River via exchange with the historical water rights holders who are to receive a more reliable water supply from northern California CVP facilities. The Friant Division is predominantly permanent crops. Some contractors are wholly dependent upon Friant supplies. Other contractors have supplemental supplies, including groundwater. Friant is a "conjunctive use" services area. In wet years, Friant supplies are used to recharge groundwater aquifers which are relied upon to make water deliveries in dry years.

*California water conditions—Impacts to Friant Water Division*

Pumping reductions in the Delta as a result of environmental regulations are also affecting the Friant Division. Earlier this year, for the first time in the nearly 60 years of the project, Reclamation was concerned that it could not deliver northern California water to the Exchange Contractors. The Exchange Contractors could then call upon their historical water rights from the San Joaquin River. Up to 200,000 acre feet of Friant water could have been lost. Unfortunately, modeling demonstrates that this risk will continue if conditions in the Delta are unchanged.

Cross Valley CVP water supplies (128,000 acre feet) also come from northern California and those contractors reside within the Friant Division. Delta conditions have severely limited delivery of those water supplies and those diminished deliveries are impacting groundwater supplies for both the Cross Valley contractors and neighboring Friant contractors.

Friant, Reclamation and the NRDC recently settled an 18 year old lawsuit over San Joaquin River operations and its effect on salmon fisheries which was supported by federal legislation, advanced by Senator Feinstein, earlier this year. The Settlement has two goals—restore the river system and salmon fishery and avoid or reduce water supply impacts to CVP contractors. Water released from Friant Dam can be recovered in the Delta. However, recent biological opinions have called into question whether restoration flow releases can be recaptured in the delta and returned to Friant.

The delta pumping restrictions affecting water supplies in the Friant Division could result in the fallowing of over one hundred thousand acres of permanent and annual crops with significant economic impact to the eastside of the San Joaquin Valley and the loss of specialty crops, such as fruits and nuts, to the entire Nation.

*The Benefits of Transfers within the Friant Division of the CVP*

One of the key features of the Friant Division is the conjunctive use of surface and groundwater. Since the inception of the Project, wet year water has been used to replenish groundwater supplies. In certain instances, ground water recharge has been accomplished by transferring water to non-long term contractors within the Friant Division boundaries who share in a common groundwater basin. That transferred water is then used instead of groundwater ("in-lieu recharge") or put into recharge facilities for direct groundwater recharge. Given the hydrological volatility of water supplies in the Friant Division, wet year conditions may suddenly occur and the opportunity to transfer the wet year water is short as a result of limited storage capability at Friant Dam. Transfer approvals are needed quickly to take advantage of groundwater recharge capabilities in wet years.

*Case Study-Friant Division (East Side) Transfer*

Since the passage of CVPIA, transfers of wet year water to non-long-term CVP contractors have become increasingly difficult. The proposed legislation contains a provision which would statutorily meet the transfer conditions of the CVPIA that are currently causing restrictions and delays in transferring water.

As an example, in the last wet year cycle, some Friant contractors were able to reduce irrigation demands due to rainfall into late May. One of the Friant districts, who has limited direct groundwater recharge facilities, desired to transfer water to a non-CVP contractor in the Friant Division who could recharge the groundwater using their facilities. The consumptive use condition in the CVPIA had the affect of thwarting this transfer. The water was ultimately put to beneficial use but by means not nearly as efficient and effective. Relief from the current CVPIA provisions for this type of transfer would improve the ability to use wet year conditions to recharge groundwater. Delays as a result of these provisions could result in a loss of water supplies to an already water supply deficient area.

*Case Study Eastside to Westside Water Transfer*

Many water transfers are extraordinarily complex, requiring numerous agreements, multiple exchange partners and various state and federal agency approvals, long processing times and multiple environmental documents. These processes add risk, time and cost to transfers. In many cases it is simply not possible to complete a transfer during the timeframe water is available. Due to a lack of conveyance facilities and excessive requirements, some seemingly simple transfers can become very complicated. One example:

San Luis Water District (SLWD) is a Westside CVP contractor in Fresno County experiencing a zero water supply allocation in early 2009. Fresno Irrigation District (FID) is an Eastside CVP contractor also in Fresno County. FID owns and operates a water bank. In 2009 FID had surplus banked water to sell. In April terms were struck for a one time transfer of 10,000 acre feet, contingent on successful completion of environmental documents and various approvals.

The transfer required:

- Negotiation and execution of four agreements
- Completion of federal environmental assessment
- Approval by Reclamation
- Approval by State Water Resources Control Board
- Approval by Department of Water Resources
- Approval by State Water Contractors
- Approval by City of Fresno

Despite the most diligent of efforts involving over twenty professionals, it was not until 6 months later, in the last feasible month, before transfer water actually began its 300 mile journey from FID to SLWD which have facilities separated by less than 25 miles. Throughout the entire process there was no certainty that the essential water would actually be transferred.

*Human Impacts of Westside Water Shortages*

In January and February 2008, pumping constraints imposed upon the CVP and SWP by the U.S. District Court for the Eastern District of California intended to protect delta smelt cost the projects collectively approximately 600,000 acre-feet of water. The impacts of regulation would have been worse except that drought took over, resulting in the driest March through May on record. Dr. David Sunding, Professor of Agricultural and Resource Economics at UC Berkeley, estimated the average statewide economic effect of protecting the threatened delta smelt under the constraints imposed by the Eastern District Court would exceed \$1 billion and could eclipse \$3 billion through lost crops and more expensive water. While the potential statewide impacts of these regulations is staggering, they in fact impact regions differently, and disproportionately affected the San Joaquin Valley's Westside agricultural region due to lack of replacement supply and diminished transfer opportunities.

As a result of the water supply shortages manifested in early 2008, water supply rationing was imposed in June by the CVP upon south-of-Delta contractors and the water supply allocation was cut from 45% to 40%. These actions occurred in the heart of the Westside's growing season and resulted in economic impacts estimated by Dr. David Sunding to exceed \$175,000,000 and 700 jobs in a matter of weeks. These impacts were in addition to those that had already rippled through the region as a result of the Eastern District Court constraints.

Lack of transfer water has caused districts and individual growers to increase their reliance upon local groundwater and surface supplies. Forecasted economic im-

pacts indicate potentially significant effects upon the region and State. The most recent analysis conducted by the UC Davis Department of Agricultural and Resource Economics suggests that the economic impact upon Central Valley agriculture due to 2009 water supply reductions resulted in 21,000 lost jobs and reductions in income exceeding \$703 million. These findings are dependent upon an assumed ability of farmers to increase groundwater pumping, which is locale dependent and likely to increase production costs substantially.

Land fallowing along the Westside has exceeded 350,000 acre feet and 500 square miles of highly productive land. Unemployment rates through many parts of the Westside exceed Depression era levels. Food lines are common in several rural Westside communities and need has often outstripped the ability of the food banks to provide. Currently, the Central Valley food bank is out of money. They have been serving an estimated 30,000 people through the summer, which is traditionally the best period for agricultural employment. Sadly, demand for social services is peeking at a time when the ability of local and state government to respond is also severely depressed due to the broader global economic downturn.

Residents in the rural community of San Joaquin standing in relief line to receive food imported from China.

The fact is regulatory impacts upon the CVP and SWP are affecting more than just water supplies. Rural communities, big cities, development, and environmental restoration are all being impacted. Currently there is a large, concerted, and long overdue effort to overhaul California's water supply infrastructure and regulatory paradigm. However, many solutions lie too far out in the future and cannot satisfy the critical and urgent need for meaningful improvements now. Reforming the transfer provisions of the Central Valley Project Improvement Act is one important and readily available tool.

Attachment 1: Letter\* from Del Puerto Water District to the Honorable Ken Salazar, Secretary of Interior.

Senator STABENOW. Thank you very much for your testimony. Mr. Candee, welcome.

**STATEMENT OF HAMILTON CANDEE, ALTSHULER BERZON LLP, REPRESENTING GRASSLAND WATER DISTRICT, SAN FRANCISCO, CA**

Mr. CANDEE. Thank you very much. Thank you, Madame chairwoman and members of the subcommittee. I appreciate the invitation to testify before you today on S. 1759.

My name is Hamilton Candee. I'm a partner in the San Francisco law firm of Altshuler Berzon. I'm appearing today on behalf of the Grassland Water District which is a contractor of the Central Valley project located in Merced County and a beneficiary of water transfers in the CVP.

Grassland Water District is part of the larger Grassland Resource Conservation District which encompasses approximately 60,000 acres of wetlands which is one of the most important wetland complexes west of the Mississippi.

Grassland Water District delivers water to privately owned wetlands as well as to neighboring state and Federal wildlife refuge areas pursuant to a contract with the Bureau of Reclamation.

Grasslands is also a participating organization within the Central Valley joint venture. An entity that is specifically referenced in the 1992 Central Valley Project Improvement Acts, CVPIA, for its central role in promoting and facilitating the acquisition of adequate water supplies for wetland habitat including state and Federal wildlife refuges. In working on this transfers bill we've been working closely with some of the NGO's in the Central Valley Joint

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\*Letter has been retained in subcommittee files.

Venture including National Audubon, California Audubon, Defenders of Wildlife and Ducks Unlimited.

While Grasslands is supportive of the goals of S. 1759, we believe certain changes are needed to ensure that there are no unintended adverse impacts of the legislation on the refuge supply issue and to reaffirm the importance of meeting the goals of CVPIA with respect to wetlands and refuge areas. We appreciate the encouragement we have received from the authors of the legislation to provide suggested language improvements. We look forward to working with the committee and with the bill's co-authors to identify ways to address each of our concerns.

My written testimony and the attachments set out a more detailed statement of the predicament faced by Central Valley Refuges and the importance of the water supply provisions to address the ongoing predicament. In the interest of time I'll be providing a short summary. I ask that the full written statement be put into the record.

Between the 1850s and the 1950s the wetlands in the Central Valley went from 4 million acres down to less than 300,000 acres. Things continued to get worse between 1950 and 1970. Then when the drought hit in the 1970s the situation became much, much worse.

During the latter part of the 1970s the greatly reduced wetland water supplies and in some instances eliminated all wetland water deliveries. The combination of drought and poor wetland water supply reliability resulted in significant impacts to wetland habitat and water bird populations. Partly in response, the North American Water Fowl Management Plan was enacted. That's what led to the Central Valley Habitat Joint Venture that I mentioned.

Those groups worked together with Congress. In 1992 the Central Valley Project Improvement Act was enacted. In summary the CVPI was to provide key wetland basins with sufficient water supplies for the purpose of achieving optimum habitat management in all but the most critically dry years.

There have been several long term water conveyance like contracts and agreements negotiated after the passage of CVPIA. Unfortunately the original program of CVPI was to provide what they call level 2, which is the historic water supplies and the basic mitigation supplies that were expected for all of the refuges, but also a level 4 supply. The difference was that level 2 would be provided right at the outset when the bill was passed and then level 4 would come in over time over 10 years and it would be acquired through transfers.

Unfortunately the level 4 supplies have never shown up in the full amount. I attached a chart at the end of my testimony that shows what the level 4 supplies are supposed to be according to Congress, according to the act in 1992. What they've actually been delivered is far short of the actual level 4 target.

Grassland Water District and the other organizations in the joint venture, the NGO's will be providing separate written comments. But I want to focus on 2 areas where we're concerned there may be an impact from the transfer legislation, the goals of the 1992 CVPIA with regard to refuges.

The first is we understand that it's the intent of the authors to preserve all the existing protections of the Federal and State environmental laws. But we feel that that issue needs to be clarified. It's not 100 percent clear as you read through the bill that all the protections that are already in the CVPIA will be preserved.

We think there are different ways you could do that. You can do it by amending section 2(a), by amending section 2(b) or you could put in a separate stand alone provision. We're happy to work with Senator Feinstein and Senator Boxer's staff and the committee staff on what's the best way to accomplish that. But we think this intent which apparently is implicit in the intention of the authors needs to be made more explicit.

Second, we are concerned that the protection and restoration of wetlands will become more difficult as a result of this bill as it opens up the transfers market. There's more demand for the transfers and the price goes up. The competition to move that water around becomes more intense. There could be negative impacts on the wildlife refuges. So there should be one or more mitigation measures to try to address that.

One measure that we would recommend which is consistent with the philosophy of the bill in terms of facilitating transfers would be to make it easier for State and Federal wildlife refuge managers to move water from one refuge to another. You have this unusual situation now where some refuges in the north will not need their full supply in a particular year where some of the refuges in the south need a lot more water. They would like to move the water from one refuge to the other. But it's very hard to do that and sometimes what happens is the water just ends up going back into the general pot and being distributed to cities or farms without any attention given to how you could move that water from one refuge to the other.

It's actually—it's a doable thing. In fact even the current contracts with the refuges anticipate that that would be the first thing that you would do with any extra water. So we'd like to propose language, if it's ok with the chair to the subcommittee, to suggest how that could be accomplished as a mitigation measure.

Senator STABENOW. We'd be happy to have that information given to staff. Work with you on that.

Mr. CANDEE. Thank you very much.

The Wetlands of the Central Valley of California have national and international significance. Are truly an important resource for our state and country. The CVPIA Congress made clear that these refuge areas need to receive an adequate water supply through both level 2 and the level 4 programs.

While we support the goal of facilitating water transfers that are at the heart of S. 1759, we urge the committee to revise the legislation as needed to ensure that these unintended adverse impacts to Central Valley Wetlands are avoided and mitigation is provided.

Thank you.

[The prepared statement of Mr. Candee follows:]

PREPARED STATEMENT OF HAMILTON CANDEE, ALTSHULER BERZON LLP,  
REPRESENTING GRASSLAND WATER DISTRICT, SAN FRANCISCO, CA

Thank you Madam Chairwoman and Members of the Subcommittee. I appreciate the invitation to testify before you today on S. 1759, The Water Transfer Facilitation Act of 2009, which is intended to facilitate and expand voluntary water transfers in the Central Valley Project in California. My name is Hamilton Candee and I am a partner in the San Francisco law firm of Altshuler Berzon LLP. I am appearing today on behalf of the Grassland Water District, which is a contractor of the Central Valley Project (CVP) located in Merced County and a beneficiary of voluntary water transfers in the CVP. Grasslands is a participating organization within the Central Valley Joint Venture, an entity that was specifically referenced in the 1992 Central Valley Project Improvement Act (CVPIA) for its central role in promoting and facilitating the acquisition of adequate water supplies for Central Valley wetland habitat, including national and state wildlife refuges and privately owned wildlife habitat. In its work on the proposed transfers legislation, Grasslands has been coordinating its efforts in particular with Audubon California and Defenders of Wildlife, and with Ducks Unlimited and California Waterfowl Association, all founding members of the Joint Venture. A recent brochure prepared by Joint Venture members about Central Valley wetlands and the importance of the CVP refuge water supplies is attached to my testimony.

While Grasslands is supportive of the goals of S. 1759, we believe certain changes are needed to ensure there are no unintended adverse impacts from the legislation and to reaffirm the importance of meeting the goals of CVPIA with respect to wetlands and refuge areas. We appreciate the encouragement we have received from the authors of the legislation to provide suggested language improvements and we look forward to working with the Committee and the staff to Senators Feinstein and Boxer to identify ways to address each of our concerns. My written testimony sets out a more detailed statement of the predicament faced by Central Valley wetlands and the importance of fully implementing the CVPIA's refuge water supply provisions to address this ongoing predicament. In the interest of time I will be providing a short summary of this testimony today but I ask that my full written statement, including the attachments, be included in the record of this hearing. Thank you.

*Background*

The loss of wetlands since the 1850s has been well documented by a variety of publications and reports. Surveys in the 1850s estimated there to be over 4 million acres of wetlands in California's Central Valley. By the 1950s, expanding development decreased Central Valley wetlands to an estimated 290,000 acres. Continued decline of Central Valley wetlands occurred between 1950 and 1970. Water supplies for managed wetlands during this period were not secure. Most managed wetlands depended upon agricultural irrigation return flows, low-priority water contracts, or non-binding agreements for their water supplies. This situation continued during the 1970s until a severe drought during the latter part of the decade greatly reduced wetland water supplies, and in some instances, eliminated all wetland water deliveries. The combination of drought and poor wetland water supply reliability resulted in significant impacts to wetland habitat and water bird populations, and in particular, wintering waterfowl.

Partly in response to this crisis, the North American Waterfowl Management Plan (NAWMP) was enacted in 1986 and the Central Valley was identified as one of the major focal points for addressing the needs of North American waterfowl. The Central Valley Habitat Joint Venture (CVJV) was formed in 1988. Based upon the findings of the subsequent 1989 federal Report on Refuge Water Supply Investigations, one of the top priority goals of the CVJV became securing firm, reliable water supplies for managed Central Valley wetlands. Several CVJV partners worked closely with Congress to include wetland water supply provisions within the Central Valley Project Improvement Act (CVPIA) of 1992. In summary, the CVPIA was to provide key wetland basins with sufficient water supplies for the purpose of achieving optimum habitat management in all but the most critically dry years. To date, the CVPIA remains the most important legislative action ever taken to protect and restore Central Valley wetland habitat.

The CVPIA authorized and mandated that historic water supplies and 2/3 of baseline CVP mitigation requirements (collectively called "Level 2" supplies) must be provided by the Secretary of the Interior from the Central Valley Project. In addition, the incremental water supplies necessary for wetlands to operate at full habitat development levels (known as "Level 4" supplies) were to be acquired through purchase from willing sellers and provided in 10% increments per year until 2002, when full water supply requirements were to be met. These full water levels have

not been achieved, due in large part to federal and state budget shortages, inconsistency in the timing of water deliveries, and increases in water costs on the spot market. This shortfall has been a serious problem for Grassland Water District and other federal and state wetlands in the Central Valley. As we analyze the new proposed legislation, our goal is to ensure that the bill does not inadvertently aggravate this shortfall by making it even more difficult for Interior officials to carry out their Level 4 mandate, as well as the related diversification goal of CVPIA that also depends on transfers to succeed.

Since enactment of the CVPIA in 1992, delivery of water supplies of adequate quality and quantity to public refuges and the privately-managed wetlands of the Grassland Resource Conservation District (GRCD) has improved wetland habitat quality and benefited many wetland-dependent wildlife populations, including waterfowl, shorebirds, colonial water birds, and several threatened and endangered species. These benefits have been documented in annual reports to Congress and a variety of studies and reports conducted by individual refuge units.

Several long-term water conveyance/supply contracts and agreements were negotiated during the 1990s that increase the reliability of the CVPIA water supplies to be delivered over the 25-year contract term. However, water costs have also escalated as 2 water acquisitions to meet CVPIA, urban, and agricultural needs resulted in a sharp increase in spot market prices, further stressing limited budgets. Even if fully realized, CVPIA's refuge water supply provisions did not resolve the issue of firm and reliable supplies to all the NWRs, WAs and private wetlands in the Central Valley. The CVPIA required the Secretary of the Interior to investigate and report to Congress the water supply needs for the remaining private wetlands of the Central Valley and those lands included in the CVJV wetland restoration objective. This investigation, known as the "Central Valley Wetlands Water Supply Investigations of December 2000," identified available water supplies for existing private wetlands and water supply requirements to meet the wetland restoration goal of the CVJV 1990 Implementation Plan.

We strongly believe that the refuge water supply provisions are among the Act's greatest achievements to date. Vast increases in restored wetland acreage, seasonally flooded spring and summer habitat, bird use numbers on Central Valley wetlands, and increases in non-waterfowl wetland dependent species are but a few examples of what the CVPIA has already accomplished. Despite these successes, we are concerned that this recovery cannot be fully realized without the Bureau of Reclamation being given the resources to meet their statutory Level 4 refuge water supply obligations, and could be further impacted in future years due to the rapid increase in water costs and increased competition for CVPIA Restoration Fund dollars. I am attaching a chart that shows the shortfall in Level 4 deliveries, and how that shortfall has increased in recent years as the spot market price of water has gone up.

#### *The Water Transfers Legislation*

Grassland Water District and several of the individual organizations within the Joint Venture will be providing written comments in the days ahead making specific suggestions for changes to the legislation to prevent adverse impacts to wetlands. For example, some of these comments will focus on clarifying the provisions of Section 3 of S. 1759 to ensure that the call for expedited environmental review does not create unintended consequences; others will address the concern that Section 2's expanded exemption from CVPIA not allow for "paper water" transfers by which a particular district might try to sell water that it is not currently using, water which in fact may be in use by other water users or wetland areas.

In my present testimony, I wish to draw the Subcommittee's attention to two particular problems, which we believe are easily solved without causing any harm to the goals of the bill. First, we understand it is the intent of the authors of the legislation to preserve existing protections of federal and state environmental laws that are otherwise applicable to water transfers, with the sole exception of the expanded exemption in subsection 3405(a)(1)(m) of the CVPIA as provided in Section 2 of the present bill, and the directive for programmatic environmental reviews in Section 3 of the bill. Unfortunately, because of the structure of the legislation, especially its status as a standalone bill rather than an amendment to CVPIA, this intention is not as clearly reflected in the legislation as it should be. In particular, we believe the numerous protections for wetlands and refuge water supplies provided in the CVPIA must be clearly reaffirmed as conditions on the newly expanded transfers authorized by this legislation. We believe this can be easily achieved in different ways (for example, by revisions to either Section 2(a) or to Section 2(b)) and will be submitting proposed language under separate cover to make clear that, just as the San Joaquin River Settlement is now protected in the current version of S. 1759,

all other applicable provisions of federal and state law, including but not limited to NEPA, the Endangered Species Act, the CVPIA and state water transfer laws, are also fully preserved.

Second, we are concerned that the protection and restoration of wetlands under CVPIA will become more difficult as a result of the measures provided in this bill and, therefore, believe one or more mitigation measures are needed to help counteract this unintended adverse impact. This impact will result from the reduction in available water for acquisition by refuges, the increasing market price for acquired water as more buyers are seeking that available water, and potentially through increased priority placed on water supply transfers authorized by this bill. To help counteract this adverse impact, our recommendation is to include language within the bill to facilitate and expand a particular kind of voluntary transfer that will assist wetland areas, specifically language that facilitates transfers from one refuge area to another.

We believe this language will also help reduce costs to the Federal Government, assist Interior in meeting its existing CVPIA obligations, and encourage efficient use of refuge water supplies by federal, state and private wetland managers. While some may believe that Interior and its refuge customers already have the ability to accomplish such refuge-to-refuge transfers, the fact that they are not at all common and that refuge water in the Sacramento Valley that is not needed in a particular year is returned to the CVP for general delivery to urban or agricultural customers before the water supply needs of other CVPIA refuges are met, indicates that further authority and direction from Congress is needed. We would note that this mitigation provision would not only help Interior meet its Level 4 obligations, it would also help promote the diversification of Level 2 supplies, which requires more surface water supplies to be successful. Again, in the coming days we and other organizations within the Joint Venture intend to provide the Committee with specific language proposals to accomplish this straightforward mitigation concept within the structure of S. 1759.

#### *Conclusion*

The wetlands of the Central Valley of California have national and international significance and are truly an important resource for our state and country. In the CVPIA, Congress made clear that these refuge areas need to receive an adequate water supply through the combined Level 2 and Level 4 programs. While we support the goal of facilitating water transfers that is at the heart of S. 1759, we urge the Committee to revise the legislation as necessary to ensure that unintended adverse impacts to our Central Valley wetlands are minimized and to ensure that refuge-to-refuge transfers are specifically authorized to provide mitigation for the inevitable impacts that are caused.

Senator STABENOW. Thank you very much to both of you for your testimony. We'll turn to questions now.

First, Mr. McIntyre, welcome again. In general your testimony is supportive of the provisions of S. 1759. Do you think there are more areas in which we could facilitate transfers between the east side and the west side water districts and improve the water transfer process?

Mr. MCINTYRE. I do, Madame Chair. I would encourage and have invited the Bureau of Reclamation to engage in workshops to identify and distinguish between practice and protocol and statutory requirements.

We believe that we could substantially expedite the transfer of water supplies if we did a comprehensive re-visitation of past practices and determine which of those are required by law, which are appropriate and which are unnecessary. While at the same time exercising due diligence to comply with both state and Federal environmental laws.

Senator STABENOW. Thank you. Speaking of environmental laws, other than the Endangered Species Act which I know we have heard concerns about. Are there other factors that contribute to a decreased water supply for irrigators in the district?

Mr. MCINTYRE. There have been a series of decisions all intended to shore up a declining delta habitat and delta species set. But those are goals and objectives that I believe Mr. Candee and I would strongly agree on. It's the approach that has been taken by virtue or by virtue by the way the Endangered Species Act is written that allows what we believe to be the more significant causes of the decline of the delta to remain unaddressed. While the focus remains on the state and Federal water supply pumps which surely are not responsible for the introduction of invasive species or the collapse of the food web on which all those species, important native species, depend.

So as I mentioned earlier we encourage the National Academy of Sciences review of the recent biologic opinions in an expanded view of the delta and how to resurrect it, species and habitat. We do not believe that will occur without a comprehensive view and the introduction of the best and most currently available science.

Senator STABENOW. Thank you very much.

Mr. Candee, in your testimony you indicated that you're concerned about the protection and restoration of wetlands. That would be more difficult as a result of certain measures in the bill. I wonder if you might speak further because how would enactment of the bill result in a reduction in available water for acquisition by the refuges?

You've talked about the refuges somewhat related to that, but and an increased market price for the acquired water. Shouldn't the opposite be true that an additional supply of water would result in lower prices?

Mr. CANDEE. Actually it appears that one of the effects of the bill could be to increase the demand, but not necessarily the amount of water that's available. So for example the, right now there are certain contractors who are able to access water that's put on the market. I think one of the goals of the bill. I think the authors are quite clear, is to make it easier, broaden that group.

For example in CVPIA those 2 provisions that are referenced in section 2 are exempted only for a very limited group. There's a very limited exemption. What section 2 of the new bill does is broaden that to all of the south of delta divisions in the CVP.

So clearly that will enable more people to compete for that same block of water since right now the Interior Department is currently one of the people in the market, one of the groups in the market, trying to acquire water to meet its obligations for refuges. It just seems logical that that will increase the demand and increase the price. If you look at that chart at the end of my testimony, it shows that as the price was going up the supply for the refuges was going down. I think there's a limited amount of money that's been made available.

One of the things that Grasslands and other groups have asked for is additional funding support for acquiring that water. I understand earlier this week the state legislature also finally kicked in some State money for that as well.

Senator STABENOW. Thank you very much.

Senator Bennett.

Senator BENNETT. Thank you very much, Madame Chairman.

Mr. McIntyre, let's talk about the pumps. Even if the legislation were passed how much impact would these transfers have in meeting your needs if there are no changes made in the pumps?

Mr. MCINTYRE. Proportionately speaking it's a relatively limited benefit compared to returning the pumps to their prior permitted capacity. Even if we just go back 2 years ago. Essentially in the past 2 years we've lost.

There may be some dispute in these numbers. But not clearly is there any dispute on the order of magnitude. Our average reliability 2 years ago, 2 ½ years ago, was roughly 65 percent of our contract amounts. Today best modeling efforts appear to indicate that we're at 35 percent with much greater, more likely occurrence of very low allocations from 0 to 10 percent at which point essentially all of the permanent cropping and many of the business enterprise on the west side will collapse. There is simply insufficient transfer water south of the delta available to sustain those crops in a 0 to 10 percent environment.

Senator BENNETT. Alright. So your economy and your crops are threatened. How much of that threat comes from red tape or environmental considerations and how much of it comes from the physical ability to deliver the water?

If the red tape were to be resolved could the water be delivered? Is the water available? Could it be there in a timely fashion?

Mr. MCINTYRE. If I could refer you back to the map. At the left hand side or the upper end of the map, above that point resides the Sacramento San Joaquin River Delta System, otherwise known as the Bay Delta. The primary reason that we cannot move water through those facilities is not as a consequence of the facilities themselves, but the environmental constraints.

Senator BENNETT. It's not a technical problem.

Mr. MCINTYRE. Correct. Correct, it is. So your question is difficult to answer directly because there is the physical capacity to return our average supply to 65 percent. It is the environmental constraints imposed by the recent smelt and salmon biologic opinions that have further restricted the operation of the pumps.

Senator BENNETT. So it's our concern for the smelt that is causing the unemployment, driving out of people from their homes and their jobs and so on. It isn't the drought.

Mr. MCINTYRE. In all fairness to—

Senator BENNETT. I'm not saying the concern of the smelt is right or wrong here. But I'm just wanting to see where the water is really—

Mr. MCINTYRE. Yes.

Senator BENNETT [continuing]. Why the water is really being held up.

Mr. MCINTYRE. I understand. The water is being held up as a consequence of a combination of drought. Although we had near average precipitation this year and a 10-percent CVP water supply allocation.

But as to the fairness issue the delta is in serious crisis. The issue we take with the response to that crisis is that the focus has been pump centric. In other words, notwithstanding all of the many other factors causing delta habitat and food chain decline the pumps are the vehicle that has been subject to a media restrictions.

We think, frankly, that you could shut the pumps off all together and we would continue to see decline of the smelt and other species in the delta because of the collapse of the food web and toxic intrusion into the delta.

Senator BENNETT. So just so that I understand exactly what I think you're saying. The delay in delivering the water and the fact that they're getting only 10 percent is more of a regulatory factor than it is a physical factor. You have average rainfall.

But you're getting only 10 percent of the water in the place where it's desperately needed because of delays based on regulation rather than any physical inability to deliver the water. Is that a safe summary of what you're telling me?

Mr. MCINTYRE. That's generally true, yes.

Senator BENNETT. I see. Thank you very much.

Senator STABENOW. Thank you, Senator Bennett.

Senator McCain.

Senator MCCAIN. Do you have any response to the colloquy that just took place between Mr. McIntyre and Senator Bennett?

Mr. CANDEE. Grassland Water District didn't ask me to come here to talk about those particular issues, but I understand—

Senator MCCAIN. Alright, then never mind.

Mr. CANDEE. I do have—

Senator MCCAIN. I'll talk to Mr. McIntyre, then. I was just giving you the opportunity. If you don't want it—

Mr. CANDEE. As an individual can I just make one comment?

Senator MCCAIN. Sure.

Mr. CANDEE. That is both the state government and the Federal Government earlier this year issued written statements that it's really more the drought than any regulatory restrictions that has caused any of the water cutbacks this year. I think one of the interesting things is earlier this week the state legislature finished 2 months of unbelievable work trying to come together on a delta package. What's interesting is that you had farmers and environmentalists working together.

You had legislators from the north and the south. You had Democrats and Republicans. It was very difficult for them to come to agreement. But they were trying to come up with a package of bills to go with a lot of these issues.

Finally after an all night session they did reach agreement. So I think that's a pretty interesting development. Senator Feinstein referenced that earlier.

Senator MCCAIN. Thank you. Also unfortunately the state is not empowered to address some issues such as the Endangered Species Act and others that are Federal law.

Mr. McIntyre, is it true that 500,000 acres or nearly so were fallowed this year, that 13 percent of our Nation's food supply and it's believed to have cost about 40,000 jobs in these rural farming communities which already had a 40 percent unemployment rate? Are those numbers pretty accurate?

Mr. MCINTYRE. Excuse me. I believe they are generally accurate. I can speak specifically to the 500 square miles of fallowed ground. We believe it's in excess of that number and chose one that was easily defensible.

I believe that cumulatively over the past 2 years as a consequence of continuing declines in water supplies that we're seeing close to 40 percent unemployment in some of the smaller communities in those rural areas. Tremendous hardship, human hardship, as you might imagine associated with that.

Senator MCCAIN. So really what we're doing is maybe not endangering the existence of human beings, but certainly we are endangering their way of life that, as I understand, is multigenerational. Is that correct?

Mr. MCINTYRE. I believe that that is undeniable.

Senator MCCAIN. So the 6-month study that was enacted in the Interior Appropriations bill is not much comfort while we await a 6-month review of the biological opinions by the National Academy of Sciences. Is that really comforting for the farmers and their families out there?

Mr. MCINTYRE. We are grateful for any opportunity to revisit, in any manner, the biologic opinions including the National Academy of Science studies provided that the appropriate questions are submitted to the Academy.

Senator MCCAIN. Would that provide any short-term relief for the families?

Mr. MCINTYRE. It will not provide relief for this coming water supply year as best as we can tell.

Senator MCCAIN. What if we passed an amendment to suspend the biologic opinions for 1 year. Would that have helped?

Mr. MCINTYRE. Yes, I believe it would.

Senator MCCAIN. As you know that was voted down as an attempt to do so the Administration spent over \$400 million in stimulus money to help modernize California's water infrastructure including \$40 million by the Bureau of Reclamation to help Central Valley farmers. Has any of that—has any benefit from this spending been realized?

Mr. MCINTYRE. Not to this point. But they are moving aggressively with the \$40 million projects which essentially are ground water related projects. We do have numerous shovel ready projects that we believe would be exceptional candidate for stimulus money should those funds be returned or deemed inappropriate for some of the original applicants.

We stand in line, hat in hand, eagerly waiting any analysis of that matter.

Senator MCCAIN. It's a human tragedy that I visited out in your part of the country. Even been on several occasions, even before it got this serious. You know it really does seem that at least in the short term we may have our priorities upside down here when you have 40,000 jobs and a way of life disappearing.

I will match my environmental record against anyone. But I'm not sure that those people who voted for the Endangered Species Act and other acts intended that the consequences would be unemployment as high as 60 percent as a direct result of it. I don't know what can be done, Mr. McIntyre. But I think we owe the people there at least some straight talk.

That is that the environmental community has more influence here than those 40,000 families who have lost their jobs. They ought to be told exactly what the prospects of them ever regaining

their former way of life. What has sustained not only them, but 13 percent of America's food supply. At least we owe them that.

I wish the Administration would be more forthcoming in telling them exactly what they can expect in the months and years to come. So far I don't think that's the case. So I extend my thanks to you for your service. I extend my sympathy to the families who what, 5, 6 generations have farmed out there and done so much for America.

But there are some of us who will continue to try to get you relief rather than lip service even if we're unsuccessful, we won't quit trying. Thank you, Madame Chairman.

Senator STABENOW. Thank you, Senator McCain. Finally I would just have a question for each of you.

First of all, Mr. Candee, would waiving the Environmental Species Act provide additional water to the farmers that we're all concerned about?

Mr. CANDEE. You know it's interesting. Governor Schwarzenegger's top water official wrote a letter recently to the Senate saying that they did not support that as an emergency relief measure. I think part of the reason both the Republican Administration and the Democratic leadership in the State Legislature focus so much on the recent delta legislation, the package of water bills that just passed, is because they want to look at solutions that are really going to work on the ground.

So I think there's not a big cry for waiving Federal environmental laws. I think the hope is that's there's going to be progress on the State legislation moving forward.

Senator STABENOW. Mr. McIntyre, could you speak to the positive aspects of S. 1759 in terms of ways that you believe this will help the situation which obviously is a crisis.

Mr. MCINTYRE. Yes, thank you for that question. We believe that solutions to our current dilemma, dire though it is in the current environment, and I mean that the physical environment and the political environment necessarily must be incremental in nature. We consider this to be an important incremental step in helping us bridge the gap between our 10 percent water supply allocation and a time during which we will see a more comprehensive and realistic delta restoration plan that doesn't unduly focus on the state and Federal water pumps which are the lifeblood of the state.

So I'm very grateful for this bill to put it in shortest form.

Senator STABENOW. Thank you very much.

Senator Bennett.

Senator BENNETT. Just one last quick question. Has this affected farmer's ability to get financing on their crops?

Mr. MCINTYRE. You know, you must have some background in agriculture. One of the extraordinary parts of farming is that most farmers are "all in" as the term goes every year. They hock land and equipment and other assets in order to gain loans for purposes of buying this very expensive supplemental water, for buying seed, for buying fertilizers.

Yes, indeed, I am fielding an increasing number of calls from lending institutions looking for some confidence that if they loan the money the water will follow. That discussion is becoming increasingly difficult. It is the first critical chalk stone that gets

kicked out of the viability of agriculture is the inability to obtain Ag loans for each year's startup.

Senator BENNETT. Thank you very much, Madame Chairman.

Senator STABENOW. Thank you very much. Thank you to both of you for traveling here and for speaking about this important legislation. I'd like to note that the subcommittee has received additional written testimony on the bills before us today. That testimony, as well as written submissions from our witnesses today, will be made part of the official record.

Senator STABENOW. For the information of Senators and staff, questions for the record are due by close of business tomorrow.

Without further questions this hearing is adjourned.

[Whereupon, at 3:50 p.m. the hearing was adjourned.]

## APPENDIXES

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### APPENDIX I

#### Responses to Additional Questions

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RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR STABENOW

S. 1759

*Question 1a.* Your testimony indicates that the Bureau of Reclamation is currently working with the State of California to develop evaluation criteria for a long-term, programmatic water transfer program.

Is that the program that Reclamation will request consultation on with the Fish and Wildlife Service? Will that result in a programmatic biological opinion that covers water transfers throughout the Central Valley Project?

Answer. Reclamation is working with the State of California to obtain a programmatic biological opinion covering transfers from Federal and State contractors located north of the Delta to contractors south of the Delta. This process will involve consultation with the U.S. Fish & Wildlife Service (FWS) as well as the National Marine Fisheries Service after which programmatic biological opinions will be provided by those agencies. These biological opinions will cover transfers from North of Delta to South of Delta contractors but they will not cover water transfers between contractors who are both located South of Delta which S. 1759 addresses.

*Question 1b.* How long do you anticipate it will take for Reclamation to have the biological assessment for the water transfer program completed?

Answer. The Bureau of Reclamation (Reclamation) is working towards the goal of issuing the final biological assessment in the spring of 2011.

*Question 1c.* Your testimony indicates that the Fish and Wildlife Service could potentially expedite a programmatic biological opinion subject to the availability of appropriations—what additional appropriations will be required?

Answer. The FWS allocates its Endangered Species Act funding based on a number of factors that help determine the priority of projects or office needs. If other projects are no longer going to be carried out, it may be possible to reallocate or reprogram these resources to help expedite the programmatic biological opinion.

*Question 2a.* Your testimony indicates that Reclamation has already approved water transfers covering over 400,000 acre-feet of water this year.

Can you provide the committee an accounting of those transfers?

Answer. To date in the 2009 Water Year, transfers among CVP contractors north of the Delta amounted to approximately 105,230 acre-feet. Transfers south of the Delta among CVP contractors accounted for 246,739 acre-feet on the Westside of the San Joaquin Valley and approximately 83,317 acre-feet within the Friant Division.

*Question 2b.* Is the programmatic environmental documentation that was used to evaluate those transfers still in place and available for use to review future transfer applications?

Answer. Yes. These transfers are accomplished pursuant to 3 programmatic environmental documents, each of which covers a period of 5 years. Reclamation obtains updated programmatic environmental documents upon the expiration of the existing documents, and these documents are available for transfers occurring within the relevant 5-year timeframe.

*Question 3a.* Section 2 (a)(2) relates to transfers of water among several different categories of contractors but requires that the transfers occur within a Central Valley Project division.

Does this provision relate to transfers that would occur both north and south of the Delta as long as the transferred water remains within a particular division?

Answer. Yes. The “North of the Delta” category includes the American River Division, Sacramento River Division, and Eastside Division (San Joaquin River tributaries). The “South of the Delta” category includes the Friant and Delta divisions; the San Felipe and San Luis units comprise the Delta Division.

*Question 3b.* Under this provision, if a potential transfer will not remain within a division, would it still be subject to the entire, existing list of requirements under the Central Valley Project Improvement Act?

Answer. Section 2(a)(2) must be read in conjunction with section 2(a)(1). Taken together, only those transfers of CVP water from North of the Delta to South of the Delta would still be subject to all Central Valley Project Improvement Act requirements.

*Question 3c.* Does this provision of the legislation enable transfers of water from north of the delta to south of the delta?

Answer. This legislation does not change the status quo with respect to transfers of CVP water from North of the Delta to South of the Delta. Currently, water may be transferred from North of the Delta to South of the Delta upon a showing that the water was made available for transfer through a savings in consumptive use or groundwater substitution.

*Question 3d.* Can Reclamation provide an inventory of the various types of contractors that fall into those categories?

Answer. Reclamation’s Mid-Pacific Region has approximately 104 current water service contractors whose capital repayment and charges for operations and maintenance are factored into their water service rate. Three of these 104 contractors have separate water service and capital repayment contracts. In addition, there are 145 settlement contractors, and 4 exchange contractors. There are approximately 11 former temporary water service contractors. CVP contractors are listed on the internet with the CVP ratebooks at <http://www.usbr.gov/mp/cvpwaterrates/ratebooks/index.html>

*Question 4a.* Your testimony indicates that if S. 1759 is enacted, Reclamation will develop administrative guidelines to ensure that transfers take place without significant adverse impacts to other water users, federal programs, Indian tribes, Central Valley Project operations or the environment—are these criteria consistent with the criteria that are currently used to evaluate water transfers within the Central Valley Project—or are they new criteria that would be developed through the new guidelines?

Answer. These criteria are consistent with criteria currently used to evaluate water transfers.

*Question 4b.* How quickly would Reclamation be able to develop these administrative guidelines?

Answer. If this legislation is passed, Reclamation will have the guidelines in place for the 2010 Water Year.

*Question 4c.* Will these guidelines ensure that third parties such as the Hoopa tribe will not be adversely impacted by the transfers facilitated by this legislation?

Answer. The goal of the guidelines would be the prevention of any adverse impacts to third parties. The guidelines will require that all environmental documentation be completed prior to transfer approval. This documentation must address third-party impacts.

*Question 4d.* Will these criteria ensure that the interests of the wetlands and the Bay Delta are not adversely affected?

Answer. It would be the goal of the guidelines to prevent adverse effects to wetlands and the Bay Delta. The guidelines will require that all environmental documentation be completed prior to transfer approval. This documentation must address environmental impacts to the Bay Delta and wetlands, among other issues.

*Question 5.* Regarding the water acquisitions currently required by Section 3406 of the Central Valley Project Improvement Act for wildlife refuges, will enactment of S. 1759, help, harm or have no effect on those acquisitions?

Answer. Reclamation does not have information as yet to determine a positive or negative effect on the refuges. Market forces, hydrology and other variables come to play on refuge water supplies, particularly Level 4, but we anticipate that this legislation will have no effect upon acquisitions of water for refuges. Reclamation could use this as an opportunity to facilitate transfers between CVP contractors and the refuges, and also between refuges. Facilitating these transfers could have mutual benefits to both the contractors and the refuges.

*Question 6.* Your testimony indicates that it is difficult to calculate the financial impacts of S. 1759, but can the Administration ensure that it will be administered in a way that revenues for the environmental restoration fund will be protected?

Answer. Payments to the Restoration Fund are required for all water delivered to a CVP contractor, including water which is transferred. There should be no ad-

verse impact to these collections, and if anything, collection could increase to the extent water transfers result in increased deliveries of water.

QUESTIONS REGARDING THE DROUGHT CONDITIONS IN CALIFORNIA

*Question 7.* Please describe the factors that contribute to the decreased water supply available to water supply contractors within the Central Valley Project? For example, how much have the drought and low reservoir supplies contributed to the reduction in water supplies?

Answer. The 2009 Water Year represents the third consecutive year of dry conditions in the Central Valley. The result was decreased runoff to all the major river systems and lower than normal contract allocations for many CVP water service contractors. CVP exports South of the Delta were further limited due to new fishery protections required by the 2008 FWS Biological Opinion. For the 2009 Water Year, approximately 75 percent of the reduction in the combined exports of the CVP and State Water Project (SWP) was related to low runoff, and the remaining 25 percent was attributable to the new delta smelt protections under the FWS biological opinion.

*Question 8.* Attempts have been made to try to prevent the application of the Endangered Species Act within the Bay Delta system -would the Administration support those efforts? What would the anticipated consequences be if such a provision were to be adopted?

Answer. The Administration is not in favor of suspending application of the Endangered Species Act (ESA). We are currently collaborating with the National Academy of Sciences (NAS) to help them research whether there are any “reasonable and prudent alternatives” (RPAs), that, based on the best available scientific data and analysis, (1) would have lesser impacts to other water uses as compared to those adopted in the FWS’ and National Marine Fisheries Service’s biological opinions, and (2) would provide equal or greater protection for the relevant fish species and their designated critical habitat given the uncertainties involved. We will thoroughly review and consider the analysis, conclusions, and recommendations from the NAS report and use that information as we continue to work with partners to address the drought that California is facing. In addition, the Administration is supporting the expedited review of and, if feasible, construction of projects such as the Intertie that may provide new water supply reliability benefits to CVP and SWP customers. The Administration believes that strong potential exists to improve water supply reliability while protecting endangered and threatened species. These twin goals have been achieved in many other river basins across the West. Suspending application of the ESA could result in irreparable harm to the Bay-Delta ecosystems when alternative solutions exist and are being sought.

*Question 9.* There are a lot of factors that contribute to the health of the Bay Delta—what is the Administration doing to protect and stabilize the situation? For example, the Department of the Interior, collaborating with the Department of Commerce, is commissioning the National Academy of Sciences to conduct a study with respect to the biological opinions relating Delta. What are the Administration’s plans for implementing the recommendations of the NAS study?

Answer. The Administration is supporting ongoing efforts to improve our understanding of the Bay-Delta ecosystems and our management of human uses of the system. We support the National Academy of Sciences (NAS) review of the implementation of the biological opinions governing Central Valley Project and State Water Project operations. The NAS has extraordinary public respect and is the right independent entity to conduct this review. Both the Department of the Interior and the Department of Commerce have sought to structure the NAS review to ensure that its findings and recommendations address the most pressing management questions and are implementable. The Administration plans to follow-up on all recommendations that are likely to improve the concurrent management of the Bay-Delta ecosystems and water project operations.

The Administration supports the ongoing development of the Bay Delta Conservation Plan, which potentially may frame future water project operations in a system of habitat and ecosystem conservation measures that are being designed to contribute to the recovery of endangered and sensitive species and ecosystems while also improving the reliability of water supplies. The Administration also supports the ongoing Pelagic Organism Decline (POD) investigation. The POD investigation is a collaborative effort of 6 Federal and 3 State agencies to determine why multiple open-water Delta fish species populations declined sharply after 2001. The POD investigation has uncovered evidence suggesting that multiple factors, including food web changes, toxic chemicals, and water project operations have each contributed to the historical declines of these species. The Administration is committed to fully

exploring all factors that may be contributing to excess mortality of endangered and sensitive species, so that important initiatives like the Bay Delta Conservation Plan can benefit from the best available science.

*Question 10.* In the interim, while the NAS study is being conducted, are there other measures that can be taken to help alleviate the drought conditions? Please describe the efforts the Administration is undertaking to address the drought conditions in California?

Answer. Please see attached fact sheet.

*Question 11.* There has been discussion about legislation to address specific endangered species in other states, such as the silvery minnow in New Mexico. Can you describe that situation and the actions taken by Congress, and explain whether that situation is applicable to the current situation in the California Bay Delta?

Answer. Some argue that an ESA exemption was used earlier this decade to address an ESA-water rights crisis, similar to the one in the CA Central Valley, in the Middle Rio Grande involving the endangered Rio Grande silvery minnow. The legislative language in question, attached to the 2004 Energy & Water Appropriations bill, P.L. 108-137, Section 208 (2003), provided protection from legal challenge to a 2003 FWS biological opinion (BiOp) addressing the impacts of Reclamation's Middle Rio Grande water operations on the endangered silvery minnow. In other words, the silvery minnow rider called for compliance with the Endangered Species Act through compliance with the biological opinion. As such, the water project is in compliance with the ESA only so long as there is full compliance with the BiOp. The silvery minnow rider created added incentives for all stakeholders to take the actions necessary to protect the silvery minnow, because if they don't follow the BiOp, the rider's protections disappear.

The silvery minnow situation stands in stark contrast to legislative proposals to exempt the Central Valley water project from the Endangered Species Act, to operate it without a Biological Opinion of any kind, or to reinstate biological opinions that have already been determined to be scientifically insufficient by the Federal District Court. Whereas such proposals would eliminate the ESA's protections for the listed species, the silvery minnow rider implemented the ESA's protections for the minnow by reaffirming the BiOp.

The second part of the minnow rider eliminated the Secretary's discretion to unilaterally reallocate San Juan-Chama (SJ-C) project water away from Reclamation contractors to provide flows for the silvery minnow. The SJ-C is a trans-basin diversion that diverts water from the San Juan Basin and delivers it to the Rio Grande basin in New Mexico where it supplements the water supply available to sustain the minnow. Since the use of this water (an imported supply) was not responsible for degrading the minnows' habitat, Congress decided it should not be reallocated to provide flows for the minnow absent a willing seller arrangement. No similar protection was provided for native Rio Grande water.

The silvery minnow BiOp contained an incidental take statement that required reconsultation should the amount of minnow mortality exceed an established limit. To this date, no such reconsultation has been necessary because minnow mortality has not exceeded the limit established by the BiOp. Consistent with regulations for all Biological Opinions (50 CFR §402.16), reinitiation of the silvery minnow BiOp may also be triggered if (a) new information reveals effects of the agency action on listed species or critical habitat in a manner or to an extent not considered in the BiOp, (b) the agency action is subsequently modified in a manner that causes an effect not considered in the BiOp, or (c) a new species is listed or critical habitat designated that may be affected by the action. The silvery minnow BiOp also specified additional reinitiation requirements specific to this consultation. These include required reinitiation if any of the following occurs: (a) deviations from any environmental commitments, (b) densities of silvery minnows fall below current levels in the Angostura Reach, (c) no "wet years" (as defined in the BiOp, excluding years in which Compact Article VI or VII storage restrictions are in place) occur within 6 years of the BiOp issuance, or (d) a net loss of southwestern willow flycatcher habitat.

#### RESPONSES OF MICHAEL L. CONNOR TO QUESTIONS FROM SENATOR BENNETT

S. 1759

*Question 1.* We are disappointed that the State of California was not able to testify today regarding this bill—

Can you generally describe the relationship or interactions between the Bureau of Reclamation and the State of California relating to the transfers process?

Answer. Reclamation and DWR work together on a daily basis to coordinate the joint operations of the CVP and SWP. Reclamation and DWR worked cooperatively on the 2009 Drought Water Bank and have undertaken the joint development of programmatic environmental documentation and guidelines to cover north to south transfers on a long-term basis. Reclamation and DWR use the combined export capacity of the two water projects to take maximum advantage of transfer windows for all north to south transfers.

*Question 2.* Can you please describe what Reclamation's current process is for review of an application to transfer water from one district to another? How will enactment of S. 1759 speed the process up?

Answer. A written application describing the entire transfer transaction is submitted to one of Reclamation Mid-Pacific Region area offices. Reclamation then prepares a reimbursable agreement and upon receipt of the requested deposit, Reclamation begins evaluating the transfer in accordance with the CVP Water Transfer Guidelines. The transferor's (seller's) request must include, where appropriate, a description of how the water to be transferred is being made available, as well as a description of the facilities to be used, and the timing of the conveyance of the water, the name of the transferee (buyer). If the transfer is not covered by an existing programmatic environmental document, appropriate environmental documentation, including ESA compliance, must be prepared before approval. The area office determines if additional costs for the use of additional facilities must be collected. If the transfer is approved, an approval letter is then sent to the transferor district. S. 1759 will speed up the process by mandating additional programmatic environmental documentation be in place, reducing the time needed to develop such documentation on an individual basis, and by eliminating the need for conclusive proof that the water for transfer was made available through savings in consumptive use. As always, transfers will still be subject to the availability of capacity through a combination of CVP and SWP facilities.

*Question 3.* Does Reclamation have any way of quantifying the amount of additional water that may be available to be transferred to some of the water districts that are currently suffering from a lack of water if this legislation is enacted?

Answer. The quantity of water considered for transfer varies significantly from year to year. It depends upon several factors, many of which are beyond the control of Reclamation. Hydrologic conditions, commodity prices, and availability of Delta pumping capacity are a few of these conditions.

*Question 4.* Do you know the percentage of districts that have a groundwater supply available to supplement the surface water supply? Can you provide any estimate of the amount of groundwater pumping that may occur in any given year?

Answer. Overall, Reclamation estimates that approximately 65 percent of CVP contracting districts have a groundwater supply available to supplement surface water supply (counting only those districts that have wells that can pump in excess of 1,000 acre-feet per year).

*Question 5.* President Obama recently signed the Energy and Water appropriations bill that contains short term provisions that are similar to the provisions in S. 1759. What has Reclamation done to implement that new law? Would Reclamation do anything differently to comply with S. 1759 if it is enacted?

Answer. Reclamation is unaware of any transfer applications made since the enactment of the appropriations bill so we have not had the opportunity to implement the new law. If S. 1759 is enacted, Reclamation will undertake preparation of the programmatic environmental documentation for transfers from the eastside to the west side of the San Joaquin Valley.

*Question 6.* One of the requirements of Section 4 of the bill is that Reclamation must submit updated reports to Congress regarding the water transfer program until the Commissioner "determines that no further Federal action would be warranted or authorized"—How will Reclamation make that determination?

Answer. Reclamation would make this determination on the basis of whether new water transfer applications are still being submitted and the environmental documentation called for in this Act is in place.

*Question 7.* Is the current infrastructure in California able to handle the increased transfers as envisioned in this bill or will new connections need to be built—pipelines, interties, etc?

Answer. Reclamation does not envision that new infrastructure will need to be constructed as a direct result of this legislation.

*Question 8a.* Could the San Joaquin River be utilized to move transferred water? What impact does the San Joaquin River Settlement have on potential water transfers?

Could the San Joaquin River be utilized to move transferred water?

Answer. Yes, the river could be used to transfer water. However, a permit from the State Water Resources Control Board for an additional point of diversion on the San Joaquin River would be required to transfer project water out of Millerton Lake.

*Question 8b.* What impact does the San Joaquin River Settlement have on potential water transfers?

Answer. There would potentially be limited times of the year during March and April where there is no available channel capacity to transfer water in the San Joaquin River because of pulse flows required by the Settlement. Proposed transfers from May-February should not be affected by Settlement flows.

P.L. 111-11 contains provisions substantially similar to many of the provisions in the current legislation. Although worded slightly differently, the impact of that law is to authorize the same transfers as S. 1759 authorizes in Section 2(a)(2). The 111-11 language requires two conditions precedent to transfers: the first is release of Interim or Restoration Flows and the second is conversion of the current 9(e) water service contracts to 9(d) repayment contracts. Upon fulfillment of the conditions precedent, and upon submission of a narrative describing how the transfer will mitigate the effects of the Restoration and Interim flow releases, the contractors can transfer any portion of their contract allotment other than the water used for Interim and Restoration flows without a showing of a savings in consumptive use and without regard to the limits established by the CVPIA historic use provision.

*Question 9.* How have reduced deliveries in wet years impacted groundwater supplies, in particular, as they relate to conjunctive use projects?

Answer. The Friant Division was originally conceived as a conjunctive use project. Transfers during dry years will impact groundwater supplies by both drawing on those supplies through groundwater pumping and because the aquifer will not recharge if surface water is being transferred. In general, Reclamation believes that groundwater pumping during dry years depletes the aquifer and transfers of water decrease the amount of recharge. Friant Division contractors will thus have an incentive to limit the amount of water that they make available for transfer in order to manage their groundwater supplies to ensure availability of water when it is needed.

S. 1758

*Question 1.* Under current regulations, what is the likelihood of hydropower being developed on the Diamond Fork Unit?

Answer. In October 2004, the Central Utah Water Conservancy District completed the Supplement to the 1988 Definite Plan Report for the Bonneville Unit (DPR). The DPR Power Appendix and Financial and Economic Appendix provide a detailed analysis of federal power development on the Diamond Fork System. Although the analysis determined federal power development would be feasible based on the October 2004 DPR Supplement, power development at Diamond Fork could not begin until after the Utah Lake System has been constructed. It is uncertain when or whether federal power would be developed at Diamond Fork.

*Question 2.* If hydropower is not developed on the Diamond Fork, how will the \$161 million allocated to power generation be recouped?

Answer. If hydropower is not developed on the Diamond Fork System as contemplated in the DPR, the costs allocated to power generation would be re-allocated to the remaining project uses. The Municipal and Industrial, Irrigation, and Fish and Wildlife water users would be obligated to pay a proportionately larger share of the project costs.

*Question 3.* If hydropower is installed at Diamond Fork, how much will federal revenues increase due to annual power fees?

Answer. If federal power is developed on the Diamond Fork System, in accordance with the DPR, the revenue generated is expected to be approximately \$5.3 million annually. The revenues would be used to repay the capital costs of power development (\$161 million) and the operating and maintenance costs allocated to power.

*Question 4.* According to CBO, hydropower sponsors would be required to pay \$400,000 in fees beginning in 2015. So from 2015-2019, the federal revenues would increase by \$2 million.

Answer. If private power is developed on the Diamond Fork System as an alternative to federal power as described in the DPR the private developer would be required to enter into an agreement with the United States under the authority of a "Lease of Power Privilege." A lease payment to the United States by the private developer would be negotiated. In the past, similar private power developments on Reclamation projects have resulted in a lease payment to the United States of 3 mills or \$3 per mega-watt hour. Under the Diamond Fork System scenario and with

the current water supply a 3 mil payment to the United States would equal approximately \$400,000 annually.

*Question 5.* It seems to me that you aren't getting anything now, and are very unlikely to in the future because the cost structure in place doesn't make it feasible. With this legislation, you will at least receive \$2million in power fees, on a system that already been built out and largely paid for.

*Answer.* If federal power is developed at the Diamond Fork System it would not be built until after the Utah Lake System is constructed. The power would be marketed by the Western Area Power Administration with estimated revenues of \$5.3 million annually. The revenues would be used to repay the capital costs of power development and costs allocated to power.

If private power is developed at the Diamond Fork System no federal investment would be required. Under existing law, private developers would provide the capital costs and a portion of the revenues would be paid to the United States under a Lease of Power Privilege.

In general the federal government has to be careful to ensure that its policies are fiscally responsible over the long term. We need to look not only at years 2015–2019, but at future fiscal years to determine what the overall impact would be on the Treasury.

#### ATTACHMENT.—CALIFORNIA DROUGHT RESPONSE FACT SHEET

California is in the third year of dry hydrologic conditions. While the most adversely affected by the drought conditions are the water service contractors north and south of Delta, Reclamation is working with all water users on short and long-term actions to improve California's ability to deal with droughts and low water supply allocations. Some of these actions include facilitating and supporting water transfers, utilizing groundwater banks, and further diversifying water supplies.

- California is in the third year of drought conditions, resulting in reduced runoff and lowered reservoir levels. Precipitation in some river basins in 2009 was near-normal, but the runoff up and down the Sacramento and San Joaquin Valleys has consistently been at only 65-70% of normal. The run-off is a good measure of the water available to fill California's reservoirs and inform the Bureau of Reclamation's allocations. The smaller basins responded well to the late-season precipitation: the American River Basin's Folsom Reservoir nearly filled and the San Joaquin's Friant Division is now at 100% Class 1 and 23% Class 2 deliveries. But while some areas were aided by the improved weather conditions, the South-of-Delta area still felt the effects of the continued dry conditions. As it relates to westside Central Valley Project (CVP) agriculture, the dry conditions in the spring of 2008 and early winter of 2008/2009 (drought related), combined with the late winter and spring 2009 pumping restrictions (ESA and regulatory related), resulted in a 10% allocation. Dry hydrologic conditions resulted in a loss of about 1,600,000 acre-feet of water and pumping curtailments in the Delta to protect delta smelt resulted in a loss of about 500,000 acre-feet of water. This 2,100,000 acre-feet of water could have been delivered to agricultural and urban users. For the CVP, these reduced supplies have fallen predominantly on the water service contractors in the west side of the San Joaquin Valley who hold junior water rights.
- For the 2009 water year, Reclamation and the water users worked together to minimize the impacts of 3 consecutive dry years. The CVP water allocation for 2009 equates to about 80 percent of 5-year average of the overall amount of water delivered to all CVP contractors; however, CVP water allocations vary by type of contractor (e.g., water service, urban, water rights, refuge) and by geographic location; therefore reductions in allocations do not affect all water users the same. As mentioned above, the most adversely impacted CVP contractors are those on the west side of the San Joaquin Valley where the allocation to agricultural water service contractors is only 10 percent or about 195,000 acre-feet of water and M&I is 60 percent or about 83,000 acre-feet.

In 2009, water contractors worked to secure water from alternative sources to address the needs of their customers by acquiring water from willing sellers and by increasing groundwater pumping. State and Federal Contractors participated in the 2009 Drought Water Bank, transferred Yuba River Accord supplies, and purchased water from the Sacramento Valley and Stanislaus River water districts contractors. South-of-Delta contractors have also utilized Federal facilities pursuant to Warren Act contracts to move water acquired from non-Federal sources south-of-Delta.

- The contract water supply compared to the actual allocations for both north-and south-of-Delta as of August 2009 are as follows:

Contractors	Maximum Contract	M&I Historical Use (1)	Agricultural Use (2)	2009 Allocation by %	2009 Allocation by acre-feet
<b>North of the Delta</b>					
American River M&I	313,750	187,841		100%	187,841
Sacramento River	468,990				
Agriculture Water Service			443,065	40%	177,226
M&I Water Service		19,817		75%	14,863
Water Rights (3)	2,113,209			100%	2,113,209
Refuge - Level 2 (4)	151,250			100%	151,250
<b>South of the Delta Water Service</b>					
Agriculture Water Service	2,099,648		1,953,926	10%	195,393
M&I Water Service		139,571		60%	83,743
Water Rights	881,023			100%	881,023
Refuge - Level 2 (4)	271,001			100%	271,001
Contra Costa In Delta	195,000	170,000		65%	110,500
<b>New Melones East Side (5)</b>					
Tri-Dams Settlement	600,000			100%	600,000
<b>Friant</b>					
Class 1	800,000			100%	800,000
Class 2	1,401,475			23%	322,339
Buchanan Unit	24,000				24,000
Hidden Unit	24,000				24,000
<b>Total Contracted Water (6)(7)</b>	<b>9,498,346</b>				<b>5,993,387</b>

## Notes:

- M&I historical use computed based upon the average of actual deliveries made the last 3 years of unconstrained CVP delivery for all contractors except Contra Costa Water District where historical use figure represents amount agreed upon in contract renewal negotiations.
- Agricultural use computed as maximum contract amount less M&I historical use, if any.
- Sacramento River Water Rights includes: base supply (1,773,098 af) & Project supply (340,111 af)
- Project also acquires up to 133,264 af incremental Level 4 from willing sellers subject to availability and funding.
- New Melones East Side allocation is computed as an amount, rather than percent, since only one group receives the water allocation.
- Water supplied to City of Sacramento under operations agreement not included: American R. (245,000 af) & Sacramento R. (90,000 af)
- Total does not include 800,000 af CVPIA b(2) water provided out of Project yield for mitigation purposes.

- In order to alleviate effects of the drought in 2009, Reclamation continues to coordinate actions and activities with numerous Federal and State agencies, including the U.S. Fish and Wildlife Service, National Marine Fisheries Service, the California Department of Water Resources, State Water Resources Control Board, California water users, and many other water entities. Following are specific activities that are being implemented:

**Water Transfers**—Reclamation is working closely with the California Department of Water Resources to use the flexibility of the CVP and SWP facilities to accommodate water transfers and exchanges among water districts to make the most effect use of limited supplies. Reclamation has worked to facilitate critical “North to South” transfers to CVP contractors totaling 146,000 acre-feet. Since January 2009, more than 136 local transfers, totaling some 340,000 acre-feet, have been approved between willing sellers and buyers throughout the CVP. Of this, some 230,000 acre-feet were south-of-Delta transfers (including transfers of rescheduled water).

**Banked Groundwater**—Reclamation is prioritizing the review and approval of proposals for the return of previously banked groundwater. As of July 17, Friant Division Contractors withdrew 7,016 acre-feet and Westlands Water District withdrew 6,063 acre-feet from existing groundwater banks.

**Rescheduling**—Reclamation approved requests from water contractors to “reschedule” (carryover) 2008 water supplies they had conserved in San Luis and Millerton Reservoirs into 2009. The total water rescheduled in San Luis Reservoir was 336,701 acre-feet and 55,615 acre-feet in Millerton Reservoir (Friant Division).

Consolidated Place of Use—Reclamation and the California Department of Water Resources filed a joint petition in March 2009 with the State Water Resources Control Board to Consolidate the CVP and SWP Places of Use to increase operational flexibility. In May, the State Water Resources Control Board adopted an Order approving the petition which allows CVP and SWP water to be delivered within the same overlapping area which aided in facilitating transfers and exchanges of water among both sets of contractors.

Refuge Level 2 Water Supply Deliveries—Reclamation continues to coordinate with Federal and State refuge managers on scheduling delivery of their WY 2009 contracted water supplies of 422,251 acre-feet to months outside the agricultural season. Further, groundwater wells are being installed to help supply water to the refuges, thus freeing up CVP supplies for agricultural and urban use.

- During his Town Hall Meeting in Fresno on June 28, 2009, Secretary Salazar announced his appointment of Deputy Secretary David Hayes to lead the Federal response to California's water supply and related environmental issues in coordination with the State and stakeholders. Further, the Secretary has assigned Associate Deputy Secretary Laura Davis and Reclamation Commissioner Michael Connor to co-chair the Federal Drought Action Team, which includes representatives of the U.S. Department of Agriculture, U.S. Environmental Protection Agency, NOAA Fisheries, Small Business Administration, U.S. Army Corps of Engineers, U.S. Department of Labor, the Council on Environmental Quality, and the Office of Management and Budget. The team meets regularly to ensure maximum attention to ways the Federal agencies can assist in marshaling existing resources to respond to and mitigate the impacts of the drought on California water users.
- On Oct 23, 2009, the U.S. Fish and Wildlife Service announced the creation of the Bay-Delta Fish and Wildlife Office, located in downtown Sacramento. This new office will focus on conservation issues related to the increasingly vital Delta.

The Secretary has also elevated Federal involvement and leadership in the development of the State-led Bay Delta Conservation Plan (BDCP), a collaborative planning process that seeks to provide for a sustainable Sacramento-San Joaquin Delta to address the needs of several threatened and endangered species while improving water system reliability south of the Delta. Reclamation has executed Financial Assistance Agreements with the California Department of Water Resources to assist in the completion of planning efforts, environmental documents, and technical studies.

- The Department has allocated \$40 million in American Recovery and Reinvestment Act (ARRA) funds for drought relief projects to help reduce impacts as quickly as possible in the short term and with a major emphasis on minimizing impacts in WY 2010. The projects include temporary pipelines and pumps, new domestic and irrigation water wells, well-enhancement projects, and a groundwater monitoring effort. Many of the projects will help preserve permanent crops and associated jobs in the San Joaquin Valley, an area experiencing economic hardship and high unemployment rates.
- Reclamation has allocated \$134 million for 27 projects approved under the Title XVI (water recycling and reuse) Program; over \$22 million will be spent on 6 projects in the MP Region. These projects will provide 13,000+ acre-feet of recycled water per year, reduce dependence on existing potable water supplies and improve water supply reliability.
- Reclamation finalized a funding agreement with the Tehama Colusa Canal Authority (TCCA) to build an interim pumping plant at Red Bluff to allow for pumping of an additional 500 cubic feet per second (cfs) of water to TCCA for irrigation starting in May 2009. This is in addition to existing pumping capacity of about 465 cfs. The interim pumping plant will allow the gates of the Red Bluff Diversion Dam to remain open, providing unimpeded fish passage for threatened and endangered salmon, steelhead, and green sturgeon, as well as other fish species.
- With funding provided by the ARRA and other water conservation programs, Reclamation is encouraging water use efficiency projects to accelerate implementation of conservation activities through cost-shared grants:
  - ARRA—Reclamation has solicited proposals for \$40 million in ARRA Challenge Grants for water use efficiency projects. 4 grants will be awarded to San Joaquin Valley water districts totaling almost \$11 million. An additional project in Sacramento for urban water meters will be awarded for \$5 million. Projects in the Mid-Pacific Region include expanding existing

groundwater water banks and development of new groundwater banking facilities, water marketing, automating water delivery structures, and installation of water meters. Awards will range from \$1-\$5 million. In all, projects in California totaled over \$27 million of the program's \$40 million.

- Water Marketing and Efficiency Challenge Grants—Reclamation is currently awarding eight Water Marketing and Efficiency grants to San Joaquin Valley Contractors for \$2.4 million. Awards are for \$300,000 each and projects include ground water banking facilities, flow measurement, and system automation.

- CALFED Water Use Efficiency Grant Program—Two projects were awarded in the San Joaquin Valley for \$1.6 million. Projects will provide benefits to the Bay-Delta while providing better water management to the districts.

- Water Conservation Field Services Program—Reclamation has awarded five grants in the San Joaquin Valley for system automation, flow measurement control, and mobile irrigation labs for land owners to aid in efficient irrigation practices. Awards totaled \$175,000.

- On July 31, 2009, the Mid-Pacific Region issued Rescheduling/Carryover Policy and Guidelines for the 2010 water year, which runs from March 1, 2010, through February 28, 2011. Historically, Reclamation has released the Guidelines late in the water year; however, recognizing contractors' need to make plans in preparation for the 2010 water year, the Region committed to publishing the 2010 Water Year Guidelines by August 1, 2009. In addition to the Guidelines, which apply to allocated CVP water only, the policy also addresses storage priority for various types of Project and non-Project water to be stored in San Luis Reservoir, some of which may be kept in storage well into the 2010 water year.

- As California's population continues to increase, Reclamation is working with the State on longer-term plans and projects to prepare to manage future water supply shortages, improve available supplies, and minimize hardships. Projects include:

- Bay Delta Conservation Plan (BDCP): The BDCP is a collaborative planning process that seeks to provide for a sustainable Sacramento-San Joaquin Delta to address the needs of several threatened and endangered species while improving water system reliability south of the Delta. Reclamation and the Department of Water Resources have jointly entered into Financial Assistance Agreements to provide and aid in the development and completion of planning and environmental documents, along with technical studies.

- Delta-Mendota Canal (DMC) and California Aqueduct Intertie Project: The Intertie would connect the DMC and Aqueduct via a new pipeline and pumping plant to help meet water supply demands, allow for maintenance and repair activities, and provide the flexibility to respond to CVP and SWP emergencies. The project was identified as a proposed action in the August 2000 CALFED Bay-Delta Program Programmatic Record of Decision. A Record of Decision is planned to be signed in December 2009 allowing initiation of construction.

- Other Storage Projects: As a component of CALFED, Reclamation is studying storage projects related to water supply and reliability, including the Shasta Lake Water Resources Investigation, North-of Delta Offstream Storage Investigation (Sites Reservoir), Los Vaqueros Reservoir Expansion Investigation, and the Upper San Joaquin River Basin Storage Investigation.

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RESPONSES OF MARTIN R. MCINTYRE TO QUESTIONS FROM SENATOR BENNETT

*Question 1a.* Please describe the direct economic contribution of agriculture in the Central Valley of California.

Answer. Agricultural production and processing are especially important to the Central Valley. The University of California estimates that in the Central Valley, considering the economic ripple effects, 24% of private sector employment and over 18% of private sector labor income is attributable to these sectors.

*Question 1b.* Please describe the percent of the private sector labor force that is directly related to California farms and the processing sectors.

Answer. According to the University of California, approximately 7.3 % of the state's private sector labor force is directly related to California farms and food proc-

essing sectors alone. The majority of these jobs exist in the San Joaquin Valley. According to the USDA, total California farm and farm related employment is significantly larger and was approximately 2,750,000 in 2002 (13.8 % of Ca. labor force).

*Question 1c.* What % of the California state labor income can be attributed to these industries?

Answer. According to the California Department of Agriculture, direct California farm receipts in 2007 totaled \$36.6 billion or about 13% of the Nations total gross farm receipts. Almost 6% of California labor income is attributable to farms and closely related processing industries. In 2007, California agriculture accounts for \$11 billion in international exports.

*Question 1d.* How many jobs are created in your area for every \$ in farm sales, both directly and indirectly?

Answer. Every \$1 billion in farm sales generates about 18,000 jobs.

*Question 1e.* Please describe how much of the agricultural productivity in your area is driven by water. If there is less water available, how much will this impact the productivity level?

Answer. Over 95% of agricultural production in this area is directly related to irrigation. Reduced water deliveries will result in reduced productivity of nearly one for one. In other words, a 1% reduction in water supply results in approximately 1% in reduced productivity for affected lands.

*Question 2.* Please describe why over the last ten years there has been a growing shift from row crops to permanent crops (trees and vines).

Answer. The shift in cropping patterns is depicted in the graphic below. Factors that have driven the shift from row crops to permanent crops during the past 10 years include the following:

- Increased water supply costs-Increased costs have forced more growers to seek out high value permanent crops to offset sharply increased production costs.
- Water conservation investments-substantial capital investment is necessary to implement high efficiency irrigation systems. Those costs can be better absorbed in higher value permanent crop environments.

*Question 3a.* As indicated in your testimony, your on-farm irrigation efficiency is estimated to average greater than 80%. Please describe why in 2009 you had to fallow 25% of your irrigable land, and why you had to abandon 80% of your annual crops.

Answer. There are three primary reasons for increased fallowing and abandonment of annual crops:

- 2009 saw the lowest water supply allocations in the history of the Central Valley Project (CVP): In March of 2009, the US Bureau of Reclamation notified west side water Districts that contracted South of Delta (SOD) CVP water supply allocations would initially be zero and that under any circumstances allocations were likely to remain very low. Planting decisions must be made in late winter/early spring based on available water supply forecasts.
- No reliable alternative water supplies: Any and all supplemental water supplies (water transferred from elsewhere) are uncertain and require long lead times. A grower cannot afford the great expense of planting annual crops without an assured water supply.
- Water costs: Under such circumstances supplemental water, if available, is very expensive. Supplemental water costs delivered to the west side of the San Joaquin valley in 2009 averaged over \$400 per acre foot. A cost above that which annual crop markets can support.

*Question 3b.* At what point are your permanent crops at risk?

Answer. Permanent crops located SOD were at risk this year and will remain at risk until or unless Delta pumping constraints are returned to the 65% average reliability available prior to the implementation of the Delta smelt Biologic Opinion (B.O.). Even for the most profitable permanent crops, \$400 acre foot water costs are not sustainable. Additionally, with post B.O. average CVP allocations at about 35% the occurrence of years when CVP yields zero agricultural water supply increases substantially. At that point little to no supplemental water would be available and permanent crops would die or become seriously damaged.

*Question 4.* Please describe the process you undertook to transfer water within the CVP prior to the implementation of CVPIA. Furthermore, describe what you may consider a routine transfer that historically had occurred but now is not possible.

Answer. Prior to the implementation of the CVPIA, or more accurately the interpretation of the CVPIA by the Reclamation, transfers were considered a contract right and water was moved around within the CVP with a relatively simple notification of Reclamation by the contractor and the subsequent approval of what, in es-

sence, was a water schedule change involving the transferring contractor and the receiving contractor. Transfers were viewed as an operational issue where the change in the point of delivery and the timing of the delivery as a result of the transfer needed to be checked for potential operational impacts. It was not viewed as a significant federal action. Thus, there was a real ease in moving water among Project contractors.

Prior to CVPIA, Project contractors included entities that did not have long-term contracts, but either contracted with Reclamation on a temporary basis (one-year contracts) or on a short-term basis (contracts of up to fifteen years in length). These entities would have access to Project supplies that were in excess of the contractual demands of the long-term contractors.

Transfers to and from temporary or short-term contract neighboring districts which shared common groundwater resources occurred commonly. These same transfers can no longer occur without meeting the "consumptive use" test and without undergoing individual review.

*Question 5.* Prior to the implementation of the Central Valley Project Improvement Act (CVPIA), were transfers occurring within the Central Valley? In general, how long did it take for water to be transferred amongst different entities once an agreement was made on a transfer?

Answer. Transfers within divisions of the CVP occurred regularly. There were transfers occurring annually to balance annual vagaries in supply and demand as between contractors. Temporary surplus or shortages among contractors of available water supplies were easily managed. Most of the CVP was in a water surplus condition and supplies were highly reliable. The Friant Division of the CVP was more isolated from the main CVP storage reservoirs on the Sacramento, Trinity and American rivers and thus was more subject to shortages, but only in the driest years was water sought from other parts of the CVP. Some water was obtained in the drought year 1977 from other parts of the CVP for the Friant Division, but this was Project water set aside by Reclamation as a drought water bank and not transfer supplies from another CVP contractor.

As noted above in response to the previous question, transfers were largely viewed as operational issues. Typically there was little concern associated with the changed point of diversion or timing of the diversion as a result of the transfer. In most circumstances, a call could be placed to Reclamation's operations personnel, who would verbally approve a transfer on the spot. Follow up paperwork sufficed as the official request for the transfer along with the appropriate response from Reclamation's contracting officer both of which often trailed the actual movement of the water. Transfers were thus approved very quickly. If there was concern as to canal capacity or reservoir operations resulting from Reclamation's initial review of a transfer, there would be a delay until Reclamation could validate or dismiss their concerns, but the delay usually entailed a couple of days at the most.

*Question 6.* As referenced in your testimony on page 11, you indicate that prior to Biologic Opinions (B.O.s) rendered in the past two years, south of Delta CVP allocations averaged 65%, but now are forecasted to be only between 10–30 %. How much of this reduction can be attributed to the B.O.s?

Answer. Hydrologic modeling reveals that the combined water supply impacts of the two recent B.O.s will cause the average annual south of Delta, CVP agricultural allocation to fall from 65% to 35%. These impacts are summarized in the table\* above. The Committee's question is more difficult to answer.

The forecast of a water supply allocation of between 10–30% presented on page 2 of my testimony refers specifically to 2010 and takes into consideration circumstances as they now exist, including the effects of drought and regulatory restrictions to the degree they are currently understood. Predicting how much of the potential reduction is drought and how much is regulatory is a difficult task due in large part to the wide range of discretion available to the United States Fish & Wildlife Service (FWS) to curtail pumping by the Central Valley Project (CVP) and State Water Project (SWP). While it is difficult to predict how severely FWS decisions will impact next year's water supply, we can look to how 2009 was affected by implementation of the 2008 FWS biological opinion.

According to the Department of the Interior, FWS actions resulted in the loss of 500,000 acre-feet of water in 2009, thus exacerbating the effects of the natural drought by over 30%. Other estimates are higher. There is no evidence, however, that these actions resulted in any improvement to the fish population level. On the contrary, current delta smelt trawl data indicates abundance is at an all time low despite two consecutive years of severe operational curtailment of the CVP and SWP. If this water had been available, the water allocation to our farmers would

\*Table has been retained in subcommittee files.

have likely risen from 10% to 25%, a two-and-a-half fold water supply increase, mitigating many of the economic, social, and environmental impacts that savaged our rural, agricultural region.

Of even greater concern, these severe impacts do not include any of the effects from the United States National Marine Fisheries Service (NMFS) biological opinion, which was not issued until June, after the period it would have affected the 2009 water supply. However, it will impact the 2010 water-year in ways that are far from fully understood. Disagreements about interpretation of the biological opinions and questions over how they might be implemented and potential conflicts between their prescribe actions, for example, are hampering development of the Bay Delta Conservation Plan. Although these vagaries make forecasting incredibly difficult; we can suggest the likely ranges of impact using conservative assumptions.

Currently, analyses conducted by the California Department of Water Resources indicate that on average the long-term adverse water supply impacts attributable to issuance of the two biological opinions upon people who rely on water from the CVP and SWP will create losses ranging between 650,000—1,040,000 acre-feet due to the FWS biological opinion, and between 230,000—530,000 acre-feet of additional loss under the NMFS. These levels of impact are based upon assumptions regarding the “likely” application of FWS and NMFS discretion and the best available computer simulation modeling of data collected over an 82 year hydrologic record.

*Question 7.* On page 10 of your written testimony you include the chart that depicts the rededication of CVP & SWP water supplies since 1992. You estimate that more than 3 million acre-feet of water has been rededicated for environmental purposes. Do you see these actions as the main cause for water shortages in the Central Valley?

Answer. Absolutely. While droughts inevitably occur, the regulatory rededication of CVP and SWP supplies has resulted in chronic shortages, particularly for the CVP agricultural water service contractors south of the Delta. Deliveries of CVP water to the Westside began in 1952. From that time until winter-run Chinook salmon were listed as threatened in 1990, the CVP delivered full water supply entitlements to agricultural service contractors in every year but one, 1977, when allocations were limited to 25% due to drought. Since 1990 however, the CVP has only delivered full water supply entitlements three times. Three (1995, 1998, 2006). At first the impacts of the changing regulatory paradigm were difficult to perceive because of an ongoing drought and the lack of computer modeling capability. In 1993 though, when drought conditions finally abated, south-of-Delta agricultural water supplies only rose to 50%. At that point, the effects of the rededication became quickly and painfully evident.

Comparing the current drought conditions with previous events will help to distinguish the effects of accumulated regulations versus the effects of drought. On March 31, 1977, the CVP had 3,035,300 acre-feet of water stored in its northern California reservoirs. This point in time is the driest on record and yet the CVP was able to deliver to its south-of-Delta agricultural contractors 25% of their contract supply plus some additional water to help protect permanent crops. In 1991, the fifth year of a protracted drought, the CVP was again forced to curtail its deliveries to Westside farmers to only 25% of contract supply. Under these true drought conditions, CVP storage ran approximately 37% and 44% of capacity, respectively. This year however, northern CVP storage stood at 5,033,200 acre-feet or 61% of capacity on March 31 and yet the project was only able to provide its south-of-Delta agricultural customer 10% of their water supply. The difference between these “dry” periods is attributable entirely to changes in the regulatory constraints placed upon the CVP since the early 1990s.

Another indicator of the impact regulation is having comes from the California Department of Water Resources, which announced on December 1 an initial 2010 water supply allocation for the State Water Project of only 5%. While it is true that these initial allocations often increase, it is informative to compare conditions the State is assessing in making the initial allocation determination. At the beginning of the 2009 water year, storage at their primary reservoir, Lake Oroville, was at 31% of capacity while at the beginning of the 2010 water year Oroville storage was at 38% of capacity. This improvement is due in part to the fact that northern California precipitation in the 2009 water year was 93% of normal. Further, current northern California precipitation is at 144% of average for this time of year. Yet, despite better conditions at this point in the 2010 water-year, the initial 2009 allocation forecast was for 15% of supply. A key difference between the 2009 and 2010 supply forecast is the added regulatory burden of the NMFS biological opinion, which was issued after it could have affected the 2009 water supply situation.

While the magnitude of the impacts of the FWS and NMFS biological opinions will not be fully understood until the current drought abates, the immediate effects

are sadly well known. More land will be fallowed, more people will lose their farms and businesses and jobs, small, rural communities will become poorer, and people will suffer more depression, drug and alcohol abuse, domestic violence, and divorce.

The regional environment will also be further impacted. Expansion of unirrigated fields will produce more dust, compounding the already significant number of respiratory ailments associated with the San Joaquin Valley, particularly asthma. More unirrigated fields also means more habitat for non-native plant species such as Russian thistle (aka tumbleweed), which, upon maturity, breaks from the soil and is transported with the wind. This migration can threaten remaining native plant ecosystems, impact crops and infrastructure such as highways and canals, and produce rashes and allergic reactions among people exposed to the noxious weed. In short, the Westside region, which was developed and sustained for over half a century by water promised by the United States, will continue to bear the disproportionate brunt of the adverse impacts resulting directly from the FWS and NMFS biological opinions.

## APPENDIX II

### Additional Material Submitted for the Record

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STATEMENT OF DONALD A. CHRISTIANSEN, GENERAL MANAGER OF THE CENTRAL  
UTAH WATER CONSERVANCY DISTRICT

S. 1757

I am grateful to be able to submit written testimony in support of S. 1757. I want to thank Senator Robert F. Bennett for introducing this bill on behalf of the Uintah Water Conservancy District (District). The District was formed in 1956 for the purpose of "conserving, developing and stabilizing supplies of water for domestic, irrigation, power, manufacturing, municipal and other beneficial uses, and for the purpose of constructing drainage works". The District operates and maintains the Vernal and Jensen Units of the Central Utah Project which was authorized by Congress as part of the Colorado River Storage Project Act of 1956. The District encompasses almost all of Uintah County, Utah in eastern Utah adjacent to the border of Colorado.

At the time of its construction (1984-1987), The Jensen Unit was to provide 18,000 Acre Feet (AF) of M&I water to the residents of Uintah County. 6,000 AF were to be developed with the construction of Red Fleet dam and another 12,000 AF were to be developed at a later date with the construction of the Burns Bench Pump station on the Green River in Jensen, Utah. Due to the economic bust in the mid to late 80's there wasn't the demand for water that had been foreseen and an amendatory contract was signed in 1989 with the Bureau of Reclamation reducing the amount of water subscribed to by water providers to 2,000 AF.

The Bureau desires to do a final cost allocation on the Jensen Unit. If that allocation were done without developing the remaining 12,000 AF, the cost per AF would be approximately 2.5 times as much as if the 12,000 AF were developed. A Block Notice was issued to the District from the Bureau of Reclamation for the 2,000 AF and the District contracted with the municipalities, water improvement districts, and a private company for all of that water. Since that time the additional 4,000 AF of M&I water has remained unsubscribed. The Bureau of Reclamation took 700 AF to increase the conservation pool in the reservoir which leaves 3,300 AF of available water. The Burns Bench pump station will not be constructed until all of the M&I water available in Red Fleet is subscribed to. In the past year, due in large part to the projected growth, the District has received requests for all of the remaining M&I water available in Red Fleet. Vernal City and Ashley Valley Water and Sewer have each requested 1,000 AF, Maeser Water has requested 675 AF, Jensen Water has requested 175 AF, Uintah County in conjunction with Jensen Water has requested 150 AF, and a private company has requested 300 AF.

The price of the water was set by the amendatory contract. The amount per AF was based on the cost of the Jensen Unit (including an estimated cost of the pump station) divided by 18,000 AF. The resulting cost is \$5,555.21 per AF and is payable by dividing that amount by the number of years remaining until 2037 with the last payment being made in 2037. Water purchased in 2006 would be paid for at a rate of \$179.07 per AF per year for 31 years. The District approached the Bureau about the possibility of discounting those payments at either the 3.222% rate used by the Bureau to calculate the repayment or the federal funds rate at the time of the discounting. According to the Bureau, the amendatory contract does not allow for prepayment. The District then determined that it would seek legislation similar to that used by the Central Utah Water Conservancy District that has allowed for prepayment of the repayment contracts for the Bonneville Unit. Prepayment of our contract with the Bureau will substantially reduce the cost of water to the District. S. 1757 will also produce a substantial payment to the federal treasury which we estimate to be between \$4-5 million.

S. 1757 directs the Secretary of the Interior to allow for prepayment of the specified contract between the United States and the Uintah Water Conservancy District providing for repayment of municipal and industrial water delivery facilities under terms and conditions similar to those used in implementing provisions of the Central Utah Project Completion Act. It also provides that the prepayment: (1) may be provided in several installments to reflect substantial completion of the delivery facilities being prepaid; (2) shall be adjusted to conform to a final cost allocation; and (3) may not be adjusted on the basis of the type of prepayment financing utilized by the District. The Senate bill reflects amendments made to the House companion at the suggestion of the Administration. These amendments insure that the entire amount of the repayment contract will be prepaid.

S. 1758

*Introduction*

Mr. Chairman, my name is Don Christiansen and I am General Manager of the Central Utah Water Conservancy District (District), the State sponsor of the Central Utah Project. I appreciate the opportunity to submit written testimony in support of S. 1758 which was introduced by Senator Robert F. Bennett and Senator Orrin G. Hatch. The Bonneville Unit of the Central Utah Project develops water for communities in 10 counties covering three Congressional Districts. We express appreciation to our elected representatives for their introduction of this bill which will clear away sunk system-wide costs which constitute an economic roadblock to the development of clean hydropower in the Diamond Fork feature of the Bonneville Unit.

*The District is an experienced developer of hydropower*

The District has a proven track record of developing non federal hydropower on federal facilities of the Bonneville Unit. At an important dam in Summit and Wasatch counties, we worked from the initial design of the Jordanelle Dam to facilitate outlet plumbing for the eventual installation of the recently constructed Jordanelle hydropower plant. The District has been involved in each step of this very successful project which has a maximum capacity to generate 12 megawatts of hydropower at Jordanelle dam. The project has been certified by the Low Impact Hydropower Institute as "Green Power".

The plant began commercial operation on July 1, 2008. The District developed the Jordanelle power plant in partnership with Heber Light & Power (a local public power entity) which purchases and markets the energy. Since it was originally anticipated that federal power would not be developed at Jordanelle dam, none of the costs of the dam or system-wide project costs were allocated to power. Therefore, during the negotiation of the Lease of Power Privilege one of the negotiation points was to determine a reasonable fee to be paid to the federal government that would not push the cost of the power beyond market conditions. The negotiated fee is 3 mills per kilowatt hour escalating at 3% per annum.

*Potential for Diamond Fork Hydroelectric Power Plants*

The Supplement to the 1988 Definite Plan Report for the Bonneville Unit (2004) and the Utah Lake Drainage Basin Water Delivery System Final Environmental Impact Statement (September 2004) detail the proposed power facilities that could be built at Diamond Fork. In general, two hydroelectric power plants would be located in Diamond Fork Canyon. they are at:

1. The Sixth Water Flow Control Structure with a capacity of 45 MW and,
2. The Upper Diamond Fork flow Control Structure with a capacity of 5 MW

The potential Diamond Fork power plants have some similarities and yet some distinct differences from the Jordanelle power plant. Of particular importance is the manner in which power costs have been assigned by the Department of the Interior. \$161. million in Strawberry Collection System sunk costs have been assigned to be recovered from a future Diamond Fork power plant. This significantly complicates hydropower development at Diamond Fork. In essence, any developer of power at Diamond Fork starts in an economic "hole" of \$161 million before installing any power turbines or constructing any transmission lines.

Moreover, power generation at Diamond Fork is based on the "run of the river" (generation which is incidental to water releases), and therefore Diamond Fork hydropower has less value in energy markets because it cannot be scheduled to meet peak demands. In fact, Section 208 of PL 102-575 places limitations on the operation of the power plants at Diamond Fork. The Central Utah Project Completion Act or "CUPCA" says; "Use of Central Utah Project water diverted out of the Colorado River Basin for power purposes shall only be incidental to the delivery of water for other authorized project purposes. Diversion of such waters out of the Colorado

River Basin exclusively for power purposes is prohibited.” Hence, flow releases through the Diamond Fork System of aqueducts and pipelines would be dictated by Central Utah Project (CUP) and Strawberry Valley Project (SVP) water needs and would be used for electric energy generation at the hydroelectric power plants as a secondary purpose.

*Legislation is needed to defer sunk system costs allocated to Diamond Fork Power*

Because the power costs allocated to Diamond Fork make the project uneconomic, we approached the Utah delegation with a remedy to defer these costs similar to other costs that have already been deferred. The costs allocation was initially done using the Use of Facilities (UOF) method as directed by the Comptroller General in a letter of January 26, 1994. Application of a strict UOF allocation of costs to power resulted in an allocation of \$540.3 million to power. This amount would result in a power rate significantly higher than its market value. Consequently, a modified use of facilities approach was used to calculate the power allocation. Under this approach, the cost allocated to power is \$161.0 million.

Even with the modified use of facilities approach this amount allocated to power makes power development very expensive and infeasible. At a time when the demand for energy is skyrocketing and the need for renewable energy is paramount, the sensible approach of S. 1758 is to defer the costs assigned to power and allow development of this valuable resource. As was done with Jordanelle dam, the fee paid to the Federal government for the investment in facilities which make power development feasible could be negotiated through a competitive Lease of Power Privilege process. Current market conditions and construction costs would be known and a reasonable fee could be established.

*Conclusion*

S. 1758 reflects modifications made to the bill in the House Resources Committee to address PAYGO concerns. The bill was amended to preclude the use of tax exempt financing on the project. While we would have preferred to use all our tax advantaged financings available to us, we understand that Congressional budget rules makes this impossible. The District stands ready to initiate a process to apply for the right to develop clean hydropower at Diamond Fork if the economic hole created by the allocation of sunk system-wide costs is deferred. We strongly urge your approval of this important legislation as soon as possible.

DEFENDERS OF WILDLIFE,  
CALIFORNIA OFFICE,  
Sacramento, CA, November 19, 2009.

Hon. DEBBIE STABENOW,  
*Chairman, Subcommittee on Water and Power, U.S. Senate, Washington, DC.*

Re: Testimony on S. 1759

DEAR SENATOR STABENOW: Defenders of Wildlife appreciates the opportunity to present written testimony on S. 1759 and to suggest recommendations to improve this bill. (Attached) This testimony is presented as part of the hearing held by the Subcommittee on November 5, 2009. Defenders of Wildlife has invested, and continues to invest, a great deal of time and energy in the effort to protect and conserve the Central Valley’s natural resources, including its grasslands, wetlands, and waterways.

We thank you for the opportunity to provide our views on this bill. We look forward to working with you and your Subcommittee staff as this bill moves forward in the legislative process.

Sincerely,

KIM DELFINO,  
*California Program Director.*

ATTACHMENT.—STATEMENT OF KIM DELFINO, DEFENDERS OF WILDLIFE, ON S. 1759

Defenders of Wildlife appreciates the opportunity to present written testimony on S. 1759 and to suggest language to avoid any unintended consequences. The goal of S. 1759 is an important one: to expedite necessary water transfers in California while maintaining the integrity of Central Valley ecosystems. With adequate planning and foresight, these water transfers can bring water to areas experiencing shortages due to drought without compromising the surrounding environment. At the same time, if water transfers are not done carefully and pursuant to existing environmental laws, they could result in further degrading an already struggling environment in the Central Valley.

Defenders of Wildlife has invested, and continues to invest, a great deal of time and energy in the effort to protect and conserve the Central Valley's natural resources, including its grasslands, wetlands, and waterways. In addition to serving as a member of the Bay Delta Conservation Plan Steering Committee, Defenders is also a founding member of the Central Valley Joint Venture (CVJV). As you already know, based on the testimony presented by the Grasslands Water District—an important partner with the CVJV, there are specific concerns about the potential impacts of poorly designed water transfers on the Central Valley wetlands and wildlife refuges and associated migratory bird populations.

The following are three specific issues we have identified in S. 1759 with suggested amendments to clarify and resolve those issues:

1. Clarify that S. 1759 will continue to ensure that water transfers will comply with all applicable laws and agreements and will not undermine the environmental protections inherent in the Central Valley Project Improvement Act.

Section 3405(a)(1) of the Central Valley Project Improvement Act ("CVPIA") was carefully negotiated to assure that water transferred in the Central Valley Project did not interfere with the water intended to be used in the system to meet fish and wildlife protections and restoration obligations. We are concerned that Section 2(a) of S. 1759, which overrides subparagraphs (A) and (I) of CVPIA § 3405(a)(1), will take away the carefully negotiated safeguards established by Congress when it enacted the CVPIA. We do not believe that the intent behind S. 1759 is to weaken those fish and wildlife protections or result in transfers not conditioned by existing environmental protection laws, but we are concerned that this section as currently written could have this unintended consequence.

In order to address these concerns, we suggest the following amendment to Section 2(b):

- (b) Condition—A transfer under subsection (a) shall be subject to the condition that the transfer does not contravene—

- (1) the San Joaquin River Restoration Settlement Act (Public Law 111-11; 123 Stat. 1349), including the priorities described in Section 10004(a)(4)(B) of that Act (123 Stat. 1350) relating to implementation of paragraph 16 of the Settlement (as defined in Section 10003 of that Act (123 Stat. 1349));

- (2) the Settlement; and

- (3) all other applicable federal and state laws, including but not limited to the Endangered Species Act, National Environmental Policy Act, the Central Valley Project Improvement Act, except as expressly amended by subsection (a) above, and state water transfer laws.

2. Clarify that the directive for expedited review in S. 1759 is not intended to result in a limitation of the scope of environmental review or in the partial exemption of environmental review.

Defenders recognizes the need to ensure expeditious environmental review for water transfers. The language in Section 3(a) will ensure that such review is not delayed while the seasonal window for water transfers closes. However, Defenders is concerned that such language will give the impression that Congress has created a partial exemption for environmental review of water transfers. Moreover, we believe that when the "expedited" permitting language in Section 3(a) is read in conjunction with the singular directive in Section 3(b) to address concerns regarding Giant Garter Snake, there is a risk that Section 3 could be interpreted as narrowly limiting environmental review to only Giant Garter Snake. Therefore, in order to ensure that the intent of this provision is not to limit the scope of all applicable environmental reviews, Defenders suggests deleting Section 3(b) and adding the following language to Section 3(a):

. . . shall initiate and complete, on the most expedited basis practicable, the programmatic development of all applicable environmental compliance required for implementing voluntary water transfers within the Central Valley Project.

3. Ensure that S. 1759 does not result in adverse impact to Central Valley refuges and wetlands.

Wildlife refuges also experience water shortages during prolonged drought. In compliance with CVPIA Section 3406, water is required to be delivered to wildlife refuges to maintain the habitats for migratory birds and associated wetland species. Our Central Valley refuges and wetland areas already struggle to maintain a water supply to meet minimal wildlife needs in a landscape that has already lost more than 95% of its historic wetlands. We share the concerns that have been raised by

the Grasslands Water District in their written and oral testimony regarding the potential impacts to Central Valley wetlands and wildlife refuge water supply from this bill. We fully support the suggested amendments by the Grasslands Water District to facilitate the use of carry over storage for unused refuge water supplies; to facilitate transfers between and among federal, state, and private wetland areas that receive Central Valley Project water; and to direct the Bureau of Reclamation to develop and implement a process for securing the necessary budget for fully implementing Level 4 water supplies that are authorized under the CVPIA. We believe that the Grasslands Water District's suggested amendments to S. 1759 will ensure no impairment of the goals of the CVPIA with respect to wetlands and wildlife refuges.

We thank you for the opportunity to provide our views on this bill. We look forward to working with you and your Subcommittee staff as this bill moves forward in the legislative process.

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ENVIRONMENTAL DEFENSE FUND,  
*Washington, DC.*

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

DEAR SENATOR FEINSTEIN: Environmental Defense Fund greatly appreciates your efforts to help resolve California's pressing water issues. In particular, we thank you for bringing balance to the discussions and fending off attempts to undermine fundamental protections of existing law, including, but not limited to, the federal Endangered Species Act (ESA).

EDF is engaged at all levels to find solutions to these problems, including work to help structure the recently enacted state legislation, participation on the Bay Delta Conservation Plan (BDCP) steering committee, open dialogue with key players in the agricultural and municipal water sectors and engagement with the Department of the Interior on various issues. EDF has long believed that voluntary water transfers, particularly among users south of the Delta, have an important role in sensible allocation of available agricultural water, especially during drought.

It is in this context of constructive engagement that we offer our support for S. 1759, the Water Transfer Facilitation Act of 2009, as amended and passed by the Senate Committee on Energy and Natural Resources this week. We support the report language suggested by Grasslands to ensure that the wetlands and refuge issues are fully addressed, and look forward to working with you and the Committee to ensure its inclusion.

Sincerely,

MARY E. KELLY,  
*Senior Counsel, Rivers and Deltas.*

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WESTLANDS WATER DISTRICT,  
*Fresno, CA, October 6, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Building, Washington, DC.*

RE: Water Transfer Facilitation Act of 2009

DEAR SENATOR FEINSTEIN: I am writing on behalf of Westlands Water District to express its support for your bill, the Water Transfer Facilitation Act of 2009, authorizing certain transfers of water in the Central Valley Project and other purposes. Water transfers are a critical tool for providing water supplies for areas that are faced with chronic water supply shortages. However, the approval process for many transfers often distract from their usefulness. Your legislation will bring important reform to existing transfer authorization thus increasing the efficacy of this essential water management tool.

As you are keenly aware, the chronic water supply shortages impacting the area of the San Joaquin Valley served by the Central Valley Project demands that water users in the affected area rely on water transfers. Moreover, the need to transfer water is often urgent and in response to climactic conditions that are frequently sporadic and ephemeral. Regrettably, bureaucratic process can unnecessarily thwart successful execution of a transfer. The clarity your legislation brings to existing authorizations will only improve the capability of water managers throughout the State to effectively respond to the ongoing crisis and put our scant water resources to use even more efficiently.

The westside of the San Joaquin Valley is inarguably the most transfer dependent region of the State. Your efforts to address this important matter are greatly appreciated. If there is anything I can do to be of help in connection with your efforts, please let me know.

Very truly yours,

THOMAS W. BIRMINGHAM,  
*General Manger / General Counsel.*

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ENDANGERED SPECIES COALITION,  
*Washington, DC, November 2, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Bldg., Washington, DC.*

Hon. BARBARA BOXER,  
*U.S. Senate, 112 Hart Senate Office Bldg., Washington, DC.*

RE: California Conservation Groups concerns with S-1759, Water Transfers Facilitation Act, 2009

DEAR SENATORS FEINSTEIN AND BOXER: The below listed organizations have come together to provide this input to you for consideration in the pending water transfers legislation, S-1759. We respect the need to transfer water to affected communities and farmers to reduce the economic impacts caused by drought related shortages. It is vital to ensure this effort is accompanied by key provisions to protect against unintended consequences and to mitigate the effects of unavoidable impacts. Unlimited or poorly designed water transfers can have very serious and negative impacts to the environment in areas where the transfers begin, and as such, additional protections may be needed. We offer these recommendations and comments on the pending bills (S-1759 and HR 3750).

1. Water for Refuges

There is concern this transfer legislation could put additional, unintended demand on already limited wildlife refuge water, both state and federal. This, in turn, can result in increased cost for refuge water, and/or reduced availability of both level 2 and level 4 water under CVPIA. To alleviate this possibility, we recommend the legislation allow refuge-to-refuge transfers. This would make the system both flexible and fair, by allowing wetlands managers the ability to move available wetlands CVPIA water to the areas in the most need. Thus, they would operate like any other water user in the system, putting diminished water supplies to best use.

2. Water Transfers should only be for use in the Central Valley

As we understand it, the purpose of these bills is to provide flexibility in the water system in order to assist agricultural communities and farms impacted by ongoing drought, and not to incentivize speculation in the water markets. To this end, the bills should place some limitations on the transfers to ensure that the transferred water is used for agriculture and farming in the Central Valley (or to support refuges in the Central Valley) and not sold on a secondary market. If some of the transferred water in wet years is to be banked, as a hold-over for another year, some system of accounting, monitored by BOR and available to the public, must account for that water, and show that it is subsequently used as intended for farming and agriculture in the Central Valley and not resold or re-transferred out of the system to other uses.

3. Impacts to Groundwater Must be Included in the PEIS and Report

One of the impacts of great concern is the possibility for increased groundwater over-draft resulting from efforts to replace transferred surface water. In the Sacramento valley, where nearly 2/3 of the transfers are likely to originate, groundwater replacement of transferred water in the 1990s led to dry or polluted wells, and negative impacts to nut farms dependant upon wells for irrigation. Much of the farming in the Sacramento valley, other than rice, is well dependant. For example, the Tuscan Aquifer, which lies under several Sacramento valley counties, is currently a healthy aquifer, unlike many over-drafted aquifers in the Tulare basin (see USGS facts sheet 2009-3057). It is also connected to several surface streams in the western Sierra, like Butte Creek, Deer Creek, and Mill Creek, which supports 98% of the remaining California Spring Chinook salmon, a federal ESA listed species. It is likely that a lower Tuscan Aquifer would result in reduced stream flows and elevated stream temperatures, thus putting ESA listed fisheries at risk.

We would make two recommendations relative to groundwater. One, that groundwater replacement of transferred water is prohibited. If water is transferred, the associated irrigated land must be either fallowed or planted in crops requiring reduced water consistent with that transferred. Second, because there is no state law on groundwater monitoring, we would recommend the federal government initiate and fund a USGS Tuscan groundwater aquifer study to determine its functional capacity, especially under drought conditions.

4. Comprehensive Environmental Review is Needed

Section 3 of the Senate bill calls for preparation of a Programmatic Environmental Impact Statement and we agree that completing the programmatic review is essential. In Section 3, sub-section (b), mentions "all applicable environmental reviews, permitting, and consultations, including the environmental documentation needed to address concerns with respect to the Giant Garter Snake." However, it is clear that a comprehensive EIS will also need to look at impacts to other aquatic, riparian, and wetland dependent species in the Delta and Central valley watersheds that may impact transfer timing and amounts whether or not these species are called out by name in the bills.

We appreciate the opportunity to provide inputs designed to reduce negative impacts and un-intended consequences from these transfers. Though it is important to help impacted communities and farms if possible, it is also vital to do so while continuing to protect our natural resources and wildlife species that are already under significant stress.

Sincerely,

DR. C. MARK ROCKWELL, D.C.,  
*California State Representative, Endangered Species Coalition, Penn Valley, CA.*

JOHN BEUTTLER,  
*Conservation Director, California Sportfishing Protection Alliance, Berkeley, CA.*

ALLEN HARTHORN,  
*Executive Director, Friends of Butte Creek, Chico, CA.*

ROBIN HUFFMAN,  
*Board member and Advocacy Coordinator, Butte Environmental Council, Chico, CA.*

FLORENCE M LARIVIERE,  
*Chairperson, Citizens Committee to Complete the Refuge, Palo Alto, CA.*

DAN SILVER,  
*Ex. Director, Endangered Habitats League, Los Angeles, CA.*

DAVID PHILLIPS,  
*Director, International Marine Mammal Project, Earth Island Institute, Berkeley, CA.*

TARA HANSEN,  
*Executive Director, California Native Plant Society, Sacramento, CA.*

LLOYD CARTER,  
*President. Board of Directors, California Save Our Streams Council, Clovis, CA.*

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ASSOCIATION OF CALIFORNIA WATER AGENCIES,  
*October 5, 2009.*

Hon. DIANNE FEINSTEIN,  
*331 Hart Senate Office Building, Washington, DC.*

Hon. BARBARA BOXER,  
*112 Hart Senate Office Building, Washington, DC.*

RE: ACWA support for Water Transfer Legislation

DEAR SENATORS FEINSTEIN AND BOXER: Thank you for introducing water transfer legislation for the Central Valley Project (CVP) which ACWA is pleased to support. As California's water supply challenges multiply, this legislation can provide greater flexibility for management of CVP water supplies. As you know, ACWA's 450 public agency members are collectively responsible for 90 percent of the water delivered in California for residential and agricultural uses.

California's water supply situation is dire and worsening. Three years of below average precipitation along with heavy regulatory restrictions through the ESA and Biological Opinions, have seriously diminished California's water supplies. Under these conditions, it is essential that short term actions, such as provided by your legislation to flexibly enable water supplies to move across the San Joaquin Valley, be pursued.

Again, thank you for introducing water transfer legislation. ACWA looks forward to working with you to secure its passage in an expedited manner.

Sincerely,

TIMOTHY QUINN,  
*Executive Director.*

ALTSHULER BERZON, LLP,  
*San Francisco, CA, November 18, 2009.*

Hon. DEBBIE STABENOW,  
*Chair, Subcommittee on Water & Power, U.S. Senate Washington, DC.*

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

Hon. BARBARA BOXER  
*112 Hart Office Building U.S. Senate, Washington, DC.*

RE: Supplemental Comments & Suggested Revisions to S. 1759 re Water Transfers

DEAR SENATOR STABENOW, SENATOR FEINSTEIN AND SENATOR BOXER: I appreciated the opportunity to present testimony at the November 5, 2009 hearing of the Subcommittee on Water and Power of the Senate Energy and Natural Resources Committee on behalf of Grassland Water District to comment on S. 1759, the Water Transfer Facilitation Act of 2009. We also appreciated the Subcommittee's invitation to submit these additional comments and recommended changes to the legislation.

As I indicated at the hearing, we believe some improvements to the bill are needed to ensure protection of the Central Valley refuges that have been so severely impacted by development of the Central Valley Project and which are supposed to receive additional water supplies through CVPIA, in some cases through voluntary acquisitions and transfers. As we indicated in our testimony, one part of this protection would involve more explicit reference to the prior protections of the CVPIA as continuing to be applicable to all of the new, expanded transfers facilitated by this bill. I will suggest specific language in that regard below.

The other key part of this requested protection would be in the form of mitigation measures which should be included in the legislation to help offset the inevitable impacts that the bill will cause to the refuge water supply program of CVPIA. I have attached a separate document that outlines these proposed measures in the form of a new section to the bill. Each of these modest measures represents sound public policy that is consistent with the purposes and provisions of the CVPIA, but which will benefit from further legislative authorization to ensure they are actually carried out.

We appreciate your considering our views. We would be happy to provide additional information if it would be helpful.

*I. Suggested language to reaffirm the protections of CVPIA and other applicable laws*

Right now, the only federal law explicitly referenced as a condition of the new transfers is the San Joaquin River Restoration Settlement Act. Like many other stakeholders, we believe it would be more reasonable and provide better protection for the public to broaden that condition to include all applicable laws, including the CVPIA. Here is our proposed replacement language for Section 2(b):

(b) CONDITION—A transfer under subsection (a) shall be subject to the condition that the transfer is consistent with:

(1) The provisions of the Central Valley Project Improvement Act (except to the extent section 3405(a)(1) is expressly modified by subsection (a) above), the National Environmental Policy Act, the San Joaquin River Restoration Settlement Act, and all other applicable provisions of federal and state law; and

(2) The Settlement in *Natural Resources Defense Council v. Rodgers*, CIV-S-88-1658-LKK (E.D. California), as identified in Section 10003 of Public Law 111-11; 123 Stat. 1349.

*II. Suggested language to provide mitigation for adverse impacts to refuges and wetlands*

As we indicated in our prepared Testimony for the November 5th hearing, Grasslands and other participants in the Central Valley Joint Venture believe there are a number of ways that the provisions of S. 1759 could adversely impact the acquisition of sufficient water for Central Valley refuges and wetland areas. Accordingly, we have proposed three specific, albeit modest provisions which we request be added to the legislation to help address these unintended consequences and to help ensure these adverse impacts will be properly mitigated. The proposed language is attached

and includes provisions (a) to facilitate use of carry over storage for unused refuge water supplies, (b) to facilitate transfers between and among federal, state and private wetland areas that receive CVP water, and (c) to direct Reclamation to develop and implement a process for securing the necessary budget for fully implementing Level 4 water deliveries that are authorized by the 1992 CVPIA.

Thank you again for considering our additional views on this legislation.

Sincerely,

HAMILTON CANDEE,  
*On behalf of Grassland Water District.*

ATTACHMENT.—PROPOSED AMENDMENTS TO S. 1759 (WATER TRANSFERS FACILITATION ACT): 11-18-09

SEC. 6. MITIGATION FOR CENTRAL VALLEY WETLANDS AND REFUGES

In order to help offset potential adverse impacts to Central Valley refuges and other wetland areas receiving water supplies under section 3406(d) of the CVPIA (collectively “CVPIA refuge areas”), and in furtherance of the purposes of CVPIA, the Commissioner, in consultation with the Director of the US Fish and Wildlife Service, shall within 180 days of the enactment of this Act, and consistent with applicable law, do each of the following:

(a) Develop and implement a plan, a copy of which shall be submitted to the relevant oversight committees of Congress, to ensure that refuge water supplies that are provided pursuant to CVPIA section 3406(d) will be offered “carry-over” water storage opportunities in CVP storage facilities equivalent to those afforded other CVP water uses, including agricultural and municipal & industrial contractors. In the plan, the Commissioner shall also identify the terms and conditions established by the CVP for “carry-over” storage opportunities for irrigation customers as well as the terms and conditions for “carry-over” storage that will be offered to federal, state and other CVPIA refuge areas receiving water pursuant to section 3406(d).

(b) Develop and implement a process to facilitate and expedite water transfers between CVPIA refuge areas, to enable those waters conserved by any CVPIA refuge area in any given year to be offered and delivered to any other CVPIA refuge area for the purpose of meeting the goals and purposes of CVPIA, including achieving Level 4 water supply needs and furthering Level 2 diversification opportunities as referenced in Section 3406(d).

(c) Develop and submit to the Congress projected one year, 3 year and five year budgets for the long-term acquisition of water supplies necessary to provide to CVPIA refuge areas their full Level 4 water supply needs as identified pursuant to the CVPIA. The Commissioner shall also identify where in the future budget request for the Bureau of Reclamation funds will be allocated to meet these projected budgets.

AUDUBON CALIFORNIA,  
*Sacramento, CA, November 18, 2009.*

Hon. DIANNE FEINSTEIN,  
Attn: Leah Russin,  
*U.S. Senate, Washington, DC.*  
Re: Comments on S. 1759

DEAR MS. RUSSIN: We appreciate the opportunity to comment on Senator Feinstein’s bill, S. 1759 (bill). Audubon California respects the need to transfer water to affected farmers in order to help reduce the loss of agricultural productivity and to minimize unemployment due to the drought. Such efforts however, need to be accompanied by key provisions to protect against unintended consequences and to fully mitigate for adverse impacts. Previous state and federal laws addressing water transfers have recognized the potential for adverse impacts and the need for third party protections. S. 1759 should as well.

Unlimited or poorly designed transfers can cause significant harm to Valley farmers, communities and the environment unless they are handled properly. CVPIA water transfer limitations were instituted specifically to avoid such impacts including the risk of increasing groundwater overdraft to replace transferred water supplies. The proposed changes to water transfers legislation must similarly avoid unintended impacts and mitigate for unavoidable impacts.

Our comments relate to the bill’s language that:

- 1) could impact essential water supplies for national wildlife refuges and state wildlife areas as mandated by the CVPIA;

- 2) addresses the processes for analyzing impacts on listed species and overall environmental effects (§2);
- 3) references the applicability of other laws and agreements (§2 and 3);
- 4) specifies the geographic scope of the transfers (§2); and
- 5) specifies the content of a report by the Commissioner of the Bureau of Reclamation ordered by this legislation (§4).

#### *1. Refuge Water Supply*

A major environmental accomplishment of CVPIA was the commitment to deliver to refuges and wildlife areas in the Central Valley a firm (Level 2) yield of 422,252 acre-feet, 37% of the annual water needs for existing wetlands. In addition, CVPIA mandated that an additional 133,264 acre-feet of so-called Level 4 water be acquired over a ten-year period commencing in 1992, thus ensuring that roughly half of refuge water needs would be met by the project. Since 1992 legally mandated water supplies for the refuges has fallen short by a full 40,000 acre-feet from mandated Level 4 quantities. In 2008, refuge water supplies reached approximately 450,000 acre-feet, a full 100,000 acre feet below congressionally mandated levels.

We remain concerned that as written S. 1759 would allow a broader range of all CVP contractors to compete—with fewer limitations—for the water usually obtained by the refuges from existing CVP sources. This could in turn greatly increase the cost or reduce the availability of water that federal and state refuges currently depend on toward meeting their Level 2 and Level 4 water needs as promised by CVPIA. Congress should ensure that all federal water transfer actions fully mitigate against wetlands becoming a “third party impact.”

#### *2. Environmental Review Processes*

The environmental impacts analysis called for by the legislation should include in addition to the species listed, wetlands, wetlands dependent wildlife and/or species covered by the Migratory Bird Treaty Act. For example, one of the areas targeted by the legislation, the Sacramento Valley, is home to significant wetland-dependent species and is one of America’s most important habitats for migratory birds. The maintenance and restoration of federal and state wildlife areas in the Central Valley is a stated purpose of the CVPIA itself and including mitigation measures that protect such wildlife areas will help ensure that there are no unintended impacts from new provisions that expedite water transfers.

The bill mandates that the Interior Department must expeditiously issue all permits necessary to facilitate water transfers. It is our understanding that the Department is already in the process of developing a comprehensive environmental review on issues that pertain to water transfers in the CVP. Further, as specified by the relevant language in the 2010 Energy and Water Appropriations Bill the Department through the Fish and Wildlife Service has been instructed as soon as is practicable to “revise, finalize, and implement the applicable draft recovery plan for the Giant Garter Snake (*Thamnophis gigas*).” Therefore we question whether §2 of the bill is actually necessary to bring added efficiency to the water transfer process.

#### *3. Applicability of other laws and agreements*

We appreciate that the bill includes a condition to ensure no impacts to the San Joaquin River Settlement. This protection should be expanded so that any transfers are conditioned to ensure they are consistent with all other applicable federal and state laws, including but not limited to ESA, NEPA, CVPIA and state water transfer laws.

#### *4. Geographic Scope of §2*

It is not clear to us whether or not §2 of the bill would apply to transfers through the Delta. It is our understanding that the author’s intent in §2 focuses only on south of the Delta transfers with no intention to increase export demands on the Delta.

#### *5. Bureau of Reclamation Report*

The Report on Transfers called for by the bill would not speak to past problems involving water transfers such as the allowance for certain current transfers to proceed without complying with CVPIA conditions simply by employing questionable contract assignments or forbearance agreements that avoid restoration charges required by CVPIA. We suggest that any new water transfer study mandated by this bill should also require a report on these existing problems including previous experience on the water costs for Level 4 refuge water supply purchases occurring alongside water transfer activity.

In addition to these specific recommendations, we believe that modest amendments to the legislation could be helpful in addressing the unintended impacts of

additional water transfers to the refuge water supply. We endorse the proposed language offered by the Grassland Water District in their November 18, 2009 letter to Senators Feinstein, Stabenow and Boxer that would 1) facilitate the use of carry over water for unused refuge water supplies; 2) facilitate transfers between and among federal, state and private wetland areas that receive CVP water; and 3) directs Reclamation to develop and implement a process to secure funding to fully implement Level 4 funding for refuge water supplies as mandated by CVPIA. Including these provisions as a new section in the bill would be beneficial toward meeting the important wetland conservation goals of the CVPIA and would be consistent with the “get the water where it is needed” intent in the bill.

Thank you for your consideration of our views. We look forward to working with the Senator and the Senate Committee on Energy and Natural Resources to achieve an outcome that makes water more available to agriculture in a manner that avoids or minimizes unintended environmental consequences.

Sincerely,

DANIEL TAYLOR,  
*Director of Public Policy.*

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STATEMENT OF DAN TAYLOR, AUDUBON CALIFORNIA, SACRAMENTO, CA  
COMMENTS ON CURRENT LEGISLATION PERTAINING TO CENTRAL VALLEY PROJECT  
WATER TRANSFERS

Audubon California respects the need to transfer water to affected farmers in order to help reduce the loss of agricultural productivity and to minimize unemployment due to the drought. Such an effort however, needs to be accompanied by key provisions to protect against unintended consequences and to fully mitigate for adverse impacts. Previous state and federal laws addressing water transfers have recognized the potential for adverse impacts and the need for third party protections. These new transfers bills should as well.

- Unlimited or poorly designed transfers can cause significant harm to Valley farmers, communities and the environment unless they are handled properly. CVPIA water transfer limitations were instituted specifically to avoid such impacts including the risk of increasing groundwater overdraft to replace transferred water supplies. The proposed changes to water transfers legislation must similarly avoid unintended impacts and mitigate for unavoidable impacts as well.
- The environmental impacts analysis called for by the legislation should include in addition to listed species, wetlands, wetlands dependent wildlife and/or species covered by the Migratory Bird Treaty Act. For example, one of the areas targeted by the legislation, the Sacramento Valley, is home to significant wetland-dependent species and is one of America’s most important habitats for migratory birds. The maintenance and restoration of federal and state wildlife areas in the Central Valley is a stated purpose of the CVPIA itself and including mitigation measures that protect such wildlife areas will help ensure that there are no unintended impacts from the new provisions.
- Congress should ensure that all federal water transfer actions fully mitigate against wetlands becoming a “third party impact.” For example moving water away from wetland and agricultural regions can result in higher water market prices that wetlands management agencies cannot afford. Therefore, adding provisions to facilitate the movement of water between refuges can help carry out one of CVPIA’s important goals while also helping to minimize new impacts from this legislation.
- If the transfers bills as written became law a broader range of all CVP contractors would be able to compete—with fewer limitations—for the water usually obtained by the refuges from existing CVP sources. This could in turn greatly increase the cost or reduce the availability of water that federal and state refuges currently depend on toward meeting their Level 2 and Level 4 water needs as promised by CVPIA.
- The bills appear to mandate that the Interior Department must expeditiously issue all permits necessary to facilitate water transfers. Unless corrected this wording could potentially undermine objective review and assessment of transfers impacts, both social and environmental.
- The Report on Transfers called for by the bills says nothing about addressing past problems areas such as Reclamation allowing certain current transfers to proceed without complying with CVPIA conditions simply by employing questionable contract assignments or forbearance agreements to get around the res-

toration charges required by CVPIA. Any new legislation calling for a new study of CVPIA transfers should also require a report on these existing problems with implementing water transfers.

- Transferred water should be required to be used locally by effected farmers and should not be eligible for sale or trade on a secondary market.
- The legislation can help address potential impacts to refuges by facilitating wetland-to-wetland water transfers to allow managers to get CVPIA water where it is needed most in any given year. If CVPIA refuge supplies are not needed by one refuge area but could be beneficially used by other refuge areas, wetland managers should be afforded the same ability as any other water user to put diminishing water supplies to the best use for the needs of wildlife.
- The current bills include a condition to ensure no impacts to the San Joaquin River Settlement. This protection should be expanded so that any transfers are conditioned to ensure they are consistent with all other applicable federal and state laws, including but not limited to ESA, NEPA, CVPIA and state water transfer laws.

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BANTA-CARBONA IRRIGATION DISTRICT,  
Tracy, CA, October 2, 2009.

Hon. DIANNE FEINSTEIN,  
331 Hart Senate Office Building, Washington, DC.

Hon. DENNIS CARDOZA,  
1224 Longworth Building, Washington, DC.

Hon. JIM COSTA,  
1314 Longworth House Office Building, Washington, DC.

Re. "Water Transfer Facilitation Act of 2009"

DEAR HONORABLE PUBLIC SERVANTS: We encourage you to pass this proposed bill as it can only help Californians best use the waters within the state. It is a waste of storage and conveyance systems to limit the uses of these facilities to strictly one brand of water, ie. CVP water. When facilities can be used to move various sources of water to diverse destinations and beneficial uses then the facilities are doing the most good for the American public. These public facilities will then better serve municipal, industrial and agricultural water needs while the environment is being served during times of drought. This bill will clarify a portion of law that federal regulatory agencies are interpreting in such a way as to prevent conveyance and storage of otherwise legal water transfers within the State of California in Federal facilities. Please pursue passage of this legislative correction.

Sincerely,

DAVID WEISENBERGER,  
General Manager.

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BUTTE ENVIRONMENTAL COUNCIL,  
Chico, CA, November 4, 2009.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Hon. BARBARA BOXER,  
U.S. Senate, 112 Hart Senate Office Building, Washington, DC.

RE: BEC concerns regarding S. 1759: Central Valley Project water transfer facilitation

DEAR SENATORS FEINSTEIN AND BOXER: BEC opposes the pending transfer legislation bills (S-1759 and HR-3750): they are inappropriate and unnecessary. These bills are shortsighted attempts to dismantle the Central Valley Project Improvement Act (CVPIA), and call for permanent authority to approve and expedite transfers beyond what law currently allows. These bills essentially link the State Water Project (SWP) and Central Valley Project (CVP) and institutionalize water transfers.

Delta exports have reached unsustainable all-time highs -greater demands, increasing populations, climate change, and diminishing supplies-pointing to a collapse of epic proportions. There are no remaining great quantities of water that will fix this system. We cannot engineer or legislate our way out of this dilemma. The unintended consequences are numerous and many remain unquantifiable. Especially troublesome is further facilitation of more transfers from the north to the south because these transfers have a direct and historic effect in the form of ground-water mining and depletion.

Section 3405(a)(1) (J) The Secretary shall not approve a transfer authorized by this subsection unless the Secretary determines, consistent with paragraph 3405(a)(2) of this title, that such transfer will have no significant long-term adverse impact on groundwater conditions in the transferor's service area.

The provisions set in Section 3405(a) of the CVPIA are currently ignored and transfers take place without the appropriate oversight and research. Transfers must not increase total water used or stored during the driest times of the year. Groundwater substitution plays a major role in producing the water for transfers that originate north of the Delta. In our region, groundwater substitutions impact an aquifer system directly connected to the Tuscan aquifer. This system underlies 6 North Valley and foothill counties and is crucial for many endangered species and threatened habitats. There are approximately 17,000 private wells over the Tuscan, with the vast majority being domestic wells. Homes scattered throughout the rural areas have no other water source.

If the Senate promulgates this bill, it must adhere to CVPIA and address the following:

- Applies to specific emergency conditions only-this should protect from willing sellers out to make a profit and curtail dependency and ever increasing demands south of the Delta.
- HR-1759, Sec. 3(b) must be expanded to include recognized species of HCP/NCCPs of affected regions. It must also include all applicable environmental reviews, permitting, and consultations, including the environmental documentation needed to address groundwater quantity and quality.
- The Department of the Interior should lead the retirement of western San Joaquin Valley lands per the March 2007 Record of Decision and support the development of a comprehensive approach to sustaining the water supply in the North State. The natural systems cannot be further disrupted, salmon runs and wetlands must be improved from years of disruption that has caused the current endangerment of many species.

BEC hopes that you recognize that groundwater substitutions are already occurring and that these bills will further the abuse and decimation of one of the last functioning, natural groundwater dependent ecosystems in the State. Consider this unintended consequence and reevaluate the purpose of your bill.

Sincerely,

CAROL PERKINS,  
*Water Resource Advocate.*

[The article "Reaping Riches in a Wretched Region: Subsidized Industrial Farming and its Link to Perpetual Poverty" by Lloyd G. Carter has been retained in subcommittee files.]

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CALIFORNIA WATER IMPACT NETWORK,  
CALIFORNIA SPORTFISHING PROTECTION ALLIANCE,  
*Santa Barbara, CA, November 3, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

Re: Water Transfer Facilitation Act of 2009-S 1759

DEAR CHAIRMAN BINGAMAN, RANKING MEMBER MURKOWSKI AND MEMBERS OF THE WATER AND POWER SUBCOMMITTEE: We hereby request that this correspondence be included in the hearing record for S 1759 and that it be provided to the committee members in anticipation of the hearing on November 5, 2009.

Our organizations oppose the Water Transfer Facilitation Act of 2009 as introduced. As California continues to seek resolution to water conflicts, we agree that water transfers can play a role but we point out that there is already comprehensive water transfer authority in the Central Valley Project Improvement Act (CVPIA). Pub. L. 102-575 §3405. Moreover, significant progress in facilitating water transfers has already been made by the Bureau of Reclamation and the California Department of Water Resources through the federal/state Drought Water Bank. Reclamation and DWR successfully petitioned the California State Water Resources Control

Board to combine the Permitted Places of use for the Central Valley Project and State Water Project. However, without adequate protections, the language contained in S. 1759 will go too far to expedite transfers, and will likely create a market for paper water, create third party impacts, impact federal Indian Tribes, and further exacerbate regional conflicts over water in California.

A determination of availability and need for additional water to be transferred must precede any transfers and should come from a comprehensive package of facts. Since we are committed to working with you toward a sustainable hydrologic future for California, we respectfully urge you to amend the bill to prevent redirected impacts to other beneficial uses of water. Our specific concerns and suggestions are provided below.

#### *Section 2*

Section 2 (a), as written, creates a water transfer market for paper water-water that does not exist. Paper water would be created through exemption of transfers from the existing requirement in paragraphs (A) and (I) of section 3405(a)(1) of the CVPIA that transferred water not exceed the actual 3 year average delivery amount and the requirement to show proof that the transferred water would otherwise be beneficially used or irretrievably lost during the time period of the transfer. This exemption will likely result in additional upstream reservoir drawdown and an impact on water supplies for CVP-dependent rivers and wildlife refuges.

The legislation, as proposed is also redundant in its description of eligible CVP contractors in Section 2(a)1 which refers specifically to the CVP's San Felipe, West San Joaquin, and Delta division contractors as eligible for water transfers , but they are also included again in the description of all CVP contractors, past and present in Section 2(a)2 as eligible for water transfers.

Section 2(b) creates a preferential status for the San Joaquin River Restoration Program over any other CVPIA program, something never done before for ANY portion of a CVP program. It also supersedes federal and state area of origin protections by favoring the one CVP river system-the San Joaquin, which is a net importer of water, over other basins such as the Sacramento, Trinity and American river basins which are net exporters of water to the San Joaquin and Tulare basins. It further aggravates the continued failure of the Bureau of Reclamation to charge CVP contractors for restoration of the Trinity River as pointed out by the Hoopa Valley Tribe in their October 22nd letter.

Section 2(a) of the legislation, by exempting transferred water from proof of actual beneficial use, will further delay fulfillment of Federal Indian Trust responsibilities arising under Section 3406(b)(23) of the CVPIA. As pointed out in the letter by the Hoopa Valley Tribe, it would do so financially. However, we believe it may also do so physically by transferring water stored in Trinity Reservoir which is specifically dedicated to the preservation and propagation of the Trinity River fishery. It also jeopardizes stored in Trinity, Shasta, Folsom and other CVP reservoirs specifically dedicated to Central Valley fisheries and wildlife refuges made available under CVPIA Sections 3406(b)(2) and 3406(d), respectively.

The attached\* 1977 Interior Solicitor's Opinion on a request by the Grasslands Water District for additional water supplies explains the federal obligations to protect areas of origin such as the Trinity River from impacts to export water to areas such as the Grasslands during periods of drought.

We therefore recommend that Section 2(a)1 be deleted in its entirety, and that if this legislation is adopted in any form it include a condition on transfers that requires as a prerequisite the fulfillment of the contractors' payment obligations and establish additional protections for the Trinity River and Central Valley fish and wildlife refuges as provided in Sections 3406(b)2 and 3406(b)23) and 3406(d) of Public Law 102-575 by adding them as prohibitions of harm under new Sections 2(b)3, 2(b)4) and 2(b)5), respectively:

(3) The protection of Central Valley fish and wildlife water supplies, as described in Section 3406(b)(2) of Public Law 102-575

(4) The Trinity River Restoration Program, as described in Section 3406(b)23 of Public Law 102-575, and as embodied in the Interior Secretary's December 2000 Trinity River Record of Decision

(5) Central Valley Refuges and Wildlife Habitat areas, as described in Section 3406(d) of Public Law 102-575.

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\*Document has been retained in subcommittee files.

### Section 3

We appreciate your emphasis to follow all environmental laws to analyze the impacts to both the areas of origin and the receiving areas from Central Valley Project water transfers. As you are aware, the Bureau of Reclamation and the California Department of Water Resources have struggled to produce programmatic federal and state environmental review for water transfers (including those proposed in your bill) since the signing of the Sacramento Valley Water Management Agreement in 2001. We suggest that beyond emphasizing that the Bureau of Reclamation, “. . . shall initiate and complete, on the most expedited basis practicable, the programmatic development of environmental documentation to facilitate voluntary water transfers within the Central Valley Project,” that you add companion language that will protect the areas of origin from harm.

A programmatic National Environmental Policy Act document will not be completed for 2010 transfers and very likely won't be finished even for 2011 water transfers. In light of that fact, we request that you add the following provisions that will safeguard family farms, communities, and myriad species:

- Prohibit ground water substitution.
- Following patterns should err on the side of preventing species impacts.
- All water transfers under this bill must be monitored by independent, third parties that are paid for by the buyers and hired through USFWS or NMFS

Past experience demonstrates just how destructive surface water sales with ground water substitution can be in the northern Sacramento Valley. For example, in 1994, following seven years of low annual precipitation, Western Canal Water District and other irrigation districts in Butte, Glenn and Colusa counties exported 105,000 af of water extracted from the Tuscan aquifers to buyers outside of the area. This early experiment in the conjunctive use of the groundwater resources—conducted without the benefit of environmental review—caused a significant and immediate adverse impact on the environment. (Msangi 2006). Until the time of the water transfers, groundwater levels had dropped but the aquifers had sustained the normal demands of domestic and agricultural users. The water districts' extractions, however, lowered groundwater levels throughout the Durham and Cherokee areas of eastern Butte County. (Msangi 2006). The water level fell and the water quality deteriorated in the wells serving the City of Durham. (Scalmanini 1995). Irrigation wells failed on several orchards in the Durham area. One farm never recovered from the loss of its crop and later entered into bankruptcy. Residential wells dried up in the upper-gradient areas of the aquifers as far north as Durham.

In 2009, the U.S. Fish and Wildlife Service failed to comply with the ESA and provide information necessary to establish the impact on the threatened giant garter snake. The Service also failed to provide measures to minimize the impact of take from transfers. To fully comply with the law and minimize the potential for legal challenges to surface water transfers, your bill could emphasize the importance of including the essential baseline data and mitigation measures to protect the species.

### Section 4

The Bureau of Reclamation could bring to Congress many of the facts that have been absent from the water transfer debate. For example, a State Water Resources Control Board Strategic Plan report<sup>1</sup> (2008) reveals that there are rights, permits, and licenses for at least five times the amount of water than exists. A review of the Bureau of Reclamation's seven Trinity River water permits reveals that Reclamation has permits to store and divert twelve times the average annual flow of the Trinity River at Lewiston (Stroshane 2009). It is also well known that many speculators in hydrologically dry area of California have abused their own water supplies, and some have planted permanent crops even when their contracts clearly articulate that there will be years that water deliveries may drop to zero. To the detriment of all Californians, local, state, and federal agencies have failed to stop blatantly wasteful and inappropriate uses and diversions of water and have failed to pursue aggressive planning for regional water self-sufficiency. The water transfer legislation, as proposed, encourages more of the same.

### Conclusion

We appreciate your consideration of our concerns. If you decide after hearing testimony, that there is still a need and desire to move ahead with this legislation, we urge you to strongly consider our recommendations so that you do not, in your haste to facilitate water transfers, redirect impacts to the areas of origin, harm Cen-

<sup>1</sup>See page 10, paragraph 2 at [http://www.waterboards.ca.gov/water\\_issues/hot\\_topics/strategic\\_plan/2007update.shtml](http://www.waterboards.ca.gov/water_issues/hot_topics/strategic_plan/2007update.shtml)

tral Valley fish and wildlife, and violate Federal Indian Trust responsibilities to the Hoopa Valley and Yurok Tribes.

Sincerely,

CAROLEE KRIEGER,  
*President, California Water Impact Network.*  
 BILL JENNINGS,  
*Chairman, California Sportfishing Protection Alliance.*

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STATEMENT OF TOVEY GIEZENTANNER, PRESIDENT AND CEO, CONAWAY  
 PRESERVATION GROUP, LLC, WOODLAND, CA

On behalf of the Conaway Preservation Group, LLC (CPG), thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. We support your efforts and this legislation as a means of providing greater flexibility in the management of Central Valley Project (CVP) and other water supplies to help meet unmet needs critical to the future of the State of California.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP. Further, the language in your legislation directing the Bureau of Reclamation to work with other federal agencies to develop the necessary long-term environmental documentation addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake is a critical and necessary near-term next step.

CPG owns the Conaway Ranch in Yolo County. The Conaway Ranch property covers more than 17,000 acres on the west side of the Sacramento River between the cities of Davis and Woodland. Conaway Ranch has been operated for many years to meet goals of agricultural production and waterfowl/wildlife habitat. Approximately 40 percent of the Ranch is located within the Yolo Bypass and the remainder lies west of the bypass. Conaway Ranch's water rights and Bureau of Reclamation Settlement Contract are held by CPG. CPG's Settlement Contract water is a major contributor to the Conaway Ranch water supply during its annual summer operational term of April 1 through October 31.

We look forward to working with you and your staff in the coming months in this important legislative effort, and appreciate your leadership in advancing this legislation and addressing California water issues so important to our collective future.

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DEPARTMENT OF COMMERCE,  
 NATIONAL MARINE FISHERIES SERVICE,  
*Long Beach, CA, November 2, 2009.*

MS. KATHY MROWKA,  
*State Water Resources Control Board, Division of Water Rights, PO Box 2000, Sacramento, CA.*

DEAR MS. MROWKA: By this letter, NOAA's National Marine Fisheries Service (NMFS) registers its protest to the US Bureau of Reclamation's (USBR) Petitions for Extension of Time petitions for the Central Valley Project (CVP) (Applications 5625, 5626, 5627, 5628, 9363, 9364, 9365, 9366, 9367, 9368, 13370, 13371, 13372, 14662, 14858A, 14858B, 14859, 15374, 15375, 15376, 15764, 16767, 16768, 17374, 17375, 17376, 18115, 19303, 19304, 21542, 22316, 27319).

NMFS is responsible for managing fisheries under the Magnuson-Stevens Fishery Conservation and Management Act and for implementation of the Federal Endangered Species Act ESA with respect to marine species, including anadromous fish. NMFS' ESA responsibility includes working with federal agencies to assist them in complying with their ESA duty to avoid jeopardizing the continued existence of listed species or adversely modifying their critical habitat. (ESA § 7(a)(2)) Further, the ESA provides that it is Congressional policy that all Federal agencies shall cooperate with State and local agencies to resolve water resource issues in concert with conservation of threatened and endangered species. (ESA § 2(c)(2))

NMFS is filing this protest to preserve party status in these proceedings in order to work with the USBR and the State Water Resources Control Board (SWRCB) for conservation of federally protected marine species in the CVP service area; NMFS

must bring its technical expertise to bear in these proceedings if we are to fulfill our legal mandates to manage and protect anadromous fish. There is substantial uncertainty regarding future environmental conditions in the Sacramento Valley and Trinity River Basin. Additionally, the feasibility of providing conservation measures such as fish passage above currently impassable dams remains unclear. We are concerned that the petitions at issue could limit future operational flexibility and result in significant adverse environmental impacts and, therefore, may be contrary to the public interest.

*Project Description*

On July 23, 2009, the USBR filed petitions for extension of time to put water to full and beneficial use for 32 water rights associated with the Central Valley Project (CVP). These include 16 permits previously approved under SWRCB decision 1641 (D1641), 9 permits for power generation,<sup>1</sup> permit for Black Butte Reservoir, and 6 permits for the New Melones Reservoir. Operations covered under these permits affect water supplies in the: Trinity River (Trinity Reservoir), Clear Creek (Whiskeytown Reservoir), Sacramento River Shasta Reservoir, American River (Folsom Reservoir), Stanislaus River, the San Francisco Bay Delta, the Westside of the San Joaquin Valley, and the San Joaquin River. Purposes of use include direct diversion and storage for irrigation, stock watering, domestic, municipal and industrial use, power production, fish and wildlife enhancement, salinity control, water quality control, and recreation. The current petitions supersede and replace USBR's September 19, 1985 petition and the June 26, 1996 request for partial amendment.

NMFS, the USBR, and other agencies (including the SWRCB) have been working together to address fisheries issues in the Sacramento Valley region for several years, and in several forums. Most recently, pursuant to its duty to determine whether a proposed federal action is likely to jeopardize the continued existence of any listed species, on June 4, 2009, NMFS issued a Biological Opinion on the long-term operation of the CVP and State Water Project (SWP) (the "OCAP Biological Opinion"). NMFS concluded that proposed operations were likely to jeopardize five listed species and, as the ESA requires, offered an extensive set of actions as a "reasonable and prudent alternative" (RPA) for project operations that would be likely to avoid jeopardizing these species. The USBR has provisionally accepted the RPA. Consequently, the delivery of water by the CVP and the SWP is governed by the terms of the NMFS RPA, as well as by other federal and state decisions. In addition, NMFS and USBR are currently engaged in formal ESA consultation regarding USBR Proposed Action to continue operation of the Trinity River Division of the CVP from 2010 to 2030. This consultation is scheduled to be completed in January of 2010.

*Basis of Protest*

Our protest is based on threats to the conservation of species exposed to potential impacts of ongoing and future operations of the CVP in the event petitions are granted without appropriate conditions. These species include: Endangered Sacramento River winter-run Chinook salmon (*Oncorhynchus tshawytscha*), Threatened spring-run Chinook salmon (*O. tshawytscha*), Southern Oregon/Northern California Coasts coho salmon (*O. kisutch*), Central Valley steelhead (*O. mykiss*), the Southern Distinct Population Segment of North American green sturgeon (*Acipenser medirostris*), and Southern Resident Killer Whales (*Orcinus orca*). The storage, release, and diversion of surface flows at multiple facilities affect stream flows, habitat conditions, and temperatures important to the successful completion of spawning, rearing, and migration life-stages for these protected fish, as well as for fall-run Chinook salmon, an important commercial and recreational fishery and food source for Endangered killer whales. Detailed analyses of these effects are presented in the OCAP Biological Opinion and in the 2000 Trinity River Biological Opinion.

*A. Sacramento River*

While NMFS' OCAP Biological Opinion concluded that the operations under the RPA are not likely to jeopardize listed species, the Sacramento Bay Delta ecosystem is extraordinarily complex, and future environmental conditions are largely uncertain. Two important variables are climate change and future growth patterns. NMFS used the best scientific information available at the time of our analysis, including current projections for climate change and future growth patterns, but we expect that new answers to a variety of important questions will become available during the coming years that could affect our analysis and conclusions.

<sup>1</sup>The power generation permits are companion filings to the consolidated place of use consumptive use permits.

Federal regulations require that NMFS revisit a previous biological opinion “if new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered.” (C.F.R. § 402.16) The Opinion requires cooperative research to address many of these uncertainties. For example, partially as a response to anticipated climate change in California, the RPA requires that the project agencies lead studies to determine how to provide fish passage above currently impassable dams so fish can have access to cold water spawning habitat. The RPA’s “no jeopardy” conclusion rests in part on the assumption that fish passage will be provided. If this turns out to be infeasible, modification of project operations will most likely be necessary. These modifications could require additional cold water releases from Shasta Dam to provide suitable conditions for salmon spawning below the dam. Even under the current “no jeopardy” RPA, there is still high mortality of winter-run Chinook, and changed conditions could require provision of additional cold water while passage is being studied and engineered.

However, depending on the nature of, and conditions appurtenant to, the water rights that are the subject of those agreements, the USBR may or may not be able to provide the cold water that could be required for ESA compliance in the future. A federal court has ruled that the use of a majority of stored water in Shasta is governed by settlement agreements between the USBR and pre-existing water right holders. The court determined that USBR has no discretion to amend the agreements. If these water rights are not appropriately conditioned, via the petition process, to allow measures to conserve listed species, conservation of some species simply may not be possible.

The SWRCB proceedings in this matter are a key intersection of federal and state law. Flexibility for USBR to comply with the ESA in the future under changed conditions must be preserved if imperiled anadromous species in the Sacramento Valley are to be conserved. The SWRCB has the authority to preserve that flexibility by determinations made in these proceedings. The proceedings provide an opportunity for federal and state agencies to work in concert on critical water resource issues, with NMFS contributing its technical expertise on conservation strategies and fishery management.

#### *B. Trinity River*

The petitions do not conform to decisions previously made by federal agencies and tribal governments regarding instream flow, temperature, and minimum pool levels for the Trinity River. NMFS completed formal ESA Section 7 Consultation on October 12, 2000 on the flows provided by the Trinity River Record of Decision and concluded that the flows would not jeopardize listed species. A flow regime different than that consulted upon in the Biological Opinion may not meet this standard. Similarly, the October 12, 2000 Biological Opinion on the Trinity River assumed that the water temperature objectives and the minimum pool levels would be met because they were either included in the proposed action or formalized as an reasonable and prudent measure. As submitted, these petitions may limit the potential for USBR to comply with the ESA on the Trinity River in the future. We have outlined the factual bases for our protest with regard to the Trinity River, and specific recommendations for action, in the “Recommendations” section, below.

#### *Recommendations*

1. Evaluate alternatives associated with the allocation of water rights under settlement contracts to address impacts of CVP operations to stream temperatures for winter-run Chinook salmon below Shasta Reservoir. The majority of the water stored behind Shasta Dam has been deemed not subject to USBR discretionary control. Additional alternatives could facilitate future temperature compliance for winter-run Chinook salmon on the Sacramento River, which is critically important to the survival and recovery of this species.
2. Provide for operational consistency between flow regimes in the CVP and the OCAP Biological Opinion RPA. NMFS and USBR have agreed to a suite of protective measures using flow manipulations of associated portions of CVP water that are designed to avoid jeopardy to species. Fish resources would be well served by insuring that all elements of the RPA are fully integrated into the water rights permits and licenses held by the USBR for the CVP.
3. NMFS has recently issued a public review draft of our Central Valley Salmon and Steelhead Recovery Plan. This document analyzes current conditions and threats to threatened and endangered salmonids in the Central Valley and provides a comprehensive suite of strategies and actions to achieve their recovery. With protest standing, our agency will be better able to provide tech-

nical assistance to the USBR and SWRCB for the purposes of integrating recovery strategies into CVP operations.

4. The petitions do not include the U.S. Interior Department's 2000 Record of Decision that reduced diversions to the Sacramento River from the Trinity River from 90 to 53 percent of average annual Trinity River runoff. The petitions call for minimum instream flows for the Trinity River of 120,500 acre feet, well below the minimum agreed upon in the 2000 Trinity River Record of Decision. USBR should submit a petition that conforms to water volumes for the Trinity River as established in Trinity River Record of Decision.

5. The petitions do not include Trinity River water temperature objectives that were reviewed and adopted by the Environmental Protection Agency EPA as an amendment to the Water Quality Control Plan for the North Coast Region Basin Plan approved by the State Board in Resolution No. 91-94 on September 26, 1991. The Basin Plan amendment establishes site-specific temperature objectives and an Interim Action Plan for the Trinity River. The review of the temperature objectives found them to be protective of beneficial uses on the Trinity River, and to be based on sound scientific rationale. USBR should submit a petition that includes these water temperature objectives for the Trinity River.

6. The petitions do not include minimum pool levels for Trinity Reservoir. NMFS established a 600,000 acre feet minimum pool level for Trinity Reservoir in the October 12, 2000 Biological Opinion on the Trinity River. This minimum pool level was deemed necessary at that time to ensure sufficient cold water resources to meet the temperature objectives. USBR should submit a petition that includes minimum pool levels for Trinity Reservoir.

Thank you for considering our protest of the above petitions. We hope that by establishing a formal nexus for our agency to participate in the review and conditioning of the subject permits via the SWRCB permitting process, we may provide technical assistance and make significant contributions to the survival and recovery of threatened and endangered species and management of important commercial and recreational stocks. If you have any questions or comments concerning this issue, please contact Steve Edmondson, Habitat Manager for Northern California at 707 575-6052 or Steve.Edmondson@noaa.gov.

Sincerely,

RODNEY R. MCLNNIS,  
*Regional Administrator.*

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STATEMENT OF C. MARK ROCKWELL, D.C., ENDANGERED SPECIES COALITION, PENN VALLEY, CA, ON S. 1759

I am writing for a second time on this legislation, and our group letter, sent to you on November 3, 2009, is also attached for reference. Our concern with the current legislation is that we feel it does not adequately protect the environmental water designated for the California Bay-Delta ecosystem, and for the central valley salmon fishery (Central Valley Improvement Act (Title 34, Public law 102-575)). As you may know, under the CVPIA 800,000 acre feet of water, classified as b(2) or surplus water, was supposed to be allocated for the purpose of Bay Delta estuary protection/restoration, and to meet the salmon doubling goals of the CVPIA legislation. Additionally, this water is designated to allow the Secretary of Interior to meet Endangered Species Act responsibilities to protect and recover listed salmon species in the California central valley.

As you probably also know, the salmon doubling goals have never been reached, and in fact, the central valley salmon populations have severely declined to the point where salmon fishing in both California and Oregon has been closed the past two years. This has caused both economic hardship on many business and commercial fishing families, as well as hardships on the recreational fishing communities in both states. It has caused hundreds of millions of dollars to be lost to the California economy, and contributed to the climbing unemployment figures in these states. Loss of salmon is, frankly, a disaster for our state.

One of the goals of this legislation is to make available water easier to move within the state to those in need. However, as stated by Senator Feinstein's staff, it has to be done with no un-intended consequences or negative impacts. We are concerned about negative impacts to CVPIA goals and intent, as well as its impact on salmon populations in the central valley. Therefore, we recommend the following language to firm up the goals and prescribed outcomes of CVPIA (in blue italics):

(b) CONDITION.—A transfer under subsection (a) shall be subject to the condition that the transfer not interfere with—

(1) Implementation of Section 3406(2) of the Central Valley Project Improvement Act (Title 34, Public Law 102-575), particularly with regard to the Secretary's obligations under Section 3406(b)(1)(B) and the Endangered Species Act as spelled out in that Section;

(2) the San Joaquin River Restoration Settlement Act (Public Law 111-11; 123 Stat. 1349), including the priorities described in section 10004(a)(4)(B) of that Act (123 Stat. 1350) relating to implementation of paragraph 16 of the Settlement (as defined in section 10003 of that Act (12320 Stat. 1349)); and

(3) the Settlement.

We feel this addition would achieve the goals of Senator Feinstein and Boxer of making water easier to move to needed locations, while continuing to protect the central valley salmon fishery, and meeting the goals and objectives of the Central Valley Improvement Act. I can't stress enough how important it is to recovery the west coast salmon fishery for the economy and families of this state. We cannot risk any further declines. People's livelihoods and families are at stake.

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ENVIRONMENTAL DEFENSE FUND,  
San Francisco, CA, November 4, 2009.

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

Re: Environmental Defense Fund recommendations on S 1759 (water transfers)

DEAR SENATOR FEINSTEIN: Environmental Defense Fund greatly appreciates your efforts to help resolve California's pressing water issues. In particular, we thank you for bringing balance to the discussions and fending off attempts to undermine fundamental protections of existing law, including, but not limited to, the federal Endangered Species Act (ESA). EDF is engaged at all levels to find solutions to these problems, including work on the pending state legislation, participation on the Bay Delta Conservation Plan (BDCP) steering committee, open dialogue with key players in the agricultural and municipal water sectors and engagement with the Department of the Interior on various issues. It is in this context of constructive engagement that we offer the following comments on S 1759.

As you know, EDF is supportive of the use of appropriate market mechanisms to solve environmental problems, and we played a central role in including such provisions in CVPIA originally. The record is clear that voluntary water transfers provide important economic incentives to sellers and buyers alike, resulting in improvements in agricultural efficiency and on-farm productivity. We thus appreciate and agree with the general stated intent behind S 1759.

We do have a few concerns about S 1759 as filed. First, we are concerned that Section 2(a) not undo basic important and carefully negotiated provisions of CVPIA by providing too broad of an exemption for certain transfers from Sec. 3405(a)(1) of the Act. We suggest the following amendment to ensure that S 1759 is limited to intended purposes of reducing non-environmental impact related barriers to appropriate transfers and that it does not undermine the environmental protection inherent in CVPIA (additional language in underlined):

Sec. 2 (b) Condition—A transfer under subsection (a) shall be subject to all applicable provisions of existing state and federal law and to the condition that it not interfere with . . .

Second, we understand that the primary intent of Section 3 of S 1759 is primarily to streamline the process for review and approval of through Delta transfers that may affect the giant garter snake, currently listed as a threatened species under the federal ESA. EDF generally supports this objective. However, we believe the language in Section 3 of the bill as filed may be interpreted to go far beyond the stated purpose. We suggest that Section 3 be amended to read as follows (additional language in underline):

Sec. 3 (a) In General—As soon as practicable after the date of enactment of this Act, the Secretary of Interior, acting through the Director of the United States Fish and Wildlife Service and the Commissioner of the Bureau of Reclamation (referred to in this section as the "Secretary), using such sums as are necessary, shall initiate and complete, on the most expedient basis practicable the programmatic development of environmental documentation to facilitate voluntary water transfers within the Central

Valley Project, consistent with all applicable provisions of state and federal law.

Third, we share the concern of the Grasslands Water District and other members of the Central Valley Joint Venture that S 1759 should guarantee no loss of water to wetlands. We ask that S 1759 include language assuring that if a Central Valley refuge is unable to take full delivery of its annual water allocation, the water is made available to other refuges that are not in receipt of their full level 2 or level 4 supplies.

We are happy to discuss these issues further with your staff, and, again, we appreciate all your efforts to help California meet the overarching dual goals of water supply reliability and healthy river and delta ecosystems.

Sincerely,

MARY E. KELLY,  
Senior Counsel, Rivers and Deltas.  
SPRECK ROSEKRANS,  
Senior Analyst.

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FRIANT WATER USERS AUTHORITY,  
Lindsay, CA, October 1, 2009.

Hon. DIANNE FEINSTEIN,  
331 Hart Senate Office Building, Washington, DC.

Re: SUPPORT for Transfer legislation for the Central Valley Project

DEAR SENATOR FEINSTEIN, On behalf of Friant Water Users Authority (Authority), we thank you for introducing transfer legislation for the Central Valley Project (CVP) and we support your efforts and this legislation as a means of providing greater flexibility for management of CVP water supplies.

The diminished water deliveries to the CVP as a result of three years of below average precipitation amplified by various regulatory restrictions, including the ESA and the most recent delta smelt and salmon Biological Opinions, have, as you know, created a desperate situation in the San Joaquin Valley.

While long-term solutions are being sought, numerous short term efforts are needed to help bridge the water supply gap and greater flexibility, as provided in your legislation, to move water supplies across the San Joaquin Valley would be a useful tool. In addition, the legislation would help Friant districts affected by the SJR Settlement improve management of surface and groundwater supplies.

The Authority consists of nineteen member water, irrigation and public utility districts. The Friant Service area includes approximately one million acres and 15,000 mostly small family farms on the east side of the southern San Joaquin Valley (Madera, Fresno, Tulare and Kern County). Friant Division water supplies are also relied upon by several cities and towns, including the City of Fresno, as a major portion of their municipal and industrial water supplies.

We look forward to engaging in this effort and working closely with you and your staff in advancing this legislation and addressing California water issues.

Sincerely,

RONALD D. JACOBSMA,  
Consulting General Manager.

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GLEN-COLUSA IRRIGATION DISTRICT,  
Willows, CA, October 2, 2009.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Re: Support for Water Transfer Legislation

DEAR SENATOR FEINSTEIN: On behalf of Glenn-Colusa Irrigation District (GCID), we thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. We support your efforts and this legislation as a means of providing greater flexibility in the management of Central Valley Project (CVP) and other water supplies to help meet unmet needs critical to the future of the State of California.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation has been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA.

Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP.

GCID is the largest and one of the oldest diverters of water from the Sacramento River, dating back to 1880. As a senior water right holder and CVP Sacramento River Settlement Contractor, we believe we can and will actively participate in this water transfer program. The language in your legislation directing the Bureau of Reclamation to work with other federal agencies to implement the necessary long-term environmental processes addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake will be imperative to its usefulness and success.

We look forward to working with you and your staff in the coming months in this important legislative effort, and appreciate your leadership in advancing this legislation and addressing California water issues so important to our collective future.

Sincerely,

THADDEUS L. BETTNER,  
*General Manager.*

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STATE CAPITOL,  
OFFICE OF THE GOVERNOR,  
*Sacramento, CA, November 4, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Building, Washington, DC.*

Hon. BARBARA BOXER,  
*U.S. Senate, 112 Hart Senate Office Building, Washington, DC.*

DEAR SENATOR FEINSTEIN AND SENATOR BOXER, I am writing to express my support for S. 1759, the Water Transfer Facilitation Act of 2009. I appreciate your efforts to help alleviate the conditions brought on by drought in our state.

California is entering what could be its fourth consecutive year of drought. The state has a history of supporting water transfers and in 2009 implemented a Drought Water Bank as a tool for helping with worsening drought conditions. Given the challenges facing California's water supply, water transfers are likely to play an increasingly important role in meeting the state's water needs. My administration, through the Department of Water Resources (DWR), is working in partnership with the U.S. Bureau of Reclamation to facilitate transfers in 2010. DWR and the Bureau of Reclamation are also working to develop a long-term water transfers program.

I appreciate your recognition of the importance of this effort in meeting California's water supply needs. As Congress considers this legislation, I look forward to working with you and your colleagues to ensure that the final version meets the needs of both California and the federal government.

Sincerely,

ARNOLD SCHWARZENEGGER,  
*Governor.*

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GRASSLAND WATER DISTRICT,  
SAN LUIS & DELTA-MENDOTA WATER AUTHORITY,  
*Los Banos, CA, July 9, 2009.*

Mr. DONALD GLASER,  
*Regional Director, U.S. Bureau of Reclamation, 2800 Cottageway-MP100, Sacramento, CA.*

DEAR DIRECTOR GLASER: We are writing to request a meeting between you, Pablo Arroyave, and ourselves—as respective representatives of the San Luis & Delta-Mendota Water Authority and Grassland Water District—to discuss the future of the Refuge Water Supply Program and how wetland and agricultural interests can further our mutual goals while meeting the mandates of the Central Valley Project Improvement Act (CVPIA).

In that regard, the matter of the “March” toward Level 4 acquisition and Level 2 diversification are at the top of our agenda, as well as how we might be able to improve upon the current structure of the Refuge Water Supply Program. We both concur that just as Level 4 supplies are an obligation of the CVPIA, so is the requirement to diversify sources of Level 2 supplies to alleviate pressure on agricultural contractors. We wish to discuss how to move both of these objectives forward, which we believe possess connectivity in terms of the Bureau's ability to eventually meet both objectives. Our current actions to work together to seek solutions to these issues are a reflection of our commitment to work together. Nonetheless, the Bureau

maintains exclusive regulatory authority over actually meeting, and thus funding, these objectives. It is in this regard we wish to meet and begin a more formal dialogue as to how we can move forward.

We believe that as a starting point, it would be helpful to have this meeting with you and Pablo Arroyave. We then envision a follow-up meeting with other members of your staff to further refine the ideas which we will develop at this meeting.

We are both ready to make ourselves available to you based on your schedule. Considering recent actions related to changes in Refuge Water Supply Program staffing, and the yet to be released PART document related to the refuge water program, we believe it is important we meet at your earliest convenience.

Thank you for your consideration of our request. We look forward to your response.

Sincerely,

DAVID L. WIDELL,  
*General Manager, Grassland Water District.*

DANIEL G. NELSON,  
*Executive Director, San Luis & Delta-Mendota Water Authority.*

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HOOPA VALLEY TRIBAL COUNCIL,  
*Hoopa Valley Tribe,  
Hoopa, CA, October 26, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, 304 Dirksen Building, U.S. Senate, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy and Natural Resources, 304 Dirksen Building, U.S. Senate, Washington, DC.*

Hon. NICK J. RAHALL II,  
*Chairman, Committee on Natural Resources, 1522 Longworth Building, U.S. House of Representatives, Washington, DC.*

Hon. DOC HASTINGS,  
*Ranking Member, Committee on Natural Resources, 1522 Longworth Building, U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMEN AND RANKING MEMBERS: S. 1759 and H.R. 3750 would interfere with fulfillment of a long-deferred federal trust responsibility owed to the Hoopa Valley Tribe that was identified in the Central Valley Project Improvement Act (CVPIA). Pub. L. 102-575 §3406(b)(23) (October 30, 1992). The purpose of this letter is to request an amendment to the legislation that would ensure implementation of the requirement in the CVPIA that the cost of Trinity River restoration be paid as a cost of service by Central Valley Project (CVP) contractors. These contractors have repeatedly and persistently fought to avoid their statutory and contractual financial obligations to Trinity River restoration. They should not be provided any further benefits of Trinity River water until they recognize and pay for the full cost of Trinity River restoration. Also, many of these same contractors oppose the fulfillment of the CVP water supply obligations to Trinity River basin communities established by Congress in 1955 when it authorized the Trinity River Division.

The Tribe will respectfully oppose this legislation unless the issues we raise are resolved favorably to our Tribe.

Below are a proposed amendment, an explanation of the need for the amendment, and a background statement of the Hoopa Valley Tribe's interest in this legislation. In the event your Committees hold hearings on this legislation, we request that this letter be include in the record of your proceedings.

*1. Amendment*

Add at the end of section 2:

(c) The Secretary shall not approve a transfer authorized by this section unless the Secretary determines first that there are funds appropriated and presently available to meet the costs of implementing the Trinity River Mainstem Fishery Restoration Record of Decision adopted by the Secretary with the concurrence of the Hoopa Valley Tribe pursuant to section 3406(b)(23)(B) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4720) in the amount of \$16,400,000 per year (October 2007 price levels) through completion of construction and \$11,000,000 per year (October 2007 price levels) thereafter for

so long as the Trinity River Division of the Central Valley Project diverts water to the Central Valley.

### *2. Statement of Need for the Amendment*

S. 1759 and H.R. 3750 would authorize San Joaquin Valley CVP contractors to market CVP water exempt from two critical conditions established in the CVPIA. The first condition is that a contractor may not market water that exceeds the average of the contractor's actual use in the prior three years. Public Law 102-575 §3405(a)(1)(A). The second condition limits transfers to water that would have been consumed or lost to beneficial use during the year of the transfer. Public Law 102-575 §3405(a)(1)(L). The elimination of the two conditions will result in a financial windfall to the contractors at the expense of both the federal taxpayers and restoration of environmental damage caused by the diversion of Trinity River water to the Central Valley.

In addition, the legislation would streamline environmental reviews of the impacts of proposed water transfers. We support improved efficiency in the application of environmental laws to economic activity. We note, however, that many of the contractors who would benefit by S. 1759 and H.R. 3750 spent nearly five years in court between 2000 and 2004 trying to prevent restoration of the Trinity River by invoking the same environmental laws under which S. 1759 and H.R. 3750 would provide them with favored treatment.

The amendment the Tribe requests would ensure that no transfer could occur unless CVP contractors, in paying for CVP water at the "full cost or cost-of-service rates" established by section 3405(a)(1)(B) of the CVPIA, included the cost of Trinity River restoration in their payments. This amendment would not entail direct spending. Rather, it would require that contractors pay as they go for the benefits of CVP water. We request that the Committees consider making the amendment applicable to all transfers, not just those that would be authorized by S. 1759 and H.R. 3750.

### *3. Background*

The Trinity River Division of the CVP was authorized in 1955 and completed in 1963. The Division is the only source of water imported by the CVP. Congress included area-of-origin protections for the Trinity River including one establishing flow release procedures for Trinity River fish and wildlife preservation and propagation. The Bureau of Reclamation informed Congress that it would divert approximately 50 percent of Trinity River water regulated by the Division. However, until the enactment of the CVPIA in 1992, the Bureau consistently diverted 90 percent. The Trinity River fishery was devastated.

Subsequently, several legislative, judicial, and administrative initiatives culminated with the enactment of a Trinity River restoration provision in the CVPIA. Public Law 102-575 §3406(b)(23); 106 Stat. 4720. The CVPIA required the Secretary of the Interior and the Hoopa Valley Tribe to develop a restoration plan. If the Secretary and Tribe concurred in the plan, the Secretary was required to implement it according to its terms. Public Law 102-575 §3406(b)(23)(B). In 2000, the Secretary and the Tribe concurred in a plan that retained approximately 47 percent of the Trinity River Division's water in storage for scheduled releases to the Trinity River for fishery restoration. To enable that amount of water to be effective for restoration, the plan identified funding requirements to carry out habitat restoration and construction, gravel replenishment, and various monitoring programs that would have to remain in place so long as CVP diversions continued.

The Trinity River restoration provision of the CVPIA concludes with the statement:

Costs associated with implementation of this paragraph shall be reimbursable as operation and maintenance expenditures pursuant to existing law.

Public Law 102-575 §3406(b)(23). However, the Bureau of Reclamation has not incorporated the full cost of Trinity restoration in its operation and maintenance rate books or annual rate-setting process, and funding has otherwise not been provided in the amounts identified in the restoration plan by the Secretary and the Tribe. As a result, critical restoration activities have not occurred in a timely manner, some restoration activities have not been implemented according to prescriptions in the restoration plan and have been ineffective, and others have not been implemented at all. As a result, the fishery remains in decline.

In the last Congress, legislation entitled "Trinity River Restoration Fund Act of 2007" was introduced to address this issue. H.R. 2733, 110th Cong., 1st Sess. The costs set out in the requested amendment above were identified by the Secretary of the Interior in consultation with the Hoopa Valley Tribe in February 2007 and

were included in H.R. 2733. The prior Administration subsequently opposed enactment of H.R. 2733, and supported enactment of the San Joaquin River Settlement that became law in April of this year. The San Joaquin settlement included provisions promoted by San Joaquin Valley contractors, among others, that undermined the future availability of funds for all CVPIA restoration activities, including Trinity River restoration. See Public Law 111-11 Title X §10007(2) and Draft Central Valley Project Improvement Act Program Activity Review Report at 41 (December 22, 2008) (The report concluded that the amount available for CVPIA restoration activities will be reduced by enactment of the San Joaquin River settlement.)

The primary beneficiaries of S. 1759 and H.R. 3750 will be some of the same CVP contractors who not only secured enactment of the above-mentioned reduction in their environmental restoration funding obligation, but also have litigated and lobbied against the Trinity River restoration program from its inception. Among them are west side contractors who testified against enactment of H.R. 2733, the Trinity restoration funding legislation, which would have offset the San Joaquin settlement's financial impacts on environmental restoration. The San Joaquin settlement was negotiated behind closed doors. When the settlement was published in the fall of 2006, the Tribe immediately notified the Committees and the Administration that it would harm the Tribe's trust resources and undermine environmental restoration funding. Several members of the House and Senate acknowledged our concerns and pledged to address Trinity River restoration while urging the Tribe to withdraw its opposition to the San Joaquin Settlement. Our Tribe did withdraw its opposition. But the pledge from Congress remains unfulfilled. As Supreme Court Justice Hugo Black wrote in 1960, "Great Nations, like great men, should keep their word."

Instead, CVP contractors are on the verge of being rewarded for their aggression with yet another special benefit in the form of S. 1759 and H.R. 3750. This is particularly offensive to our Tribe because San Joaquin Valley irrigation operations profit from federally subsidized water that is delivered at direct expense to our fishery. The major portion of irrigation development on the west side of the San Joaquin Valley was made possible by Trinity River diversions to the CVP. See Senate Rept. 1154, 84th Cong. 1st Sess. 5 (1955). ("An average of 704,000 acre-feet of Trinity River water would be diverted annually to the Sacramento River Basin . . . and about 525,000 acre-feet annually would be available for use on land of the west side of the San Joaquin Valley.") However, actual diversions prior to the adoption of the Trinity River ROD in 2000 were far in excess of that, often exceeding 1 million acre-feet annually. Trinity River Flow Evaluation-Final Report Table 4.4 (1999).

S. 1759 and H.R. 3750 represent an opportunity to enforce the existing obligations of CVP contractors, meet the federal trust responsibility, and serve the goal of environmental justice. Accordingly, we urge that you not let this legislation proceed in the absence of the amendment we request. Your attention to this matter is appreciated.

Sincerely,

LEONARD E. MASTEN, JR.  
*Chairman.*

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METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA,  
*Los Angeles, CA, October 5, 2009.*

Hon. DIANNE FEINSTEIN  
*U.S. Senate, SH-331 Hart Senate Office Building, Washington, DC.*

DEAR SENATOR FEINSTEIN: The Metropolitan Water District of Southern California is pleased to support the legislation you are introducing related to water transfers for the Central Valley Project (CVP). This legislation will help provide good water management while providing flexibility for CVP customers.

As a regional wholesale water provider, Metropolitan provides water for nearly 19 million people throughout our 6-county service area in Southern California. As Metropolitan and the entire state continue to address water supply challenges throughout California, the vitality of our economy and environment has been seriously affected. Your proposed legislation will help address these critically important issues.

Please let me know if we can be helpful in any way.

Sincerely,

JEFFREY KIGHTLINGER,  
*General Manager.*

NORTHERN CALIFORNIA WATER ASSOCIATION,  
*Sacramento, CA, October 2, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Building, Washington, DC.*  
 Re: Support for Water Transfer Legislation

DEAR SENATOR FEINSTEIN: On behalf of the Conaway Preservation Group, LLC (CPG), thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. We support your efforts and this legislation as a means of providing greater flexibility in the management of Central Valley Project (CVP) and other water supplies to help meet unmet needs critical to the future of the State of California.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP.

NCWA was formed in 1992 to present a unified voice working to resolve California's water issues and protect the water rights and supplies of the diverse Northern California region, now and into the future. NCWA represents 54 agricultural water districts and agencies, private water companies, and individual water rights holders with rights and entitlements to the surface waters and groundwater resources of the Sacramento Valley. Many of our members can and will actively participate in this water transfer program. The language in your legislation directing the Bureau of Reclamation to work with other federal agencies to implement the necessary long-term environmental processes addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake will be imperative to its usefulness and success.

We look forward to working with you and your staff in the coming months in this important legislative effort, and appreciate your leadership in advancing this legislation and addressing California water issues so important to our collective future.

Sincerely,

DONN ZEA,  
*President and CEO.*

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NORTHERN CALIFORNIA WATER ASSOCIATION,  
*Sacramento, CA, October 2, 2009.*

Hon. BARBARA BOXER,  
*U.S. Senate, Washington, DC.*

Re: Support for Water Transfer Legislation

DEAR SENATOR BOXER: On behalf of the Northern California Water Association (NCWA), we thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. We support your efforts and this legislation as a means of providing greater flexibility in the management of Central Valley Project (CVP) and other water supplies to help meet unmet needs critical to the future of the State of California.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP.

NCWA was formed in 1992 to present a unified voice working to resolve California's water issues and protect the water rights and supplies of the diverse Northern California region, now and into the future. NCWA represents 54 agricultural water districts and agencies, private water companies, and individual water rights holders with rights and entitlements to the surface waters and groundwater resources of the Sacramento Valley. Many of our members can and will actively participate in this water transfer program. The language in your legislation directing the Bureau of Reclamation to work with other federal agencies to implement the necessary long-term environmental processes addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake will be imperative to its usefulness and success.

We look forward to working with you and your staff in the coming months in this important legislative effort, and appreciate your leadership in advancing this legislation and addressing California water issues so important to our collective future.  
Sincerely,

DONN ZEA,  
*President and CEO.*

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PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS  
*San Francisco, CA, November 3, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. States Senate, 331 Hart Senate Office Building, Washington, DC.*

Hon. BARBARA BOXER,  
*U.S. Senate, 112 Hart Senate Office Building, Washington, DC.*

RE: PCFFA concerns with S. 1759 re Central Valley Project water transfer facilitation; suggested amendment

DEAR SENATORS FEINSTEIN AND BOXER: The purpose of this letter is to bring to your attention the inadvertent harm that your bill S. 1759, as introduced, can bring to the fish and wildlife resources of the San Francisco Bay-Delta estuary and to offer an amendment that we at the Pacific Coast Federation of Fishermen's Associations believe will mitigate such potential harm.

We apologize for the lateness of communicating our S. 1759 concerns to you, but the ongoing wrangling in Sacramento over the future of the Bay-Delta—the "Delta water package"—has been all-consuming for weeks now.

As introduced, S. 1759 strikes at the heart of the principal purpose of the Central Valley Project Improvement Act (CVPIA), PL 102-575, co-authored by then-Senator Bill Bradley and Congressman George Miller and signed into law 17 years ago last week by President George H. W. Bush.

The principal purpose of the CVPIA was to repair the damage dealt to fish and wildlife resources by (then) 57 years of federal Central Valley Project (CVP) development and operation in the Central Valley and on the Trinity River. From a fisheries perspective the two most important provisions of the CVPIA are (1) a commitment to double the Central Valley salmon resource over 1960s-80s population numbers; and (2) the provision of 800,000 acre-feet of water from the CVP's yield with which to protect and restore Project-impacted fish and wildlife resources, particularly those of the San Francisco Bay-Delta estuary.

We know that the CVPIA has yet to accomplish its salmon-doubling purpose. Central Valley salmon are, as you know, in dire straits.

The Bureau of Reclamation has defied Congress. It has been gaming the CVPIA's environmental water

Last year a panel of independent scientists conducted an Office of Management & Budget-prescribed evaluation of the CVPIA's Anadromous Fisheries Restoration Program, that which purports to implement the Act's salmon-doubling provisions. That panel's report<sup>1</sup> sends a clear message why S. 1759, as introduced, threatens the health of the Bay-Delta estuary and the implementation of the CVPIA's salmon-doubling purpose.

Section 3406(b)(2) of the CVPIA explicitly directs the Secretary of the Interior to

dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including but not limited to additional obligations under the federal Endangered Species Act.

The independent science panel literally struggled to get the Bureau of Reclamation to explain, in any straightforward manner, how it was managing that 800,000 acre-feet of water that Congress directed it to use for salmon-doubling and for meeting the Secretary's ESA obligations in the Bay-Delta estuary. Rather than attempt

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<sup>1</sup>Listen to the River : An Independent Review of the CVPIA Fisheries Program", available at [http://www.cvpaiindependentreview.com/FisheriesReport12\\_12\\_08.pdf](http://www.cvpaiindependentreview.com/FisheriesReport12_12_08.pdf)

to paraphrase what the scientists learned—and how “flabbergasted” they were by what they finally learned, we provide the text of their report here<sup>2</sup>:

When viewed in combination with the broad directive in Section 3406(b)(1)(B) to “modify Central Valley Project operations to provide flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish,” for which the 800 kaf is one explicit tool, the panel expected to find that implementation of 3406(b)(2) had occurred in this way: The agencies identify 800 kaf of dedicated storage in the system—essentially, a water volume budget—and then consistent with an identified system-wide flow regime to improve conditions for anadromous fish, Reclamation would release this stored water in requested amounts at the call of the fish managers and then protect that amount of altered flow through the rivers, through the Delta, and into the bay.

We were flabbergasted to learn this is not how the agencies implement this provision. The agencies have not identified a system-wide flow regime and set of system flow objectives. Worse, Reclamation does not dedicate and manage 800 kaf of water from headwaters storage through the Delta [our emphasis]. Instead, Reclamation releases approximately 400 kaf from CVP storage each year, aimed at supporting the needs of particular life stages at particular locations. These augmented amounts are then diverted out of the system at a later point. The 800 kaf accounting then includes approximately 400 kaf realized in pump restrictions in the Delta. This approach seems fundamentally at odds with the intent and language of the legislation. It is symptomatic of a program focused on local upstream watershed factors and not on the Delta and especially not on the problem at the system scale.

In short, Reclamation has defied Congress’ directive to apply 800,000 acre-feet of water to salmon doubling and to meeting the Secretary’s ESA and Clean Water Act obligations in the San Francisco Bay-Delta estuary.

S. 1759 as introduced will legitimate Reclamation’s gaming of the CVPIA environmental water

S. 1759 as introduced would explicitly waive the application of CVPIA section 3405(a)(1), subparagraphs (A) and (I) in order to further unfetter the marketing of CVP water.

CVPIA section 3405(a)(1), subparagraph (A) reads “ No transfer or combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.”

Subparagraph (I) reads “The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year or years of the transfer.”

The purpose of these subparagraphs was to assure that the water being freed up for sale under the then-new CVPIA policy was real water that had been used on-farm for three years prior to enactment of the CVPIA, that it was not water that Congress intended be used to meet the Secretary’s fish and wildlife protection and restoration obligations in the San Francisco Bay-Delta estuary, or for that matter, in the Trinity River restoration program or elsewhere.

S. 1759, as introduced, will bring CVP contractors explicitly in on the gaming of the CVPIA environmental water by specifically waiving the environmental water safeguards Congress provided in the CVPIA at section 3405(a)(1), subparagraphs (A) and (I).

PCFFA’s proposed amendment to S. 1759, as introduced, will prevent gaming of the CVPIA environmental water

#### AMENDMENT

At subsection (b) “CONDITION” of Section 2, following “A transfer under subsection (a) shall be subject to the condition that the transfer not interfere with—”, insert

(I) Implementation of Section 3406(1)(2) of the Central Valley Project Improvement Act (Title 34, Public Law 102-575) , particularly with regard to the Secretary’s obligations under the Endangered Species Act as spelled out in that Section:

<sup>2</sup>Ibid. at the bottom of page 41, top of page 42

(and renumber the other sections of the subparagraphs accordingly).

Two additional concerns that have been raised by PCFFA members in reviewing S. 1759 are:

1) The need to mandate a flow study (scientific proceedings by the State Water Resources Control Board were abruptly halted by the State administration, first in 1988 and then again in 1993) to determine the amount of fresh-water inflow to the Delta and Bay to maintain the estuarine function of the Bay-Delta ecosystem. Without this, transfers could be occurring of water that may be needed for the protection and recovery of the most important estuary on the West Coast of the Americas; and

2) The need to prohibit growers from transferring agricultural water for non-agricultural uses (e.g., land development in the Mojave Desert) when shortages of agricultural water exist, or transfers to growers who have sold their water for non-agricultural uses. We are sympathetic to the need for water for legitimate food production operations, but we cannot see placing the environment or fisheries—our livelihoods and communities—at any further risk to facilitate profiteering from water sales or accommodating new development, such as golf courses in the desert.

Again, we apologize for the delay in communicating our concerns. It has been a hectic time for those of us struggling to secure some water for salmon and other public trust resources. We assume that neither of you understood clearly the connection between your bill, as introduced, and the CV PIA environmental water, that which took us, literally, generations to secure for the San Francisco Bay-Delta estuary and Central Valley river environments.

Thank you for your consideration of our concerns and the amendment to your bill that we offer here.

Sincerely,

W.F. "ZEKE" GRADER, JR.  
*Executive Director.*

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PACIFIC COAST FEDERATION OF FISHERMEN'S ASSOCIATIONS,  
*San Francisco, CA, November 3, 2009.*

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy & Natural Resources, 304 Dirksen Building, U.S. Senate, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy & Natural Resources, 304 Dirksen Building, U.S. Senate, Washington, DC.*

Hon. NICK J. RAHALL II,  
*Chairman, Committee on Energy & Natural Resources, 1522 Longworth Building, U.S. House of Representatives, Washington, DC.*

Hon. DOC HASTINGS,  
*Ranking Member, Committee on Natural Resources, 1522 Longworth Building, U.S. House of Representatives, Washington, DC.*

RE: S. 1759 and H.R. 3750, 111th Cong., 1st Sess.—Central Valley Project water transfer facilitation

DEAR CHAIRMEN AND RANKING MEMBERS: The Pacific Coast Federation of Fishermen's Associations represents working men and women in the West Coast commercial fishing fleet. Water policy within California and the Pacific Northwest affects the health and abundance of many of our region's economically important fish species, including salmon, and some estuarine-dependent species such as Dungeness crab. The water transfer language within S.1759 and H.R. 3750, as introduced, could have an inadvertent harmful affect on Central Valley salmon stocks and other fish native to the San Francisco Bay/Sacramento-San Joaquin Delta estuary.

As introduced, S. 1759 and H.R. 3750 threaten to undo legislation intended to protect and restore fish and wildlife resources of the San Francisco Bay-Delta estuary. These fish and wildlife protection and restoration obligation of the Secretary of the Interior are found in PL 102-575, the Central Valley Project Improvement Act signed into law 17 years ago last week by President George H. W. Bush.

We have brought our concerns to the attention of the authors and we would respectfully request the Committees' help in assisting the authors to incorporate the amendment that we provide below—to make absolutely clear that the proposed legislation shall not be used to interfere with the CVPIA's principal purpose, the repair

of damage done to fish and wildlife resources over the Central Valley Project's (CVP) 57 years of development and operation prior to 1992.

We will set out our proposed amendment together with an explanation of the need for the amendment. We request that this letter be included in any record of hearings on these bills.

1. Amendment

At subsection (b) "CONDITION" of Section 2, following "A transfer under subsection (a) shall be subject to the condition that the transfer not interfere with—", insert

(1) Implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (Title 34, Public Law 102-575), particularly with regard to the Secretary's obligations under the Endangered Species Act as spelled out in that Section;

(and renumber the other sections of the subsection accordingly).

2. Explanation of the need for the amendment

As we note above, the principal purpose of Public Law 102-575, the Central Valley Project Improvement Act, was repair of the damage done to fish and wildlife populations over the years of Central Valley Project development and operation beginning in the mid-1930s.

In order to gain sufficient support for passage of the CVPIA the proposed Act's backers worked with California municipalities and agricultural irrigation interests to liberalize the use of CVP water, historically confined to designated places of use, or "service areas". The CVPIA authorized the sale of CVP water outside the Project's designated service areas.

Section 3406(b)(2) of the CVPIA explicitly directs the Secretary of the Interior to

dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including but not limited to additional obligations under the federal Endangered Species Act.

Given the uncertain nature of the CVP's yield (in the run-up to California's 1986-93 drought, Interior was preparing to sell nearly 2 million acre-feet of water it claimed remained uncommitted within the CVP's yield—water that has not been heard from since) the CVPIA imposed a "reality check" on those who would market their CVP water into the new urban market—subparagraphs (A) and (I) of CVPIA section 3405(a)(1).

Subparagraph (A) reads "No transfer or combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title."

Subparagraph (I) reads "The water subject to any transfer undertaken pursuant to this subsection shall be limited to water that would have been consumptively used of irretrievably lost to beneficial use during the year of years of the transfer."

Again, the purpose of these subparagraphs was to assure that the water being freed up for sale under the new CVPIA policy was real water that had been used on-farm for three years prior to enactment of the CVPIA and that it was not the water that Congress intended be used to meet the Secretary's fish and wildlife protection and restoration obligations in the San Francisco Bay-Delta estuary, or for that matter, in the Trinity River restoration program or elsewhere.

It is these CVPIA safeguards against the marketing of water needed to repair the damage to fish and wildlife resources caused by the CVP's decades of development and operation that S. 1759 and H.R. 3750 would sweep away.

If the proponents of the present bill do not intend to deny San Francisco Bay-Delta fish and wildlife resources the water dedicated to them by Congress in the 1992 CVPIA then the amendment we propose should work to make that fact even clearer to the Secretary.

Thank you for your consideration of our concerns and our proposed amendment.

Sincerely,

W.F. "ZEKE" GRADER, JR.,  
*Executive Director.*

PANOCHÉ WATER DISTRICT,  
Firebaugh, CA, October 5, 2009.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Hon. BARBARA BOXER,  
U.S. Senate, 112 Hart Senate Office Building, Washington, DC.

Hon. DENNIS CARDOZA,  
U.S. House of Representatives, 1224 Longworth Building, Washington, DC.

Hon. JIM COSTA,  
U.S. House of Representatives, 1314 Longworth, House Office Building, Washington,  
DC.

RE: Water Transfer Facilitation Act of 2009

DEAR SENATOR FEINSTEIN, SENATOR BOXER, MR. CARDOZA, AND MR. COSTA: I am writing on behalf of the Panache Water District express our enthusiastic support for your bill, the Water Transfer Facilitation Act of 2009, authorizing certain transfers of water in the Central Valley Project and other purposes. Water transfers are essential to sound water management and often are time sensitive. Your legislation will bring important reform to existing transfer authorization thus increasing the efficacy of this essential water management tool.

As you are keenly aware, coping with California's water crisis and, in particular, the chronic water supply shortages impacting the Central Valley Project demands utilization of various best management practices including water transfers. Moreover, the need to transfer water is often urgent and in response to climactic conditions that are frequently sporadic and ephemeral. Regrettably, bureaucratic process can unnecessarily thwart successful execution of a transfer and the best management of this all too precious resource. The clarity your legislation brings to existing authorizations will only improve the capability of water managers throughout the State to effectively respond to the ongoing crisis and put our scant water resources to use even more efficiently.

The Westside of the great San Joaquin Valley is inarguably the most transfer dependent region of the State. Your efforts to address this important matter as well as your vast knowledge of and longstanding commitment to water resource issues vital to the State are most deeply appreciated. If there is anything I can do to be of further service to you in this cause, please do not hesitate to call.

Very truly yours,

DENNIS FALASCHI,  
General Manager.

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STATEMENT OF PLACER COUNTY WATER AGENCY TRANSFER LEGISLATION PROPOSAL

BACKGROUND

PCWA has extensive water transfer experience. PCWA has transferred water to willing buyers in nearly every dry year over the past 20 years. Most recently, in 2009 we transferred 20,000 af to San Diego County Water Authority. In 2008 we transferred 20,000 af to Westlands Water District. Previously we have transferred water to the State Water Bank, the Environmental Water Account and the City of San Francisco.

These transfers are consistent with the PCWA's commitment to the Sacramento Area Water Forum to provide additional dry year flows to help sustain fisheries in the lower American River.

TIME CONSUMING PROCESS

The administrative and regulatory process necessary to gain permission to complete a water transfer has become so cumbersome that it almost cannot be completed in a single year. For many potential transfer partners, these processes have become a huge barrier and may impede drought response and impact future opportunities for transfer transactions. One of the more time consuming administrative elements is the negotiation and execution of Reclamation's Warren Act Contract<sup>1</sup>.

<sup>1</sup>The Warren Act (WA)—The WA (43 U.S.C. §523) of 1911 provides authorization to the Secretary of the Interior to enter into WA contracts with water purveyors to carry non-CVP water (i.e., water not developed as part of the CVP) through Federal facilities. Under Section 305 of the States Emergency Drought Relief Act of 1991 (43 U.S.C. §2211 et seq.). "Excess Storage and

Continued

The process involves many steps and the execution of the contract becomes the “federal action” triggering NEPA compliance, all of which can take several months to complete.

The WA (43 U.S.C. §523) of 1911 provides authorization to the Secretary of the Interior to enter into WA contracts with water purveyors to carry non-CVP water (i.e., water not developed as part of the CVP) through Federal facilities. Under Section 305 of the States Emergency Drought Relief Act of 1991 (43 U.S.C. §2211 et seq.), “Excess Storage and Carrying Capacity,” the Secretary is authorized to execute contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities pursuant to the WA. These contracts provide for the impounding, storage, and conveyance of non-CVP water for domestic, municipal, fish and wildlife, industrial, and other beneficial uses using any CVP facilities identified in the law, including Shasta Reservoir, Folsom Reservoir, Jones Pumping Plant, the Delta-Mendota Canal, San Luis Reservoir, O’Neill Forebay, the San Luis Canal.

#### PCWA CASE STUDY

PCWA owns and operates the Middle Fork American River Hydroelectric Project (MFP), which is above Folsom Reservoir. Any water that PCWA does not “use or otherwise dispose of” becomes CVP water once it reaches Folsom Reservoir.

In dry years there are generally willing buyers and excess delta pumping capacity (currently in a very limited time “window”) available to move the water south.

The operation of the MFP necessary to release additional water for transfer into Folsom Reservoir is permitted within PCWA’s existing FERC license conditions and water rights. The storage and conveyance of PCWA transfer water, by Reclamation, to the buyer (if a CVP contractor) or to the State Water Project facilities, is within Reclamation’s normal operating limits and consistent with all of the water right conditions and biological opinions governing the operation of the CVP.

In all of its previous transfers neither PCWA nor Reclamation have identified any adverse environmental impacts associated with these transfers. On the contrary, the most recent Environmental Assessment stated the impacts of releasing more water from MFP would likely have a positive impact to the fish habitat downstream.

The following Steps were necessary in order to complete a one-year temporary transfer of 20,000 acre-feet of PCWA water to a State Water Project contractor in 2009.

- 1) State Water Resources Control Board (SWRCB) Permit—Willing Seller prepares a comprehensive project description and transfer application, including an assessment of potential impacts.

Submit application to SWRCB for permits to change the place of use of this water to a new area. After review of the application by SWRCB staff and completion of any necessary corrections or additions, publish a comprehensive notice for 30 day public review.

Water transfers are exempted under CEQA due to the temporary nature of the transfer, which eliminates the need for a separate public notice and protest period on the subject of the impacts. However, the SWRCB must make an independent determination that the water transfer will not cause unnecessary environmental impacts.

After public notice and review closes, SWRCB seeks any resolution for any public comment, or input. Willing seller/buyers respond appropriately as necessary. SWRCB issues an order granting the permit.

- 2) Refill Agreement—In cases involving reservoir re-operations upstream of Central Valley Project (CVP) storage facilities, steps are taken by both Reclamation and DWR to ensure no other users are harmed by the changes in reservoir operation. A refill criteria agreement, setting forth limitations on future year upstream reservoir operations, is required between the parties to ensure the following year water supply is not impacted by the refilling of vacated storage space if the following year is also dry. Reclamation has recently determined the execution of this agreement triggered a federal action under NEPA and required

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Carrying Capacity,” the Secretary is authorized to execute contracts with municipalities, public water districts and agencies, other Federal agencies, State agencies, and private entities pursuant to the WA. These contracts provide for the impounding, storage, and conveyance of non-CVP water for domestic, municipal, fish and wildlife, industrial, and other beneficial uses using any CVP facilities identified in the law, including Shasta Reservoir, Folsom Reservoir, Jones Pumping Plant, the Delta-Mendota Canal, San Luis Reservoir, O’Neill Forebay, the San Luis Canal.

an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI)<sup>2</sup>.

3) Warren Act Contract—If non-project water is to be moved through Central Valley Project facilities, a temporary Warren Act Contract between the willing seller/buyer and Reclamation is required. It can take several weeks to negotiate this agreement.

Executing the temporary wheeling agreement is a discretionary federal action, which triggers the need for review under NEPA. NEPA review can only begin after the wheeling agreement negotiations are complete so that the “federal action” can be clearly defined.

The preparation of a Warren Act project description and an assessment of the potential impact of all required changes in seller, Reclamation and buyer operations necessary to complete the transfer can be very time consuming. Then a 30 day public review of the Environmental Assessment is required. Following the public review if comments are received, they are addressed and Reclamation may then publish a record of decision and execute the agreement(s).

4) SWP Conveyance Agreement—When the buyer is a SWP contractor a delivery and conveyance agreement, which sets forth SWP conditions for the transfer conveyance and delivery must be reached between the seller and buyer and DWR. Since transfers are exempt from CEQA, no additional impact analysis is required as a condition of the execution of this agreement.

5) Coordinated Operations—DWR and Reclamation consult under their Coordinated Operating Agreement to ensure that the storage and conveyance of transfer water does not have unintended water supply consequences for SWP and CVP contractors. These are peer to peer discussions between SWP and CVP operations staff and any adjustments in operation are not subject to CEQA or NEPA.

#### PROPOSAL

If Reclamation were given the authority to facilitate and expedite temporary transfers, including non-CVP water transfers, without the need to execute a temporary Warren Act Contract, one of the biggest impediments to water transfers throughout the state would be removed. . .

To do this Reclamation would need authorization to acquire water from a willing seller, to treat that water as CVP water and then deliver that water to the party that provided the funding for the acquisition. We propose to give Reclamation those authorizations.

We further propose to make these action(s) categorically excluded under NEPA so long as all parties are acting within their separate existing authorities and within system capacities.

Together, the elimination of the need for a Warren Act Contract and extensive NEPA review would cut the processing time to facilitate these transfers by many months.

REVIVE THE SAN JOAQUIN,  
Fresno, CA, December 14, 2009.

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

Re: Opposition to S 1759 [Senators’ Feinstein and Boxer], Water Transfer Facilitation Act of 2009

DEAR CHAIRMAN BINGAMAN, RANKING MEMBER MURKOWSKI AND MEMBERS OF THE WATER AND POWER SUBCOMMITTEE: Revive the San Joaquin is a San Joaquin Valley based nonprofit working for the protection of the San Joaquin River system and a successful restoration of its valuable resources. For nearly 60 years the State’s second largest river system has been dried up, and with it so has the economy of the valley communities who now rely heavily on groundwater and surplus Delta water imports. The unreliability of San Joaquin Valley water supplies has led our commu-

<sup>2</sup>This is stated in Chapter 1 of the Environmental Assessment document and the Finding of No Significant Impact -09-05 July 2009.

nities to experience extreme hardships and resulted in a severe over-drafting of groundwater supplies as well as creating entire local economies based on empty promises for water exports from the Delta.

Please listen to ALL stakeholder interests in the San Joaquin Valley when reviewing this water legislation. Far too often large corporations and single-interest stakeholders dominate the political discussions and misrepresent the needs of San Joaquin Valley communities and stakeholders. As Westside farming interests increasingly weigh decisions to farm or sell water (example Dudley Ridge Water District fallows land to sell 14,000 af/yr at \$5,500 to Mojave Water Agency for new desert developments), it is our local communities and jobs that suffer. Inequitable access by large agribusiness corporations to water storage infrastructure further enables sales of water destined for Valley farms to be privatized and sold for purposes other than irrigation to the Valley's Westside.

The proposed water transfer legislation does little more than add complexity and gut existing environmental protections for a water supply that must be made more sustainable if the Valley's economy is to thrive in the future. Water quality in the Delta must be improved if we are to convey surplus water supplies to San Joaquin Valley farmers. Conservation efforts and new governance in the Delta are key elements of the long-term recovery efforts that will eventually lead to a sustainable water supply from the Delta.

*San Joaquin River Restoration Adds Storage and Conveyance Opportunities*

The San Joaquin River Restoration Program is probably the best short-term solution to South Delta water quality issues. Releases of a significant water supply from Friant Darn may improve water supply and water quality impacts by 2012 creating water supply benefits to both Northern San Joaquin Valley water districts and also Westside water districts through improved water quality and reduced salinity at the export pumps. New storage capacity created from the Friant releases may also provide new water supplies and reduce flood frequencies, changing the nature of fishery management in the South Delta. Restoration creates new conveyance opportunities between the Friant division and other State and Federal projects that have yet to be explored. New legislation is not needed to facilitate beneficial transfers.

The State's water crisis is real and our State legislature is seeking a comprehensive solution including increased oversight of Delta water quality, a task that can only be accomplished through improved oversight by the State Water Resources Control Board (SWRCB), and through a coordinated accounting of Delta-based water rights. Delta exports have seen drastic increases this decade from the years 2001–2006 in contrast to the SWRCB 1978 decision D-1485 which identifies the need to reduce exports and protect Delta water quality (See Exhibit 1).<sup>\*</sup> The lack of oversight of exports from the Delta has created an unrealistic and unsustainable supply for Valley farmers.

*New Legislation Must Reinforce State Actions, Not Add Complexity*

Our local Congressmen have consistently looked to temporary fixes, emergency exemptions, and other agency-based "do not enforce" orders to remedy the concerns of NVestside farm interests. This has provided false hope and unrealistic expectations for water supplies out of the Delta. Federal legislation should not stand in conflict to existing State and federal governance of the Delta, but rather should support on-going efforts to improve water quality in the Delta. Creating a healthy environment for fish and habitat. will also create a favorable environment for continued exports. Sucking up the last drip of freshwater from the South Delta is a formula for immediate extinction of multiple fish species and a guarantee that continued export capacity will fail.

Revive the San Joaquin opposes the current 5.1759 legislation as it is counter-productive to ongoing efforts to improve local water supplies and improve water quality in the South Delta. Revive the San Joaquin represents many local residents, farmers, and businesses who believe coordinated and unified actions by our State and Federal legislature is the only path to ensure economic and environmental progress can be made during this water crisis.

Sincerely,

CHRIS ACREE,  
*Executive Director.*

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<sup>\*</sup> Exhibit has been retained in subcommittee files.

RECLAMATION DISTRICT 2035,  
Woodland, CA, October 6, 2009.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Re: Support for Water Transfer Legislation

DEAR SENATOR FEINSTEIN: On behalf of Reclamation District 2035, thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. Reclamation District 2035 (RD 2035) was formed in 1919 to provide flood control and water delivery for approximately 22,000 acres in Yolo County, California. While RD2035 does not own water rights, it is responsible for the delivery of CVP water to its agricultural customers whose crops represent the top three agricultural commodities in Yolo County.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP. Further, the language in your legislation directing the Bureau of Reclamation to work with other federal agencies to develop the necessary long-term environmental documentation addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake is a critical and necessary near-term next step.

We look forward to working with you and your staff on this important legislative effort.

Sincerely,

REGINA J. CHEROVSKY,  
Chairperson.

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RECLAMATION DISTRICT 2035,  
Woodland, CA, October 6, 2009.

Hon. DENNIS CARDOZA,  
U.S. House of Representatives, Washington, DC.

Re: Support for Water Transfer Legislation

DEAR CONGRESSMAN CARDOZA: On behalf of Reclamation District 2035, thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. Reclamation District 2035 (RD 2035) was formed in 1919 to provide flood control and water delivery for approximately 22,000 acres in Yolo County, California. While RD2035 does not own water rights, it is responsible for the delivery of CVP water to its agricultural customers whose crops represent the top three agricultural commodities in Yolo County.

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We look forward to working with you and your staff on this important legislative effort.

Sincerely,

REGINA J. CHEROVSKY,  
Chairperson.

RECLAMATION DISTRICT 2035,  
Woodland, CA, October 6, 2009.

Hon. JIM COSTA,  
U.S. House of Representatives, Washington, DC.  
Re: Support for Water Transfer Legislation

DEAR CONGRESSMAN COSTA: On behalf of Reclamation District 2035, thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. Reclamation District 2035 (RD 2035) was formed in 1919 to provide flood control and water delivery for approximately 22,000 acres in Yolo County, California. While RD2035 does not own water rights, it is responsible for the delivery of CVP water to its agricultural customers whose crops represent the top three agricultural commodities in Yolo County.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP. Further, the language in your legislation directing the Bureau of Reclamation to work with other federal agencies to develop the necessary long-term environmental documentation addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake is a critical and necessary near-term next step.

We look forward to working with you and your staff on this important legislative effort.

Sincerely,

REGINA J. CHEROVSKY,  
Chairperson.

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RECLAMATION DISTRICT 2035,  
Woodland, CA, October 6, 2009.

Hon. BARBARA BOXER,  
U.S. Senate, Washington, DC.

Re: Support for Water Transfer Legislation

DEAR SENATOR BOXER: On behalf of Reclamation District 2035, thank you for introducing legislation authorizing and establishing a permanent long-term program to promote and manage water transfers in the Central Valley of California. Reclamation District 2035 (RD 2035) was formed in 1919 to provide flood control and water delivery for approximately 22,000 acres in Yolo County, California. While RD2035 does not own water rights, it is responsible for the delivery of CVP water to its agricultural customers whose crops represent the top three agricultural commodities in Yolo County.

As you are aware, the devastating impacts of diminished water deliveries to the CVP as a result of three years of below average precipitation have been made even greater by the various regulatory restrictions, including the requirements established by the recent federal biological opinions for endangered fish under the ESA. Your legislation will provide immediate, much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP. Further, the language in your legislation directing the Bureau of Reclamation to work with other federal agencies to develop the necessary long-term environmental documentation addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake is a critical and necessary near-term next step.

We look forward to working with you and your staff on this important legislative effort.

Sincerely,

REGINA J. CHEROVSKY,  
Chairperson.

FRIENDS OF THE RIVER,  
SIERRA CLUB CALIFORNIA,  
December 14, 2009.

Hon. JEFF BINGAMAN,  
*Chairman, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

Hon. LISA MURKOWSKI,  
*Ranking Member, Committee on Energy and Natural Resources, 304 Dirksen Senate Building, Washington, DC.*

DEAR CHAIRMAN BINGAMAN, RANKING MEMBER MURKOWSKI AND MEMBERS OF THE WATER AND POWER SUBCOMMITTEE: The undersigned oppose S 1750. As representatives of California fishing, river and environmental organizations we have worked for decades to achieve, in the words of the 1992 Central Valley Project Improvement Act [CVPIA] Public Law 102-575 Section 3401(f), "a reasonable balance among competing demands for use of Central Valley Project (CVP) water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors."

The stated intention of Senator's Boxer and Feinstein S 1759 is purportedly to smooth the transfer sale of water among irrigation districts south of the Delta by directing Interior Department officials to complete under "the most expedited basis practicable" all necessary environmental reviews and by lifting several safeguards that decades of fish and wildlife protections that the 1992 Central Valley Project Improvement Act [CVPIA], PL 102-575 imposed on the water that a CVP contractor can transfer. The unfortunate effect will be a free pass for the Bureau of Reclamation and CVP contractors to resell taxpayer funded water and by-pass present laws designed to protect the environment and repair some of the environmental damage caused by the project.

According to BOR testimony, over 600,000 acre feet of water was approved under existing law this year for sale and transfer of water by CVP irrigators. For 57 years, the taxpayer-subsidized CVP has damaged fish, wildlife, natural river resources and damaged the economic livelihood of Indians, farmers, commercial and sport fishing in the San Francisco Bay-Delta and in rivers throughout California. The 1992 CVPIA protections still have not been implemented nor followed by the Bureau of Reclamation and now this legislation will undo even these modest provisions by allowing these taxpayer subsidized agricultural interests to profit from this public funded largesse at the further expense of our fishery resources.

We oppose the passage of S 1759. It strikes at the heart of the principal purpose of the CVPIA, co-authored by Senator Bill Bradley and Congressman George Miller, and signed into law 17 years ago by President George H. W. Bush. There is no evidence to support the purported problem that the legislation attempts to solve—unless the intent is to by-pass environmental protections that are part of the CVPIA.

We also are concerned about the unintended harm this legislation, if passed, can bring to the fish and wildlife resources of the San Francisco Bay-Delta and its estuary. We urge the bill be remanded to the Water and Power Subcommittee so the full effects and potential unintended consequences of the legislation can be analyzed. We are concerned that this legislation, if it should pass, will be contrary to its intended purpose, for three main reasons outlined below:

*There is little or no evidence that the bill is needed, unless the purpose of the legislation is to get around existing safeguards*

If, as is asserted, this legislation is to benefit agriculture by reallocation of water resources through the sale of water only south of the Delta, then the authors should not object to inserting language that would require any such transfer sale be entirely and exclusively water that originates south of the Delta in the San Joaquin Valley. The authors have refused this simple change. Agricultural interests indicate there are insufficient water resources south of the Delta to "solve" their need for water. And yet these same taxpayer-subsidized corporate agricultural interests have yet to provide evidence to support how removing the safeguards enacted under the CVPIA will solve their water supply problems by allowing them to sell water to one another—unless they intend to further deplete water that Congress intended be used to remedy over 57 years of damage to the fisheries of the state.

Under the CVPIA legislation only real water that had been used on-farm for three years prior to enactment of the CVPIA is allowed to be sold for a profit outside of the congressionally designated service areas. [Section 3405(a) (1), subparagraph (A)] The purpose of these safeguards was to assure water being freed up for sale was "real water", water beyond that which Congress intended to be used to meet the

Secretary of Interior's legal obligations to fish and wildlife protection and restoration of the San Francisco Bay-Delta estuary or to the Trinity River, its communities and the Secretary's Tribal trust responsibilities.

*Removing the Congressionally adopted safeguards will adversely impact the San Francisco Bay, the Sacramento-San Joaquin Delta Estuary, Tribal trust responsibilities and the economic health of the State of California*

Congress allowed Central Valley irrigators to profit from taxpayer funded water supplies by selling their water provided that they followed federal obligations as outlined above. Also they could not use water that was intended to meet the Secretary's obligation under federal law to remedy and restore damage to fish and wildlife. Water diversions under the federal Central Valley Project have decimated salmon, steelhead and trout populations causing huge economic dislocations and putting many thousands of people out of work.

One of the CVPIA's major intended purposes was to rebuild the salmon population devastated by the water diversions by the Central Valley project contractors. To do this Congress required the Bureau of Reclamation to dedicated and manage 800,000 acre feet of water from the project annually to fish and wildlife populations damaged by operations of the Central Valley Project. Further Congress set a numeric goal for the Secretary of Interior to meet—a doubling of the salmon populations. Neither of these objectives has been met. Removing the CVPIA safeguards to allow these contractors to profit from the sale of this taxpayer subsidized water allows these federal contractors to undercut Congress's intent and mandates.

*The Bureau of Reclamation has consistently failed to carry out Congressional directives*

Congressional action until now has been clear. The Secretary of Interior and the Bureau of Reclamation are not exempt from the Clean Water Act, the Endangered Species Act, the Central Valley Project Improvement Act and various other provisions of federal and state law. And yet the history of the Central Valley Project is replete with examples of how the project is operated in violation of the law and the intent of Congress. Court case after court case has found the Bureau of Reclamation in violation of the Clean Water Act, Endangered Species Act, and National Environmental Policy Act and in a landmark Supreme Court case, California water rights law. Only expensive, time-consuming legal effort has resulted in compliance and at times only additional court action has brought compliance with court orders.

And now under S 1759, the Bureau of Reclamation and these subsidized irrigators are asking Congress to change the law because they do not want to comply with the existing laws that would safeguard the environment if they were followed. We urge that this legislation be remanded to the Water and Power Subcommittee to analyze the impacts of the legislation on the environment, groundwater aquifers, refuges, fisheries and water quality and to consider amendments to safeguard taxpayer funds that have provided this water that will profit irrigators. Absent this action we urge the full committee not to pass this legislation.

Sincerely,

JIM METROPULOS,  
*Senior Advocate, Sierra Club California.*

STEVE EVANS,  
*Conservation Director, Friends of the River.*

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SAN JOAQUIN RIVER WATER AUTHORITY,  
*San Joaquin Valley, CA, October 5, 2009.*

Hon. DIANNE FEINSTEIN,  
*331 Hart Senate Office Building, Washington, DC.*

RE: SUPPORT for Transfer Legislation for the Central Valley Project

DEAR SENATOR FEINSTEIN: On behalf of the San Joaquin River Exchange Contractors Water Authority (Exchange Contractors), we thank you for introducing transfer legislation for the Central Valley Project (CVP) and we support your efforts and this legislation as a means of providing greater flexibility for management of CVP water supplies.

The diminished water deliveries to the CVP as a result of various regulatory restrictions, including the most recent delta smelt and salmon Biological Opinions and three years of below average precipitation statewide, have, as you know, created a desperate situation in the San Joaquin Valley.

While long-term solutions are being sought, numerous short term efforts are needed to help bridge the water supply gap and great flexibility, as provided in your legislation, to move water supplies within the San Joaquin Valley would be a useful tool.

The Exchange Contractors consist of 4 member agencies serving over 240,000 acres in the San Joaquin Valley in Fresno, Madera, Merced, and Stanislaus Counties.

We look forward to engaging in this effort and working closely with you and your staff in advancing this legislation and addressing California water issues.

Sincerely,

STEVE CHEDESTER,  
*Executive Director.*

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SAN LUIS & DELTA-MENDOTA WATER AUTHORITY,  
*Los Banos, CA, October 5, 2009.*

Hon. DIANNE FEINSTEIN

*U.S. Senate, 331 Hart Senate Office Building, Washington DC.*

Hon. BARBARA BOXER,

*U.S. Senate, 112 Hart Senate Office Building, Washington, DC.*

Hon. DENNIS CARDOZA,

*U.S. House of Representatives, 1224 Longworth Building, Washington, DC.*

Hon. JIM COSTA,

*U.S. House of Representatives, 1314 Longworth House Office Building, Washington, DC.*

RE: Water Transfer Facilitation Act of 2009

DEAR SENATOR FEINSTEIN, SENATOR BOXER, MR. CARDOZA, AND MR. COSTA: I am writing on behalf of the Panache Water District express our enthusiastic support for your bill, the Water Transfer Facilitation Act of 2009, authorizing certain transfers of water in the Central Valley Project and other purposes. Water transfers are essential to sound water management and often are time sensitive. Your legislation will bring important reform to existing transfer authorization thus increasing the efficacy of this essential water management tool.

As you are keenly aware, coping with California's water crisis and, in particular, the chronic water supply shortages impacting the Central Valley Project demands utilization of various best management practices including water transfers. Moreover, the need to transfer water is often urgent and in response to climactic conditions that are frequently sporadic and ephemeral. Regrettably, bureaucratic process can unnecessarily thwart successful execution of a transfer and the best management of this all too precious resource. The clarity your legislation brings to existing authorizations will only improve the capability of water managers throughout the State to effectively respond to the ongoing crisis and put our scant water resources to use even more efficiently.

The Westside of the great San Joaquin Valley is inarguably the most transfer dependent region of the State. Your efforts to address this important matter as well as your vast knowledge of and longstanding commitment to water resource issues vital to the State are most deeply appreciated. If there is anything I can do to be of further service to you in this cause, please do not hesitate to call.

Very truly yours,

DANIEL G. NELSON,  
*Executive Director.*

SAN LUIS WATER DISTRICT,  
Los Banos, CA, October 5, 2009.

Hon. DIANNE FEINSTEIN,  
U.S. Senate, 331 Hart Senate Office Building, Washington, DC.

Hon. BARBARA BOXER,  
U.S. Senate, 112 Hart Senate Office Building, Washington, DC.

Hon. DENNIS CARDOZA,  
U.S. House of Representatives, 1224 Longworth Building, Washington, DC.

Hon. JIM COSTA,  
U.S. House of Representatives, 1314 Longworth House Office Building, Washington,  
DC.

RE: Water Transfer Facilitation Act of 2009

DEAR SENATOR FEINSTEIN, SENATOR BOXER, MR. CARDOZA, AND MR. COSTA: I am writing on behalf of the San Luis Water District and its Board of Directors. We strongly support the Water Transfer Facilitation Act of 2009. Given the regulatory impacts of recent Biologic Opinions, the survival of our commercial, residential and agricultural water users is increasingly dependent on supplemental water transfers. Your legislation will bring important reform to existing transfer authorization and this essential water management tool.

Coping with chronic water supply shortages impacting the Central Valley Project requires implementation of best management practices including water transfers. The need to transfer water is often urgent. Regrettably, bureaucratic process can unnecessarily thwart successful execution of a transfer. Your legislation will improve the capability of water managers throughout the State to effectively and efficiently respond to the ongoing crisis.

Your continuing efforts to address these important matters are critical and deeply appreciated.

Sincerely,

MARTIN R. MCINTYRE,  
General Manager.

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SOUTH DELTA WATER AGENCY,  
Stockton, CA, October 14, 2009.

Hon. DIANNE FEINSTEIN,  
One Post Street, Suite 2450, San Francisco, CA.

Re: Draft Water Transfer Facilitation Act of 2009

DEAR DIANNE FEINSTEIN: I am counsel and manager of the South Delta Water Agency. The diverters in our area are directly affected by operation of the state and federal projects (SWP and CVP, respectively), especially their export pumps. Because water transfers oft times are routed through the state and federal Delta export facilities, we try to comment on all proposals affecting exports and the operation of the SWP and CVP in general. I have reviewed an undated draft of the above referenced bill and would like to comment.

As you know, CVPIA (Public Law 102-575) attempted to do a number of things, one of which was to ease/allow transfers among CVP users. At the time, the notion of transfers was believed by many to be a means by which supply inconsistencies and unanticipated export limitations might be addressed, at least to some extent. This idea was controversial as it resulted in Federal project water becoming more of a commodity than a subsidy to agriculture.

One of the discussions at the time CVPIA was being contemplated dealt with the impacts that transfers had on the water demand and consumption in the state. Any new transfer had the very real potential of increasing demand on the entire system as the buyer became reliant on the same supply to which the seller was reliant. Although the seller might be satisfied with the money instead of the water, more likely he/she would try to make up for the sold water. The net result was either both buyer and seller becoming dependent on the same supply, or the seller becoming dependent (or partially dependent) on a new supply (his/her alternate supply). This would not only increased or finned up overall demand, it also resulted in a net increase in the consumptive use without increasing the supply at all.

Two of the provisions of CVPIA which dealt with this demand/supply issue are at the core of the new bill, and are proposed to be changed. Section 3405 (a) 1 (A) precluded transfers of more water than the seller receives each year (or received on average). The specific purpose of this was to make sure that the seller was not "mining" or turning to alternate supplies of water, but was rather transferring only the

water he/she received from the CVP, Section 3405 (a)(1)(I) precluded transfers of water which was not previously consumed or previously lost to beneficial use. This provision attempted to make sure that the seller sold only water that he would have used in the absence of the transfer, or water that was previously lost somehow from the system (e.g., drains to a salt sink). The idea was that he/she sold X amount of water, and decreased his/her use by X amount of water.

These two provisions were to make sure that transfers did not result in a net increase in demand or consumption, or otherwise affect other beneficial users and uses. State law has similar provisions (see for example Water Code sections 1707(b), 1725, and 1727). Unfortunately, both the federal CVPIA limitations and the California Water Code restrictions have been generally ignored in practice.

The proposed changes do not so much further facilitate transfers, as they undo the well thought-out protections of CVPIA. The bill's language makes virtually any and all transfers of CVP water legally consistent with the restrictions in CVPIA even though they may be directly inconsistent with them. By ignoring the specific restrictions of CVPIA or pretending they are met, the demand (especially the dry year demand) for water will increase and the net consumptive use will undoubtedly increase. Although we sympathize with those who are experiencing shortages in this time of drought, it would seem to be bad policy to encourage increased demand and increased consumption (above that which would have occurred in the absence of the transfer). Unless the system "learns" to live within the current supply shortages, or actually develops a greater supply, things will only get worse under the proposed changes. Sellers will sell to those without a reliable supply and then seek alternate supplies to make up for that which they sold. The necessary result will be an increased demand, a worsening of the over drafted groundwater basins, greater diversions and use from other streams, etc., all of which hurts other users and uses and predetermines a greater crisis during the next drought.

There is another problem I see with the bill. Section 3 therein directs the Secretary of the Interior to expedite environmental review of the transfers. This language appears to be an attempt to create federal law to facilitate the Bay Delta Conservation Plan (BDCP) process and a peripheral canal (PC). This is because the PC is largely dependent on transfers to make it cost effective.

Let me explain further. Current BDCP modeling indicates that use of the massive PC is severely limited in many years during many times. This is because in drier times there is little or no "excess" or "surplus" water in the system to export. In addition and as we have seen this year, at some times there is no stored water available for exports either, [This past February the USSR notified the Exchange Contractors they would likely receive San Joaquin River water instead of (or in addition to) Delta-Mendota Canal water. When the Exchange Contractors cannot get their full contract amount from the Delta-Mendota Canal, it means there is no stored water available for export, it all being needed for instream uses, upstream right holders and fishery requirements.] Hence, the \$20 Billion plus PC would be empty in many years. Since the BDCP does not propose to increase the available supply (and in fact will decrease it by replacing agricultural use with habitat/wetland use) the only method by which the PC would have water at certain times would be via transfers. This reliance on purchasing water to meet export needs rather than increasing the supply available for exports is central to the BDCP process. I note that the use of the PC for transfers in dry times deprives the Delta of the benefit of the transfer water going through the Delta channels; an apparent violation of Water Code section 12205.

With that said, you can see that any new federal law which directs an expedited environmental process to facilitate transfers would of course be used to expedite the BDCP process and a PC. Although we are opposed to any PC as a violation of existing priority rights and an avoidance of project mitigation and other obligations, I am sure everyone would agree that the process analyzing massive changes to the Delta should go through a deliberate and comprehensive process; not an expedited one. We are after all, facing the extinction of some fisheries and a collapse of the Delta ecosystem.

Please feel free to contact me if you have any questions.

Very truly yours,

JOHN HERRICK,  
*Counsel & Manager.*

TEHAMA-COLUSA CANAL AUTHORITY,  
*Willows, CA, October 5, 2009.*

Hon. DIANNE FEINSTEIN,  
*U.S. Senate, 331 Hart Senate Office Building, Washington, DC.*  
Re: Support for Central Valley Project Water Transfer Legislation

DEAR SENATOR FEINSTEIN: On behalf of the Tehama Colusa Canal Authority (TCCA), we thank you for introducing legislation authorizing and establishing a programmatic program to promote and manage water transfers in California, including the Sacramento Valley. We support your efforts and this legislation as a means of providing greater regulatory certainty for the management of Central Valley Project (CVP) water supplies for water users.

As you are aware, the TCCA is intimately aware of the impacts of diminished water deliveries to the CVP as a result of below average precipitation and regulatory requirements placed upon the CVP and its water users through the requirements established by the recent National Marine Fisheries Service biological opinions for endangered salmon. Your legislation will provide much needed relief in the form of a flexible and useful tool that will allow water to be transferred from willing parties to those in need within the CVP.

Many of our members have participated in water transfer programs in the past and would continue under this legislation in a more flexible manner. Also, the language in your legislation directing the Bureau of Reclamation to work with other federal agencies to implement the necessary long-term environmental processes addressing impacts of a water transfer program on the ESA-listed Giant Garter Snake will be imperative to its usefulness and success.

We look forward to working with you and your staff in the coming months in this important legislative effort, and appreciate your leadership in advancing this legislation and addressing California water issues so important to our collective future.

Sincerely,

JEFFREY SUTTON,  
*General Manager.*

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