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OPERATIONS OF THE WATER DELIVERY SYSTEM: THE CALFED RECORD OF DECISION AND ANTICIPATED WATER DELIVERIES FOR 2002

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED SEVENTH CONGRESS

SECOND SESSION

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OVERSIGHT HEARING ON THE OPERATIONS OF THE WATER DELIVERY SYSTEM: THE CALFED RECORD OF DECISION AND ANTICIPATED WATER DELIVERIES FOR 2002

Thursday, February 14, 2002
U.S. House of Representatives
Subcommittee on Water and Power
Committee on Resources
Washington, DC

The Subcommittee met, pursuant to other business, at 10:25 a.m., in room 1334, Longworth House Office Building, Hon. Ken Calvert [Chairman of the Subcommittee] presiding.

STATEMENT OF THE HON. KEN CALVERT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CALVERT. Now the Subcommittee on Water and Power will come to order for a hearing. The Subcommittee is meeting today to hear testimony on the operations of the California water delivery system: the CALFED Record of Decision and anticipated water deliveries for 2002.

Under Rule 4(b) of the Committee rules, any oral opening statements at hearings are limited to the Chairman and the ranking minority member. This will allow us to hear from our witnesses sooner and help members to keep to their schedules. If other members have statements today, they can be included in the hearing record under unanimous consent. And obviously Mr. Dooley will be giving the opening statement for the minority.

The hearing today will focus on the operations of the Central Valley Project, CVP, and the State water project delivery systems and how they interrelate to the CALFED Record of Decision. People often say that timing is everything, and in this particular case I couldn't agree more. It is pure coincidence this hearing comes at this time, in light of three major happenings in the world of water:

One, the recent Federal court decision regarding the appropriate accounting of water for environmental purposes; two, an independent study released by the National Academy of Sciences, indicating no substantial scientific justification to maintain higher water levels in the Klamath Basin; and, three, projected water deliveries by the Bureau of Reclamation of less than 50 percent in certain cases.

I would like to address these three issues prior to receiving testimony from our witnesses. To begin with, on January 25, 2002, the Bureau of Reclamation released its initial water supply outlook for 2002 that estimated CVP agricultural water deliveries south of the delta will be 45 percent of the contracted amount.

The CALFED Framework for Action indicated that in a normal water year, agricultural water service contractors could anticipate at least 65 to 70 percent of their contracted amount. To date, this allocation has not been achieved. I look forward to hearing from each witness today as to what are the statutory, legal, and regulatory requirements shaping the current water supply forecast and/or what can be done to meet the identified goal.

Second, the National Academy of Science interim report on the Klamath Basin maintains there is no substantial scientific justification to maintain higher water levels in the Klamath Basin for fish. Several members see a potential correlation between the data interpretation by the fishery agencies and the Klamath Project to the way data has been utilized in developing biological opinions for the Central Valley Project. Members of the Subcommittee have expressed interest in a similar study being conducted within the Central Valley Project.

And, last, February 5, 2002, United States District Judge Oliver W. Wanger issued a summary judgment motion on offset/reset, how the 800,000 acre-feet of water is being dedicated. Specifically, the judge said the Interior Department was wrongly credited the amount of water used for environmental purposes. Proponents of the decision have indicated this could mean boosts of water deliveries by 5 to 20 percent annually for west side farmers. I would be interested to know how this may affect the environmental baseline built into the CALFED Record of Decision.

I believe the current administration has the obligation to provide to Congress how it plans to use its afforded discretion pursuant to the Federal and State law to implement the CVPIA and ESA in a more balanced manner. We have already had a previous administration that I believe abused its discretionary power to implement Federal statutes by relying on inadequate science that led to junk decisions. It is time for the Federal Government to choose to implement these laws in a less punitive manner, without imposing enormous costs with little or no scientific benefit for the environment.

I look forward to hearing from today's witnesses, but before that, I would like to recognize Mr. Dooley for his opening statement.

[The prepared statement of Mr. Calvert follows:]

Statement of The Honorable Ken Calvert, a Representative in Congress from the State of California

The hearing today will focus on the Operations of the Central Valley Project (CVP) and the State Water Project (SWP) delivery systems and how they interrelate to the CALFED Record of Decision.

People often say that timing is everything and in this particular case I couldn't agree more. It is by pure coincidence this hearing comes at this time, in light of three major happenings in the world of water;

- the recent Federal court decision regarding the appropriate accounting of water for environmental purposes,
- an independent study released by the National Academy of Sciences indicating no substantial scientific justification to maintain higher water levels in the Klamath Basin, and

- projected water deliveries by the Bureau of Reclamation of less than 50% in certain cases.

I would like to address these three issues prior to receiving testimony from our witnesses.

To begin with, on January 25th, 2002, the Bureau of Reclamation released its initial water supply outlook for 2002 that estimated CVP agricultural water deliveries south-of-the-delta will be 45% of the contracted amount. The CALFED Framework for Action indicated that in a normal water year, agricultural water service contractors could anticipate at least 65 to70% of their contracted amount. To date, this allocation has not been achieved. I look forward to hearing from each witness today to what the statutory, legal, and regulatory requirements shaping the current water supply forecast are and what can be done to meet the identified goal.

Secondly, the National Academy of Science (NAS) Interim Report on the Klamath Basin maintains there is no substantial scientific justification to maintain higher water levels in the Klamath Basin for fish. Several members see a potential correlation between the data interpretation by the fishery agencies in the Klamath Project to the way data has been utilized in developing biological opinions for the Central Valley Project. Members of the Subcommittee have expressed interest in a similar study being conducted within the Central Valley Project.

And Lastly, on February 5, 2002, United States District Judge Oliver W. Wanger issued a Summary Judgement Motion on Offset/Reset [how the 800,000 acre-feet of water is to be dedicated]. Specifically, the judge said the Interior Department has wrongly credited the amount used for environmental purposes. Proponents of the decision have indicated that this could mean boosts of water deliveries by 5% to 20% annually for west side farmers. I would be interested to know how this may affect the environmental baseline built into the CALFED Record of Decision.

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I look forward to hearing from today's witnesses.

Mr. DOOLEY. Thank you, Mr. Chairman, and I will not have an opening statement at this time. I just appreciate you calling this hearing, and also appreciate all of the witnesses that will testify for their taking time and putting their energies into providing some insight into these issues.

Mr. CALVERT. Thank you.

I would like to submit for the record the written testimony of David Guy, Executive Director of the Northern California Water Association, regarding the operations of the California water delivery system. If there is no objection, so ordered.

[The statement of Mr. Guy follows:]

Statement of David J. Guy, Executive Director, Northern California Water Association

Mr. Chairman and members of the Subcommittee, my name is David Guy. I am the Executive Director of the Northern California Water Association (NCWA). NCWA is a geographically diverse organization, extending from California's Coast Range to the Sierra Nevada foothills, and nearly 180 miles from Redding to Sacramento. Our members are located within the area of origin for significant part of the state's water where they rely on the waters of the Sacramento, Feather, Yuba and American Rivers, smaller tributaries and groundwater to irrigate nearly 870,000 acres that produce every type of food and fiber grown in the region. Many of our members in Northern California have water right settlement contracts or water service contracts with the Bureau of Reclamation as the operator of the Federal Central Valley Project (CVP); many others have water rights settlement contracts with the Department of Water Resources (DWR) as the operator of the State Water Project (SWP). Our members also provide water supplies to state and

Federal wildlife refuges, and much of this land serves as important seasonal wetlands for migrating waterfowl, shorebirds and other wildlife.

We welcome the opportunity to provide the Sacramento Valley perspective on the administrative and operational efforts that are necessary to meet the water supply and environmental goals in the CALFED Record of Decision (ROD). We recognize that the primary purpose of the hearing is to focus on the efforts necessary to improve water supply reliability for the CVP and SWP in the export service areas, including the Environmental Water Account (EWA), increased deliveries (15%) to south of Delta CVP agricultural water service contractors and increased SWP operational flexibility at the Banks pumping plant. Rather than focus on the export provisions in the ROD, our testimony today will instead concentrate on the efforts that are necessary to meet the water supply and environmental goals in the Sacramento Valley upstream of the Bay–Delta. If we are successful in meeting our water supply and environmental goals in the Sacramento Valley, we in turn can be more constructive in assisting the export interests address their water supply needs and environmental goals.

For many years, the Sacramento Valley (the northern part of the Great Central Valley) has been targeted as the primary source of water to meet California's burgeoning demands. The cornerstones for both the Federal Central Valley Project (CVP) and the State Water Project (SWP), Lakes Shasta and Oroville, are located in Northern California and provide water to the Bay–Delta and millions of Californians.

Water users and landowners in the Sacramento Valley have also faced restrictions under the Endangered Species Act (ESA), the Central Valley Project Improvement Act (CVPIA) and other environmental legislation and regulations. These actions have posed many challenges for Sacramento Valley water users and their ability to provide reliable and affordable water supplies for the farms, cities and wildlife refuges in the Sacramento Valley. For example, the Glenn–Colusa Irrigation District in the early 1990's was ordered to cease diversions through a faulty fish screen on the Sacramento River. CVP water service contractors in the Sacramento Valley, despite receiving 100% supplies this year, have received as little as 25% of their contract supplies in 1991 and 1992 and only 60% last year.

Rather than dwell on how we have dealt with and continue to deal with these challenges, we believe it is more constructive to focus on the exciting solutions to a variety of problems that are currently being advanced by those within the Sacramento Valley. These solutions, including the integrated water management program described below, can help the Department of Interior (DOI) and other CALFED agencies meet the water supply goals in the CALFED ROD. However, this can only occur if: (1) there are no redirected impacts to areas upstream of the Bay–Delta in the Sacramento Valley, (2) the DOI and other CALFED agencies exercise their full administrative authority to help local agencies implement the integrated water management program for the Sacramento Valley, including commitments in the ROD for Northern California such as Sites reservoir; and (3) the CALFED regulatory process is streamlined and reformed.

NO REDIRECTED IMPACTS TO NORTHERN CALIFORNIA

A fundamental tenet of the CALFED program is that there will be no redirected impacts to areas upstream of the Bay–Delta. Sacramento Valley interests recognize the importance to California's future of restoring the environmental health of the Bay–Delta and providing high quality and reliable water supplies for all beneficial uses. We generally support the CALFED program objectives and we have been willing to play a constructive role in implementing a successful CALFED program.

It is essential, however, for the CALFED agencies to deal with the Sacramento Valley interests as full partners, honoring the commitments that were and are the essence of the area of origin protection laws and, in that regard, refrain from imposing on the Sacramento Valley any burden for mitigating impacts to the Bay–Delta that result from the operation of the CVP, SWP, EWA or any other CALFED program.

Future partnership and cooperation between the Sacramento Valley and CALFED is possible and, indeed, desirable. However, it must advance based upon a framework where CALFED agency actions are undertaken in a manner that insures that solutions implemented to resolve problems within the Bay–Delta would not redirect negative impacts to the Sacramento Valley (ROD, page 9.) Additionally, CALFED must provide acceptable assurances that Sacramento Valley water rights and entitlements will not be sacrificed in favor of other CALFED objectives. CALFED agencies must work with, not against, Sacramento Valley water users in meeting their mutual water supply needs. The bottom line is that CALFED agencies, including the Department of Interior, must not use their regulatory authority to reallocate

area of origin water supplies for export or to meet Delta water quality standards and other environmental objectives in the Bay–Delta system.

AN INTEGRATED WATER MANAGEMENT PROGRAM FOR THE SACRAMENTO VALLEY WILL IMPROVE WATER SUPPLY, QUALITY AND RELIABILITY

Sacramento Valley water users have committed to help improve water supply reliability, water quality and environmental benefits. The Sacramento Valley's initiative and effort to help protect salmon and other aquatic species is unprecedented and is now recognized as one of the most exciting and progressive voluntary salmon restoration efforts in the United States. Today, more than twenty NCWA members, representing over 500,000 acres of irrigable land, have either completed or are in various stages of developing fish screens to prevent fish entrainment at their diversions. Many NCWA members have also initiated far-reaching efforts to refurbish fish ladders, construct siphons, remove dams, create habitat conservation plans and implement other habitat improvement projects to enhance the environment, while at the same time improving water supply reliability.

Additionally, NCWA and the Sacramento Valley water users have embarked on an integrated water management program that has broad support from water suppliers and local governments throughout the Sacramento Valley. This integrated program includes:

- fish passage improvements (fish screens, siphons and habitat improvements, ROD, page 35);
- groundwater management (ROD, page 46);
- joining local partners in evaluating the Sites off-stream reservoir (ROD, page 45);
- water use efficiency programs (ROD, page 59);
- potential expanded storage in Lake Shasta (ROD, page 44);
- intra-regional water transfers and exchanges within the Sacramento Valley (ROD, page 71); and
- flood protection (ROD, page 74);
- watershed management (ROD page 39).

During the past year this integrated program led to an unprecedented water rights settlement among water users throughout California. This settlement, now known as the Sacramento Valley Water Management Agreement, and the ensuing integrated water management program, avoided the extremely contentious Phase 8 Bay–Delta water rights proceedings before the State Water Resources Control Board. The parties to the initial agreement include NCWA, the Bureau of Reclamation (BOR), the Department of Water Resources (DWR), the Federal contractors in the San Luis and Delta–Mendota Water Authority, the State Water Contractors, and the Contra Costa Water District. We are also working closely with the U.S. Fish and Wildlife Service and the California Department of Fish and Game. The Phase 8 proceeding would have pitted these parties from throughout the state against each other. This integrated program will now serve as the heart of a regional strategy for the Sacramento Valley.

The Sacramento Valley Water Management Program and the integrated water management program focus on meeting 100% of the water supply demands within the Sacramento Valley during all year types, both now and into the future. Sacramento Valley water users believe that, once the full demands within the Sacramento Valley are met, this integrated program will help make water supplies available for use in and beyond the Bay–Delta to meet water quality standards, and provide for export water users in the San Joaquin Valley, Southern California, the Central Coast, and as assets for the Environmental Water Account (EWA) and other environmental programs.

The parties to the agreement are currently developing a short-term agreement that is scheduled to be completed by March 15, 2002. This agreement, if successful, will not only dismiss the Phase proceedings, it will facilitate the implementation of this integrated water management program for the Sacramento Valley.

THE REGULATORY PROCESS MUST BE STREAMLINED AND REFORMED

With nearly 18 Federal and state agencies under the respective executive branches that dictate California water policy, it is critical to coordinate and ultimately streamline the plethora of agencies with jurisdiction over water resources in California.

The framework to create CALFED in June 1994 called for cooperation and collaboration between the Federal and state agencies that oversee water in California. It is essential that these agencies continue to work together in this manner. Over the past 7 years, CALFED has evolved from a concept to streamline agency efforts to a massive bureaucratic program. For CALFED to be successful as it transitions

from a planning program to an implementation agency, it must move from a top-down bureaucratic organization to an organization that facilitates and fosters a series of regional strategies with local control and governance. Most notably, it must streamline the regulatory process to assure that these programs will be implemented. Specific examples include the facilitation of intra-regional water transfers and exchanges and expedited permitting by the U.S. Army Corps of Engineers and Environmental Protection Agency.

Significantly, this means that CALFED and its member agencies will serve in a more limited, albeit more effective, role to advance water and environmental policy in the state. It is also means that CALFED will serve a critical role to coordinate regional strategies to ensure that they fit together in a manner that provides statewide benefits, and also provide a broad-based governance strategy and oversight capability to ensure appropriate, balanced and efficient implementation of all CALFED program elements.

Much work was done by CALFED during the last seven years in terms of intensive environmental and engineering evaluation and in preparation of the ROD. That progress should not be lost. As a consequence, CALFED and its agencies should clarify that the project alternative screening process provided for in the ROD will be adhered to and that one CALFED program element will not be treated as an alternative to another CALFED program element. Again, among other things, this will allow the full integration of all water supply alternatives, maximizing the full utilization of the water resources available within the Sacramento Valley.

In conclusion, thank you for the opportunity to provide our perspective on the operational and administrative efforts that are necessary to meet the water supply and environmental goals in the ROD. If you have any questions, please call me at 916.442.8333.

Mr. CALVERT. Before I introduce our first panel, or while I introduce the first panel, why don't we have them come on up. Mr. Bennett Raley, the Assistant Secretary of Water and Science, Department of Interior; and Mr. Steve Macaulay, the Chief Deputy Director, California Department of Water Resources.

It seems that every year, and it doesn't matter which administration, but I am disappointed and concerned that we have not had the opportunity to review the administration's testimony in a timely manner. Being provided testimony within an hour of the hearing is unacceptable.

Under the rules of the Committee, and in a letter addressed to the Secretary, we asked specifically that written testimony must be filed at least two working days before the appearance. Failure to comply with this requirement may result in the exclusion of the written testimony from the original hearing record, or the barring of the oral presentation of the testimony.

I will accept the testimony, allow the administration to provide testimony. However, I want to reiterate that we expect all witnesses to adhere to the rules of the Committee, and I would hope in the future that we don't have this reoccurrence.

And with that, I would be happy to recognize Mr. Raley for his opening statement.

STATEMENT OF BENNETT W. RALEY, ASSISTANT SECRETARY FOR WATER AND SCIENCE, U.S. DEPARTMENT OF THE INTERIOR

Mr. RALEY. Mr. Chairman, members of the Committee, thank you for inviting me here. And, Mr. Chairman, I personally take responsibility for the late delivery of the testimony. It is unacceptable, and I offer no defense and simply take responsibility for that.

Today we are here to talk about an issue that is of vital importance to the Secretary and the department, as well as other agen-

cies within the administration, the State of California and our constituents there. Mr. Chairman, with your permission I would ask that my written testimony, albeit late, be submitted for the record so that I can confine my oral comments to a summary.

Mr. CALVERT. Without objection, so ordered.

Mr. RALEY. Thank you, sir.

We all face decisions, the need to make decisions that will improve water supplies and the environment in the Central Valley and generate the positive results that we expect from the CALFED process.

I would like to take the Subcommittee back to what Secretary Norton said in July 2001 in her appearance before the Senate Energy and Natural Resources Committee. She called the CALFED process "a new approach to reaching a common vision of actions needed for progress." The Secretary also pledged that the Department would "continue to work through the CALFED process to improve the environment and increase the system's water management flexibility."

Let me reiterate that sentiment, that commitment, today. The department is committed to making CALFED work for the long term. The fundamental tenet of balanced progress which guides and underlies the CALFED program can be achieved by undertaking actions that simultaneously improve project operations while accomplishing our environmental objectives. Much work is needed to meet the long-term challenges that both the Department of Interior and the citizens of California and the State of California face in satisfying the growing demands for water and other benefits created by the water management infrastructure in California.

As you are aware, increasing demand and hydrologic conditions, as well as implementation of the Central Valley Project Improvement Act, Endangered Species Act, Clean Water Act, and other legal requirements have impacted the ability of the project to meet its contractual obligations. Long-term operations of the project, as displayed in the CVPIA Programmatic Environmental Impact Assessment and described in the related Record of Decision, will result in shortages across all service areas and all types of water service provided by this project.

Mr. Chairman, you have started out with appropriately a reminder of the statement in the ROD about expectations for south-of-the-delta delivery obligations in normal to wet years, so I won't repeat that. We are intensely aware of that and all aspects of the commitment in the ROD.

The Mid-Pacific Region of the Bureau of Reclamation, in its preliminary analysis, determined that in a median precipitation year the south-of-delta agricultural contractors should only expect a 45 percent water supply, which is less than was the target that was identified in the CALFED ROD for a normal year.

Concern with this analysis prompted Reclamation to launch an intensive effort to match deliveries in 2002 with those targeted in the ROD. Additional staff have been put on this issue. There have been extensive discussions within the Federal family and with constituents that care about this issue, and there will be tomorrow a formal announcement by the Bureau of Reclamation of the delivery expectations for the coming year.

I offer some hope today that it will be more favorable than the preliminary projection of 45 percent. The bureau is working very hard right now with the other agencies involved, Federal and State, to take into account recent hydrologic information as the water year has progressed, as well as to assimilate and implement as appropriate the court's decisions in the past few months with respect to Section (b)(2) of CVPIA and the accounting structure.

In short, the department will comply with the judge's decision in its implementation of operations plans for the CVP in 2002, but we are not satisfied with the current situation in the Central Valley Project. We know that much work needs to be done.

We know that the past methodology—and I offer this with no criticism—has simply been a function of the complexity of all of the legal and physical factors associated with this enormously complex project; that the solutions to the annual debate at this time of year, in February, about whether or not there would be an appropriate level of delivery south of the delta, in the past those answers have been provided by Mother Nature in the form of precipitation. We believe that waiting and relying on the vagaries of late season snow and rainfall is not an acceptable management path, and are working to correct that.

We have to do that in a cooperative manner. We know that regardless of how close we may come to the targeted deliveries for 2002 for south of the delta, much work needs to be done. And therefore Mary Nichols, the California Secretary of Resources, and I will be convening a multiday meeting of the CALFED leadership to complete the operating plan for 2002 by mid-March. We intend to resolve issues, make decisions, and move this progress forward. We will keep this Committee informed of our progress.

I want to reiterate that this administration is committed to the concepts of the ROD. There is much, much value in preserving the hard work by everyone involved in fashioning this solution to these complex needs, and those who have speculated that this administration wishes to move from the concept of the ROD are simply inaccurate.

Mr. Chairman, I would like to conclude my oral remarks and make myself available for questions from the Committee. Thank you.

[The prepared statement of Mr. Raley follows:]

Statement of Bennett Raley, Assistant Secretary for Water and Science, U.S. Department of the Interior

Chairman Calvert, members of the Subcommittee, I appreciate the opportunity to appear before you to discuss the operation of the Central Valley Project (CVP) in 2002. Mr. Chairman, my testimony will focus on the challenge we all face of making decisions that will improve water supplies and the environment, and generate the positive results that we expect from the CALFED program. I look forward to working with this Committee and all our fellow CALFED agencies to achieve our goals.

Before I discuss these challenges, I would like to remind the Subcommittee what Secretary Norton said in a July, 2001 appearance before the Senate Energy and Natural Resources Committee. She called the CALFED process "a new approach to reaching a common vision of actions needed for progress." The Secretary also pledged that the Department would "continue to work through the CALFED process to improve the environment and increase the system's water management flexibility." Let me reiterate that sentiment today and clarify that the Department is committed to making CALFED work for the long term. The fundamental tenet of Balanced Progress which guides the CALFED program can be achieved by under-

taking actions that can improve project operations while accomplishing our environmental objectives simultaneously. Much work is needed to meet the long-term challenges that both the Department of the Interior and the citizens of California face in satisfying the growing demands for water and other benefits created by the water management infrastructure in California.

Background

CVP operations have been altered dramatically in the last decade. Considerable new demands were placed on the system and significant adverse consequences occurred in a major portion of the project. The challenges we face are clear. As you are aware, increasing demand and hydrologic conditions, as well as implementation of the Central Valley Project Improvement Act (CVPIA), the Endangered Species Act (ESA), and the Clean Water Act, impact the ability of the project to meet its contractual obligations. Long-term operations of the project, as displayed in the CVPIA Programmatic Environmental Impact Statement and described in the related Record of Decision (ROD), will result in shortages across all service areas and all types of water service provided by this project.

The CALFED Objective

The CALFED Record of Decision states in part:

> "It is also anticipated that implementation of Joint Point of Diversion, operational flexibility, interagency cooperation, EWA implementation, and other cooperative water management actions.....will result in normal years in an increase to CVP south-of-delta agricultural water service contractors of 15 percent (or greater) of existing contract totals to 65 to 70 percent."

Fundamentally, the CALFED Framework Agreement and ROD recognized the disproportionate impacts of the current operating regime on south of Delta contractors and established operational goals for the CALFED agencies, the State water project, and the CVP, in particular, to meet. We are now tasked with implementing these goals, and I believe their implementation has the potential to be as challenging as the development of these goals. The special challenges that we face today in meeting the needs of the Californians who rely on the CVP in the delta export service area will be the focus of my comments.

Current Forecast

The Mid-Pacific Region of the Bureau of Reclamation, in its preliminary analysis determined that in a median precipitation year, the south-of-delta agricultural contractors should expect only a 45 percent water supply—which is 15-20 percent less than was the target which was identified in the CALFED ROD for a "normal" year.

Concern with the results of this analysis prompted Reclamation to launch an intensive effort to match deliveries in 2002 with those targeted in the ROD. Additional staff have been committed to assist the Central Valley Operations Office in analyzing the preliminary operations plan and to develop actions which may increase the water supply south of the Delta. In addition, extensive discussions are ongoing in California between the Bureau and the other key CALFED agencies (USFWS, NMFS, DWR and CA Fish and Game).

Reclamation has assessed possible actions to address the situation:

- Actions for which Interior could exercise discretion
- State or other entity actions that may facilitate improved CVP operations (State and CALFED actions)
- Actions available at significant cost (actions that have a higher cost associated with them)

Reclamation is looking at all the possible actions, but is concentrating on those that have the greatest promise for 2002. For example, Reclamation staff are working with the contractors to better forecast demands and delivery scheduling and to better forecast storage in San Luis Reservoir at the low point.

Reclamation has also been meeting with the San Luis and Delta Mendota Water Authority to investigate installing a temporary intertie between the Delta Mendota Canal and the State Aqueduct to increase export capability at the Tracy Pumping Plant to its permitted capacity. In investigating the intertie, the parties identified and are pursuing an alternative of raising the lining of a 2,500 foot reach of the Delta Mendota Canal to recover freeboard and capacity in the canal at a fraction of the cost of constructing the intertie. Other actions involving water acquisition, demand source shifting by third parties, and use of non-project storage that are not being pursued at this time because of the high cost.

The Department is developing its approach to implementing the recent ruling of the Federal Court on the Department's responsibilities under the CVPIA and will adhere to the Court's decision in developing operational plans for 2002.

When Reclamation can assign certainty to the actions and include them in the 2002 operations plan, the resulting water supply improvements will be reflected in the CVP allocations. Although much more work remains to be done, even if we are successful in implementing all of the actions identified above, the best it appears we will be able to do is achieve water delivery increases 10 or 15 percent more south of the Delta. We are not satisfied with the current situation in the CVP. We know the customers are frustrated with the shortages and uncertainty over how the project will be operated. We are hopeful that the measures taken to improve the ecosystem ($390 million CVPIA and CALFED restoration funds spent to date) and the significant redirection of water to improve fish and wildlife will in fact work. Although, the results we are all looking for may take years if not decades to attain.

Tomorrow, February 15, 2002, Reclamation will announce the initial allocations of CVP water supply to its contractors for the 2002 contract year. I understand that CVP contractors north of the Delta will receive a full supply and that CVP contractors south of the Delta will experience shortages due to legal and technical restrictions on the operation of the export pumps. This problem must be solved. And it must be done in a cooperative effort by all Federal and State agencies involved in the CALFED Program as well as through working with the contractors and other stakeholders whose cooperation was so instrumental in getting agreement on the ROD and other progress to date. Interior will continue to work through the CALFED process to increase the system's water management flexibility while we work to improve the environment. We will also pursue actions on our own and with our contractors, to the extent practicable, to achieve CALFED goals.

Next Steps: Operations Decisions

Mr. Chairman, the situation we face today is nearly identical to that which we have faced in every mid–February for the past five or more years. However, in most years, it was mother nature that provided the solution in the form of wet conditions. That may or may not happen this year. We recognize that waiting for adequate rainfall is not an acceptable management approach.

Therefore, Mary Nichols, the California Secretary of Resources and I will be convening a multi-day meeting of the CALFED leadership to complete the operating plan for 2002 by mid March. We intend to resolve issues, make decisions and move this process forward. We will keep this committee informed of our progress.

In my few months on the job, I have encountered a number of inconsistent or conflicting views on what this language means. Some of the views I have heard include:

- "The Federal Government made a commitment to reach the 65–70 percent delivery levels."
- "There is no way these levels can be met because the objective was based on modeling and real world conditions are not conducive to optimized models."
- "The modeling assumed the aggressive exercise of discretion to reach the delivery levels."
- "Supply objectives can not be realized without significant changes to the CALFED environmental baseline, particularly changes in how the 800,000 acre feet of CVPIA (B2) water for the environment are managed."
- "If changes are made in the CALFED environmental baseline, reconsultation will be required on the Biological Opinions."
- "We were told the supply objective could be met without altering the B2 accounting methodology."
- "Interior must use its administrative discretion to meet the ROD objective."

Based on what I have heard and read to date, here are my conclusions:

- The Bureau of Reclamation and the CALFED agencies must strive to meet the south-of-delta supply objectives in the ROD.
- It may not be possible to achieve the supply objectives south of the Delta with the existing operating restrictions.
- Failure to achieve this goal could have widespread adverse consequences on the future of the CALFED Program.
- The long term certainty that communities and customers had hoped for has yet to be realized and short term water supply needs have not been fully satisfied. Simply put, there is no certainty that either the reliability or productivity of the water infrastructure has increased.
- When both reservoir storage and snowpack levels are above average, and the initial forecast projects a 55% shortage for more than 1 million acres of farmland, the commonly heard refrain that California's water system is broken appears accurate.

Mr. Chairman, the challenges that confront us in the immediate issue of 2002 project operations are similar in nature to the broader set of issues we face as we evolve the CALFED program from one of planning to one of implementation. We

have the Implementation Memorandum of Understanding in place that will guide our actions. By working together, we are putting work programs into action that I believe will lead to the realization of the long term benefits and expectations of the CALFED program.

Long–Range Planning

Mr. Chairman, we continue to believe the long-term answers to the challenges of adequate water supplies and effective environmental improvement can best be found through the CALFED Program. Everyone's interest is served by the success of CALFED. At the same time, we realize that a significant amount of work, work that is fully compatible with CALFED, needs to be accomplished. The most significant opportunities for yield increases are associated with storage and conveyance projects identified in the CALFED ROD.

On a parallel track to identifying and implementing tools to improve 2002 allocations, Reclamation is also supplementing the analysis in the CVP Least–Cost Yield Increase Plan which focuses on opportunities to increase the yield of the CVP that was dedicated to fish and wildlife purposes under the CVPIA. Reclamation is also working directly with CVP south-of–Delta contractors on an Integrated Resources Plan, which looks at locally implementable water supply and conservation projects, socio-economic analyses associated with water supply, and the impacts of proposed water supply projects on drainage in the region. Finally, we are reinitiating our work to consider the possibility of a large scale land retirement program that could yield water supply, reliability and improved water quality along with environmental benefits throughout the San Joaquin Valley.

That concludes my testimony. I would be pleased to answer any questions you may have.

Mr. CALVERT. I appreciate your testimony.

Next, Mr. Steve Macaulay, Chief Deputy Director, California Department of Water Resources. Sir, you are recognized for your opening statement.

STATEMENT OF STEVE MACAULAY, CHIEF DEPUTY DIRECTOR, DEPARTMENT OF WATER RESOURCES, STATE OF CALIFORNIA

Mr. MACAULAY. Thank you very much. I appreciate the opportunity to be here today on behalf of California Resources Secretary Mary Nichols and my director, Tom Hannigan. I provided copies of my more detailed testimony, which also addresses State water project water allocations for the current year. I ask that you accept my written testimony, which I will quickly summarize.

The Subcommittee has invited testimony on the two points that the Chair has indicated. These are topics that are being addressed both by the CALFED Bay-Delta Program and the Department of Water Resources. I wanted to make a clear statement that Governor Davis stands strongly for a successful CALFED implementation in all of its components.

On the first issue, the Department of Water Resources updates the California Water Plan every 5 years. This is a road map about how to address future water needs. We are on track to produce the next update next year. We have undertaken a fundamentally new approach to updating the California Water Plan which is indicated in an attachment to my written testimony. The update is being prepared with an unprecedented level of input from stakeholders.

Meeting future water needs, and in fact meeting present water needs in dry years, requires a full range of efforts. While CALFED programs are at the center of much of what is being done in California to meet water needs, other activities are underway as well.

Certainly there has been a great deal of focus by members of the Committee on the Colorado River Water Use Plan, which requires

California to reduce its water use, historical water use, by some 800,000 acre-feet of water, and we are clearly aware that the interim surplus criteria are directly linked to implementation of the plan. The components certainly include transfer of conserved ag water and lining of canals, and to that end, California voters have provided $235 million to help in that effort, as well as development of Metropolitan's Hayfield groundwater storage project.

Another aspect of meeting future demands is regional leadership in project development. We no longer have quite the top-down system we had back in the '50's and '60's. Local and regional water agencies are working aggressively to diversify their water supplies and use them far more efficiently. This is a clear long-term trend, and I would like to mention a couple of examples.

First, and you will hear this from Tim Quinn and others, Metropolitan Water District's Diamond Valley Reservoir and Inland Feeder projects, multiple billions of dollar investments; and local pursuit of reclaimed water, much more aggressive conservation. Much of this is being funded, certainly the latter, the smaller projects, are being funded by money provided by California voters in the passage of both Proposition 204 and Proposition 13.

The Subcommittee's second issue deals with the CALFED ROD water supply reliability. To that end, our actions include Joint Point of Diversion, which I will touch on; the south delta improvements program; temporary barriers program; and a range of other actions on which we are working with the bureau, which is detailed in Interior Assistant Secretary Bennett Raley's written testimony.

I will also address four related issues: the CALFED Science Program; the Environmental Water Account; certainly passage of Federal legislation to authorize CALFED; and responses to court decisions in a manner consistent with the CALFED program.

On Joint Point, I think most of the Committee members are aware that this is essentially the use of State Water Project pumping and conveyance facilities to help out the CVP and other water users. We have significant actions underway to implement Joint Point this year which are detailed in my written testimony. And again, that is something that has to be approved by a regulatory agency, in California the Water Resources Control Board. The written testimony again includes specific actions we are taking.

One point I wanted to make, and that is that we have used Joint Point for more than the last 20 years to help out the CVP. Over the last 20 years we have pumped some 5 million acre-feet for the Federal water project. This amounts to annual average pumping of about a quarter of a million acre-feet, with a high ranging as high as a half a million acre-feet a year for the CVP, and we certainly intend to continue and expand this as our pumping abilities expand over time.

More permanent South Delta water management facilities include facilities in the channels in the Delta, as well as an increased fish screening capability and investment in a great deal of permanent infrastructure, including some South Delta specific ecosystem restoration components. Part of what we are doing in the near term is constructing those barriers on an interim basis to protect south delta farmers, while allowing us to pump additional water for the CVP and the Environmental Water Account, and water users who

need a dry-year supply when we implement a drought water bank or something similar.

On the CALFED Science Program there are three points I would like to make. First, we are making huge investments in ecosystem restoration, new fish screen technology, and operational changes.

The second point is, the science needs to address what is needed to help endangered species populations and get away from the historical principal focus on so-called take limits at the export pumps.

And third is what we need more of, and I think CALFED has already gotten us underway, is science in action, science oriented toward the management actions that need to be taken nearly immediately, in real time, to more efficiently use the operation of our existing facilities.

I have written comments on the Environmental Water Account which I will not summarize. I certainly wanted to thank the Chairman and Senator Feinstein for the leadership they continue to show in moving forward with CALFED authorizing legislation.

I wanted to make a quick comment about response to court decisions. This doesn't have to be a zero sum game. We recognize that Judge Wanger's decision last week moves us a long way forward toward the 65 to 70 percent goal, and the judge's decisions, very clear decisions on reset and offset, and the prior decision on the 450 cap.

That could spawn another fight. Again, we would like to view this as not a zero sum game. We need to use CALFED's—it is a trite term, but it has relevance here, and that is adaptive management. We don't want to have this successful conclusion to this fight spawn another fight over ESA assurances, for example, for water project operations in 2002. This is something we are pledged to work with Secretary Nichols and Assistant Secretary Bennett Raley on over the next month.

So with that, I will conclude my testimony and be available for questions. Thank you.

[The prepared statement of Mr. Macaulay follows:]

Statement of Steve Macaulay, Chief Deputy Director, California Department of Water Resources

The Subcommittee has invited testimony on two related points: meeting California's urban, agricultural, and environmental water needs in the 21st Century, and the administrative, operational, and legislative changes that would help meet the goals of water supply and reliability set forth in the CALFED Record of Decision. These are topics that are being addressed by the CALFED Program and the Department of Water Resources. Governor Davis stands strongly for a successful CALFED implementation in all its components.

Issue 1: Given that present and future demands of urban, agricultural, and environmental needs exceed the capacity of the project, where do we find solutions to reliably meet these needs in the 21st Century?

The first issue identified by the Subcommittee mentions limitations of "the project." My responses address the issue in the context of the entire State, with of course significant implications to the future of the Federal Central Valley Project (CVP) and the California State Water Project (SWP).

The Department of Water Resources (DWR) has the statutory requirement to update the California Water Plan every five years. Our last update was in 1998, and we are on track to produce the next update in 2003. DWR has embarked on a fundamentally new approach, scope, and process for preparing the California Water Plan Update 2003 (Bulletin 160–03). The update will be California's plan to meet the State's future water needs, a useful reference for water planners and decision-makers, and a living document that integrates statewide and local planning

initiatives. The update is being prepared with an unprecedented level of input from stakeholders. Attached to our testimony is a short status report on this effort.

As indicated in CALFED Executive Director Patrick Wright's testimony, meeting future water needs—and in fact meeting present water needs in dry years—will require a wide range of efforts in addition to developing new water supplies. While CALFED programs are at the center of much being done in California to meet future needs, other activities are underway as well. One of these addresses Colorado River issues. California's draft Colorado River Water Use Plan is intended to demonstrate how California will reduce its use of river water over time to the State's basic apportionment, in response to the increased reliance upon the Colorado by its neighboring Lower Basin states. The availability of water formerly unused by Nevada and Arizona, as well as hydrologic surplus conditions, has historically allowed California to use some 800 thousand acre-feet annually in excess of its basic apportionment.

The U. S. Bureau of Reclamation (USBR) Interim Surplus Criteria for river operation are designed to reduce the risk of shortages to California's urban water users while initial elements of the draft Plan are being implemented. These elements include transfers of conserved agricultural water to urban areas (such as the existing transfer between the Imperial Irrigation District and the Metropolitan Water District of Southern California, and the proposed IID–San Diego transfer), canal lining programs to conserve water now lost to seepage, and groundwater storage programs. The State of California has executed agreements providing $235 million in financial assistance to local water users for lining the remaining unlined portions of the Coachella and All American Canal, and for MWD's Hayfield groundwater storage project.

In addition there are initiatives being undertaken at the local level to develop more regional self-sufficiency and more local control. For example, MWD has developed the multi-billion dollar Diamond Valley Reservoir and Inland Feeder projects which allow them to much more efficiently use their water supplies from both the Delta and the Colorado River. We and local agencies are also aggressively pursuing water conservation and reclamation to use existing water supplies much more efficiently. The funding, leadership and public focus provided through the CALFED Bay–Delta Program has greatly advanced efforts in the area of water use efficiency. California voters have provided very strong monetary support.

Issue 2: In your opinion what administrative or operational changes, consistent with existing law, or legislative changes can be made to meet the goals of water supply and reliability set forth in the CALFED Record of Decision?

There are many elements of the CALFED long-term plan that will increase water supply reliability, including new or expanded water storage and a strong water use efficiency program. There are also near-term actions related to facilities and operations that the State of California is taking to improve water supply reliability, including benefits for the Central Valley Project. I will describe these operational tools as well as some longer-term actions that are not directly related to water project operations, but which are essential to maintaining and improving water supply reliability in California.

Some of the near-term actions relate to an arrangement between the State Water Project and the Central Valley Project called "Joint Point of Diversion" (JPOD, or "Joint Point"). Under California water rights law, each water project is permitted to draw water from the Delta at its own pumping facility. There are times when it is advantageous for one project to draw water from the Delta using the pumping plant of the other project. This is physically possible because the projects' distribution systems are joined "downstream" from the two pumping plants. In fact, we share the capacity of the San Luis Reservoir south of the Delta, where Delta water is pumped into storage for later delivery to water users in the San Joaquin Valley and southern California. Joint Point is an institutional arrangement, permitted by the California State Water Resources Control Board, that allows the projects to use the two separate pumping plants as if they were jointly-held facilities. However, this arrangement comes with conditions requiring that actions be taken to prevent the use of Joint Point from incrementally affecting the water supply capabilities of water users in the south Delta or fish and wildlife. We have developed the response plans for the use of Joint Point. Once these plans have been approved by the SWRCB, the use of Joint Point for this year will be in place.

In theory, either project may pump water for the other. In practice, it is the State Water Project that more often pumps water for the Central Valley Project since our project has greater pumping and conveyance capacity than the CVP. The two projects have used Joint Point for many years to increase water deliveries for CVP customers and to facilitate other water transfers across the Delta. Over the past 20 years, the SWP has pumped more than 4.9 million acre-feet for the CVP. This is

water that would otherwise not have been available to CVP contractors and other users south of the Delta. During this 20-year period, annual pumping at SWP facilities for the CVP has averaged nearly 250 thousand acre-feet, and ranged up to a high of 499 thousand acre-feet.

NEAR–TERM ACTIONS RELATED TO FACILITIES AND OPERATIONS

Clearly, use of Joint Point is very beneficial to the CVP. The benefits are likely to increase over time, because the SWP is working on projects in the Delta that will provide increasing water supply benefits throughout the first stage of CALFED implementation by increasing our pumping capabilities. These include the South Delta Improvements Program and the Temporary Barriers Program.

The South Delta Improvements Program

The South Delta Improvements Program (SDIP) proposes 1) facilities in the channels of the south Delta to improve local farmers' ability to divert water, and 2) improvements to the State Water Project which will increase the reliability and quantity of water supply pumped from the Delta. It is the first CALFED project implemented to increase water supply exported from the Delta.

The first action under the SDIP will be taken next year and will increase the Delta export limit of the SWP to 8500 cfs, an increase of almost 30% at some times of the year. The SWP will not be the only beneficiary of this action. There will be increased opportunity for the CVP and CALFED's Environmental Water Account (EWA) to use the SWP facilities either to transfer water from upstream storage or capture excess water in the system. Preliminary studies of the potential water supply benefit indicate the CVP will receive an annual average benefit of 35,000 acre-feet. This is about 20% of the total preliminary benefit estimate. The opportunity for private parties to transfer water across the Delta will also increase. Finally, increasing the export limit improves the ability to protect fish by providing more opportunities to recover pumping reductions conducted for fish protection. Of course this is in addition to the additional fish protective measures that will be developed as part of our work in the Delta.

The next step of the SDIP to increase Delta water supply is to raise the export limit to the maximum amount the SWP can convey: 10,300 cubic feet per second. This will match our pumping capabilities with the capacity of the California Aqueduct. This increase would begin as new, screened export facilities become operational, possibly as early as 2006. Once again, the CVP will benefit from the increase due to the improved opportunity to transfer water from upstream storage or capture excess water in the system. Opportunities for the EWA (or an equivalent type of account), flexing operations to protect fish, and private-party water transfers are also expected to increase.

The Temporary Barriers Program

The SWP has and continues to help the CVP delivery reliability by improving conditions for local diverters in the south Delta. SWP and CVP exports contribute to low water levels in south Delta channels, reducing or preventing agricultural diversions from the channels. Due to the restricted ability of the CVP to adjust the export rate at its pumping plant, the CVP has a much greater impact upon water levels than the SWP.

Low water levels can prevent the use of Joint Point. DWR is the principal agency taking action to improve these conditions. The actions include extensive dredging of channels surrounding the CVP export facility in the south Delta to improve recreational navigation completed in 2000 and site specific improvements to local diversions taken in 2001 at a total cost of $3.7 million. DWR has committed $400,000 per year to continue site-specific diversion improvements. The USBR has no such program, although they provided land for dredge disposal last year.

Water Allocations for 2002

As water managers, we strive to meet our customers' needs every year, but weather and hydrology do not always allow us to deliver the full amount that our customers request. The last water year was a challenging one for the SWP. Due to water storage conditions, SWP percentage allocations last year were even less than the CVP.

For water year 2002, the initial allocations we made in December 2001 were significantly lower than the past few years, primarily due to preceding dry conditions. Runoff in 2001 was significantly below normal for the first time in the past seven years. Last month we were able to increase the SWP allocations from 20% to 45% due to the above average rain and snow during December. Since then, we have had dry conditions. Our ability to deliver any more than 45% to our contractors this year will depend largely on the weather in the next two months.

As water managers, we realize that our ability to meet our customers' needs is based partly on our water supply infrastructure, partly on our ability to operate our facilities in creative and collaborative ways, and partly on what nature gives us.

Additional Actions

CALFED provides a forum for State and Federal agencies to work together collaboratively to find ways to meet our various objectives. We are working with the USBR to identify and implement actions that will help meet water supply goals in the ROD, consistent with other aspects of the CALFED program.

LONGER–TERM ACTIONS ESSENTIAL TO WATER SUPPLY RELIABILITY

Finally, I would like to describe a few elements of the CALFED program that are not part of the bricks-and-mortar water supply infrastructure, but are nevertheless essential to improved water supply reliability in California. These are CALFED elements that will improve our ability to operate our facilities in creative and collaborative ways. They include:

- the CALFED Science Program which will allow us to learn more about the system and rapidly apply what we learn,
- the Environmental Water Account that is identified in the ROD as an essential component of meeting the water supply goals expressed in that document,
- passage of Federal authorizing legislation and secure funding for the CALFED program, and
- response to court decisions in a manner consistent with the CALFED program and its approach.

I will address each separately.

The CALFED Science Program

The CALFED Science Program is integrating objective science and unbiased peer review into every aspect of the CALFED program, developing the best scientific information possible to guide decisions and evaluate actions. DWR is committed to rapidly integrate into real-time operations the better science we are getting through CALFED. At a basic level, this means conducting exhaustive real-time monitoring of Delta channels for fish species of concern, particularly during the spring months when the potential for conflict between water operations and fish protection is the greatest. When fish will be harmed by our operations, we can use some of the new tools that CALFED provides, such as the Environmental Water Account, to protect fish and water users.

Water supply reliability in the Delta is directly linked to our knowledge of endangered species population dynamics. The so-called "take limits" are based in some cases on generalized understandings or theories on how fish losses at the export pumps affect species populations. The SWP and CVP are doing their part to develop the best possible screens and fish handling facilities. There is a Federal test facility under development at Tracy and plans to apply the knowledge we gain from that facility to the design and construction of screens that are subsequently installed as part of the South Delta Improvements Program. With better fish screens also needs to come refinement in our understanding of the effect that our facilities have on Delta fish species at the population level. The bottom line is we all need to work together to achieve the CALFED goal of recovery of at-risk species dependent on the Delta, and we need to have better ways of prioritizing actions and measuring success.

The Environmental Water Account

The Environmental Water Account is included in the CALFED ROD as a four-year experiment. We need to continually ask ourselves how well the EWA is doing its job, so that at the end of four years we can make an informed science-based decision on whether the EWA should be a long-term part of the CALFED Program. To help assess the success of the EWA, CALFED has pledged to convene an independent science panel each year during the four-year experiment. The panel has reviewed the first year of EWA operations and offered positive findings and constructive suggestions for improvement.

The CALFED ROD correctly observed that there would be almost no "bricks and mortar" improvements in our water supply infrastructure during the first few years of the program, so implementation of the EWA is essential to improve water supply. To that end, California has provided over $87 million for the first two years of EWA operation, about 80% of the total EWA funding.

Under the CALFED ROD the combined actions taken under Central Valley Project Improvement Act (CVPIA) Section 3406 (b)(2) and the EWA together secure commitments from the State and Federal fishery agencies. These commitments are that additional measures to protect fish at the expense of the water supplies of both

the CVP and SWP will not be taken under the State or Federal endangered species acts unless truly unforeseeable events occur. (A third tier of protection involving actions needed to prevent immediate jeopardy to the continued existence the species could be invoked in such circumstances.) Neither b2 nor EWA alone is sufficient to secure the CALFED ROD commitments to water supply reliability of the CVP and SWP. Without EWA the water supplies of both the CVP and SWP will be affected. The EWA deserves strong support from the Congress, since it ties directly to the water supply reliability focus of this oversight hearing.

Authorizing Legislation and Secure Funding

During CALFED's planning stage it was possible for the program to function effectively as an informal, cooperative interagency effort. As we begin to implement the long-term plan, various State or Federal agencies have taken the lead on various CALFED programs and projects. As we do so, we run the risk of narrowing our focus too much on specific actions or objectives of the CALFED Program. I remember history very well, and we do not want to repeat it: CALFED exists because State and Federal agencies all wore institutional blinders back in the early 1990's, and that single-focus mentality caused us all to fail in meeting our objectives.

That is why we need CALFED as a permanent entity to draw us together and balance the range of objectives that we individually strive to achieve. In order to play that role, and keep us on the road to success, CALFED needs to be a real entity with a secure funding stream. These are areas where Congressional action is essential.

Responding to Court Decisions

As always, the courts play a role in water issues. The Federal District Court in Fresno has played a role the past few years regarding litigation over implementation of Section 3406(b)(2) of the CVPIA. On February 5 Judge Wanger ruled on several issues which will have significant implications on CVP water operations beginning this year, likely firming up water supply reliability which has been a major issue confronted by the Subcommittee.

Arguments in court, as we understand them, pit water supply reliability against fish protection. This does not have to be a "zero sum game" as some will represent. To provide both water supply reliability and fisheries protection, it will be critical to employ the "adaptive management" tool in the CALFED arsenal. While the issue is not yet settled, a first challenge will be how to deal with Endangered Species Act "assurances" for water project operations during 2002.

Whenever there is court ruling that affects our ability to meet water needs, or there is a dry year, or a conflict between water delivery and fish protection, we will be at a crossroads where our previous approaches may no longer serve us well. At these times we need to adapt our actions in ways that allow us to meet all the CALFED objectives. Failing in any of the objectives just invites further litigation by one side or another.

To summarize, California is moving vigorously to expand our ability to use Joint Point to benefit the CVP, the Environmental Water Account as well as overall water transfers. Our efforts include short-term actions that maintain our ability to use Joint Point, and improvements that would allow us to pump more water using this tool. We must do this responsibly and in compliance with specific provisions of State law. We are ready to work collaboratively with our peers at USBR to help implement other short-term actions that will improve water supply consistent with the CALFED Program. In the longer term, water supply reliability depends not only on new facilities and improved efficiency, but on the application of sound science to the process, new tools such as the Environmental Water Account with the assets needed to do its job, a permanent CALFED entity with secure funding, and an unwavering commitment to the balanced implementation of the entire CALFED program—especially in the face of the inevitable litigation.

I would be glad to answer questions from the Subcommittee.

[An attachment to Mr. Macaulay's statement follows:]

CALIFORNIA WATER PLAN—UPDATE 2003

2001 STATUS REPORT

(SUBMITTED TO THE HOUSE SUBCOMMITTEE ON WATER AND POWER, FEBRUARY 2002)

The Department of Water Resources (DWR) is updating the California Water Plan for release in 2003. Our goal is for Update 2003 to meet Water Code requirements,

receive broad support among those participating in California's water planning, and be a useful document for the public, water planners throughout the state, legislators and other decision-makers. The goal and new approach are articulated in the California Water Code.

DWR has fundamentally reformulated and expanded the process and content of Update 2003 in response to new requirements of State law, and significant public comment. We are developing Update 2003 using an open and collaborative process with a 65-member public Advisory Committee, a 260-person Extended Review Forum, and an outside facilitation team.

During the preparation of Update 2003, DWR will fairly evaluate a reasonable range of options advanced by the Advisory Committee. And while we don't know now what will ultimately emerge from this collaboration, we are hopeful that the committee will reach significant consensus that we can reflect in Update 2003. In addition, by viewing the Water Plan Update as an ongoing strategic planning process, DWR and stakeholders can continue working on ideas and options that cannot be sufficiently explored in Update 2003 because of resource and time limitations.

Since January 2001, we have worked with the Advisory Committee to shape the new framework and strategic planning process for this update of the Water Plan. As a result of nine full-day meetings and over two-dozen work group meetings, Advisory Committee members have concurred on the following key features of Update 2003:

- Create detailed state and regional "water portfolios" to more comprehensively describe water supplies, water uses, and water management decisions, while identifying underutilized opportunities and unmet challenges for all beneficial uses;
- Describe current conditions of water supply, use and management with actual data and detailed narratives for three recent years having varying amounts of precipitation, namely 1998 (wet), 2000 (above normal), and 2001 (dry). In past updates we had used averaged and "normalized" data to represent a typical average and a typical dry year;
- Identify multiple ranges for key factors affecting water supply and use, as well as for water management options, that can be combined in different ways as "building blocks" to produce different versions of the state's water future or "Study Plans";
- Assemble multiple "Study Plans" to consider alternative futures and a variety of management options for the state and its individual regions;
- Consider, as project resources and time permit, multiple hydrologies and planning horizons when forecasting alternative futures, such as 2010, 2020, 2030, and 2050;

In addition, the Advisory Committee has identified global climate change as one of the factors we should consider in Update 2003. The California Water Plan will include a comprehensive discussion on the potential impacts and implications of global climate change on California's water system infrastructure and future water supply, quality, and management, including short and long term recommendations.

The key features listed above are the outcome of our work with the Advisory Committee. DWR encourages additional review and suggestions. Early in 2002, we will hold several workshops across the State to receive comments from the Extended Review Forum and other members of the public on these draft assumptions and estimates. In addition, we will continue to work with the Advisory Committee to refine the assumptions and estimates. DWR will maintain and update the Assumptions & Estimates website (www.waterplan.water.ca.gov/AandE/) as a "living document" throughout the preparation of Update 2003. The information on this website will ultimately become the Water Plan's technical reference guide.

DWR and the Advisory Committee are just beginning to address several other key elements of Update 2003. These include: (1) addressing how regional water management efforts for improving water supplies and minimizing imports from other regions will be incorporated into Update 2003 pursuant to Senate Bill 672 (Machado), (2) developing goals and management options ("where we want to be"), (3) discussing how to select, evaluate, and compare Study Plans (using modeling tools and evaluation criteria), and (4) identifying indicators and ongoing efforts to monitor and track progress toward implementing the recommendations of Update 2003. As these elements are better defined with the input of the Advisory Committee, we will periodically update the Assumptions & Estimates website.

Mr. CALVERT. I thank the gentleman for his testimony.

Mr. Raley, I am going to ask a series of questions, some of which you have already addressed in your testimony, but just to reassure the record for various reasons.

What is your evaluation of the Federal court actions relative to the 800,000 acre-feet litigation?

Mr. RALEY. Mr. Chairman, certainly it is relevant. We have asked attorneys and staff for the primary agencies to provide a report to us on exactly what the legal ramifications of that decision are with respect to CALFED in general and the '02 operations plan in particular. We are also coordinating with the State of California to make sure that we understand what it believes the implications of those decisions are on the parallel California laws that the project operates under. I have asked for a report on that as quickly as possible, and know that it is essential that we all have some answers so that we can figure out how we are going to proceed with the operating plan for 2002.

Mr. CALVERT. So you would believe, based upon hopefully the examination of that record and that court decision, that (b)(2) policy by the previous administration is in need of revision?

Mr. RALEY. I believe that it is accurate to say that the court found that at least three aspects of the (b)(2) accounting, as defined in the August '99 definition, are not within the authority of the Secretary, and so as a consequence there has to be some consideration of that reality. We can no longer operate under those assumptions.

Mr. CALVERT. Do you believe that if there is normal rainfall for the remainder of the water year, that the CVP will be able to deliver 65 to 70 percent called for in the Record of Decision to south-of-the-delta water users?

Mr. RALEY. Mr. Chairman, I am disappointed to say that I have not been yet provided with a basis to conclude that in a normal year the delivery south of the delta will be in the 65 to 70 percent range.

Mr. CALVERT. The environmental baseline built in in the Record of Decision may have to be reevaluated, as you mentioned. In the light of Judge Wanger's recent decision, will that require reconsultation with the biological opinions?

Mr. RALEY. That is the very question that we have asked the responsible agencies to provide us with their position on.

Mr. CALVERT. Where has the department identified opportunities for more flexible operation of the CVP so that water supplies can be increased and made more reliable, while still providing appropriate ecological protection and improvement?

And more specific, with the Klamath biological as a model, will the department draft new and revised biological assessments to reflect these opportunities and reinitiate consultation with Fish and Wildlife Service and other appropriate agencies?

Mr. RALEY. If I may take your, what I perceive to be the second part of your question first, with regard to the role of science and the implication of the NAS study in the Klamath Basin, going back to the Secretary's first statements on these issues in general and her testimony before Congress last summer on CVP and CALFED, she has been and remains committed to full utilization of science in the process.

In the context of CALFED, it is a different situation than existed in the Klamath Basin. CALFED has a Science Committee. There has been a greater attempt to have a more disciplined approach to studies, to integration of science in the decisionmaking process, as a result of having that structure.

I have also suggested at the December CALFED meeting that it seemed appropriate, given everyone's commitment to science, that there be three components of that question that are considered in the future, the first component being, I have heard repeatedly that certain assumptions underlying CALFED, scientific assumptions, are "off the table" and not subject to being considered. I am certain that those statements were not made by scientists because the very nature of science is the need to continually reassess the validity of prior assumptions, and that is also the nature of adaptive management.

So I am hopeful that CALFED will move forward, and we have some preliminary thoughts on how to do that, with an examination of those assumptions to make sure that they are still supported. And then the second part is to make adaptive management work, so that as we continually learn, we get better, smarter. And then finally we need to find a way to embed that science process into the entire CALFED fabric in a way that it is not a ministerial or a routine act satisfied by checking some boxes. it needs to be an active engagement in a structured way.

We have not made a decision with respect to a request for a formal National Academy of Sciences review. That has been one of the options, but we have not made a decision on that.

Mr. CALVERT. Thank you.

Mr. Dooley?

Mr. DOOLEY. Thank you, Mr. Chairman.

I thank both of you for your testimony and also for what I know is your very sincere efforts to try to find a way that we can provide greater certainty in water deliveries as well as maintaining our commitment to providing for environmental enhancements.

I just want to clarify, Mr. Raley. Did you say that the department is going to be reconsidering the allocations of water in the 2002 year in a manner that is consistent with Judge Wanger's recent rulings?

Mr. RALEY. The department will respect and implement the judge's ruling with respect to (b)(2) accounting. However, I need to point out that that legal proceeding is not completed and there are various alternative paths that we don't have control over, that may affect how the department complies with the court's order.

Mr. DOOLEY. I am not quite sure. Are you alluding to the fact that there might be an appeal filed, or I am not quite sure what—

Mr. RALEY. There may be an appeal. There may be a request for stay. Those options are there as a matter of law, and we just want to recognize that there are potentially yet additional chapters to be played out in the decision regarding (b)(2).

Mr. DOOLEY. But today we have a court ruling that, you know, has some pretty clear decisions that are embodied in it. Has there been a directive to the bureau to comply with those rulings?

Mr. RALEY. There has, yes, orally.

Mr. DOOLEY. OK. Thank you. There has been a lot of attention given in terms of the legislation that Mr. Calvert and I and others have introduced, and we passed through the Interior Committee, on how we can best assure that we will be able to see to the greatest extent practical compliance with what was provided in the Record of Decision, in particular to contractors south of the delta.

This is an issue that obviously has some controversy, because there are water users that are concerned about this having an adverse impact by our efforts to meet the 65 to 75 percent target. Now, that is something that I recognize and Mr. Calvert recognized, and we made efforts to try to give the Secretary the flexibility that they would need to meet these targets, and also provided direction to the Secretary that in their efforts to meet these targets, that they would not harm other water users.

And I don't know if you have had a chance to review the legislation, but I just want to go over it a little bit with you, in terms of this would be the discretionary authority, so it wouldn't be mandatory, where we state the Secretary shall use the discretion of the Secretary to the maximum extent practical to accomplish the goal, during a normal water year, of making available to south-of-the-delta Central Valley Project agricultural water service contractors at least 70 percent of their water supplies.

Now, would you interpret that language, when we used the words "use the discretion...to the maximum extent practical" as not a mandate or a requirement that you meet this, but a direction to whatever is practical to hit these targets?

Mr. RALEY. Congressman, what I need to do is go back to Secretary Norton's testimony of last summer, because that is the only official administration position on legislative language on the assurances, and that was that the Department was not comfortable with that form of assurances language. We look forward to working with you and all concerned to resolve that issue.

Mr. DOOLEY. I would just state, you know, that this is not the same language that Secretary Norton testified. And what I will then ask is that the department review this new language that has been in place since we had the markup and give us, you know, what their current assessment would be, because we are not talking about the same language obviously at that time, because at that time the language said "direct the Secretary" and this language, I think we would all agree, is much different.

In terms of the language that deals with trying to hold other water users or trying to assure that we are holding them harmless from meeting this target, we say "shall be accomplished in a manner consistent with California water laws," to ensure that we are respecting State water rights. Obviously we would also have to comply with all existing State and Federal environmental laws, and then we also further go on to state that it provides that the restoration of water supplies for south-of-the-delta Central Valley Project agricultural water service contractors shall be accomplished without reducing deliveries, increasing the cost of, or otherwise adversely affecting other water suppliers and water users that rely on water diverted from watercourses, tributaries to the delta and in the delta.

With that specific language, is that not clear enough or provide direction to you that in meeting the 65 to 70 percent target, that you could not harm any other contractor, or do we need to have even more language in there that would be specific?

Mr. RALEY. Congressman, let me take both of your requests back to the department, and we will discuss them further and be back to you.

Mr. DOOLEY. OK. Thank you. I have a chart that I would like to—is it going up? This, you know, this year quite frankly a lot of the people I represent are very frustrated because of the initial allocations that only got us to the 45 percent, which we contend is clearly inconsistent with the Record of Decision. And to my knowledge these figures are accurate, that we, our 45 percent gives us the 900,000 acre-feet of our deliveries.

And this is in a year where the Bureau of Reclamation said on October 1 we were going to have capacity or water storage in Shasta of 3.5 million acre-feet on October 1. This is 300,000 acre-feet above the maximum carryover that is allowed for flood control purposes. So you are going, with your numbers that you provide us, you are going to have to release 300,000 acre-feet after the water year in order to even get in compliance with your flood control mandates.

And what many of us are concerned with is, it appears that there should have been the ability to have the discretion, if nothing else, to allocate this 300,000 acre-feet, which would have provided for another 15 percent of our deliveries to get us up closer to this 65 to 70 percent. And, furthermore, we point out that 3.2 million acre-feet is the maximum amount that you can carry over.

You know, the biological opinion in 1992 on salmon requires only a minimum carryover of 1.9 million acre-feet, and I have a hard time understanding why there couldn't have been the discretion used that we thought was embodied in the Record of Decision, that could have allowed only 10 percent of that amount, between the 1.9 and the 3.2, to be provided, which could have got us to the 65 or 70 percent.

And I guess it is based on this history and, you know, these examples that doesn't give me a lot of confidence that unless we have some type of language in here that provides greater encouragement to the Secretary to exercise their discretion, in what is an above-average rainfall year, to get our numbers up to above 45 percent. And, you know, what is your response to that?

Mr. RALEY. Well, first, Congressman, both on behalf of the department and personally, we are frustrated as well at the inability so far to meet the dual goals of achieving the environmental benefits and meeting the targets for water deliveries. There are a specific, as I am understanding this, suite of issues. Various parts of them, there are specific positions or factors that have prevented something that happens north of the delta from translating into additional deliveries south of the delta, for example, restrictions on pumping operations and others.

And the bureau has been aggressively going back through all of these issues and sitting down with its sister agencies and the State to relook at prior interpretations and assumptions, to see if

progress can be made on these very sort of issues that the Congressman is right to be perplexed and frustrated by.

Mr. CALVERT. Mr. Radanovich?

Mr. RADANOVICH. Thank you, Mr. Chairman, and good morning, Mr. Raley. Welcome. Good to see you again, and thank you for your work on California water, a real simple subject and very easy to come to agreement on many things.

I just have a couple of questions for you, and need to get something into the record, if I may. Do you know at this time what the water supply allocations would be in percentages for the Friant Water Users Authority, as pertains to Class 1 and Class 2, and the supply for the Cross Valley Canal? I understand that may be announced in a couple of days, but do you know that now?

Mr. RALEY. I understand what it is supposed to be by tomorrow, but as with any Federal decision, there are factors being considered up to the last minute, and I do not want to create expectations that are not met, in part because recent events have caused the bureau to have to go back and reassess many aspects of CVP operation. I would very much like to be able to give you those numbers, but I would like to defer until tomorrow.

Mr. RADANOVICH. OK. If you can send them to me as soon as you are able to do so, I would appreciate it.

Mr. RALEY. If you would like, Congressman, I will call you.

Mr. RADANOVICH. Terrific. I appreciate it.

A couple of other questions. When there is the discussion regarding assurance, especially for the west side farmers, can you tell me whether or not that you will be able to meet the assurances that they are requesting without this being, that requirement being put into law at this time?

Mr. RALEY. What I can tell you is, the experience to date and the information that I have available to me now is that, as I believe I said earlier, I am disappointed to say that I do not foresee in a normal year reaching 65 to 70 percent.

Mr. RADANOVICH. Even with the recent court decision on the (b)(2) allocation, if that hold up through the appeal process?

Mr. RALEY. That is correct.

Mr. RADANOVICH. That is correct? Are you aware—you know, I have never hear of an MOA before. I have always heard of MOUs, memorandums of understanding. I guess what we are hearing about is a memorandum of acceptance between Westlands and Friant Water Districts regarding the issues that keep that area in conflict, a withdrawal of the permit, meeting of land retirement in Westlands, attaining, you know, the assurance requirements, those types of things. You are aware that there is a memorandum of understanding out there right now?

Mr. RALEY. Congressman, the department, like Members of this body, strongly prefer when their constituents work out their differences between themselves, and I am aware that there are efforts moving forward to have those discussions. I am not aware that they are at a level where there is a document that has been agreed to or finalized.

Mr. RADANOVICH. OK. To my knowledge, and I have met with Westlands and the assurance was given to me, and we should probably have the document today, that there is a memorandum of I

think acknowledgement or acceptance or something that they are proposing for Friant to sign as a means of resolving the conflicts between the two water regions.

To my knowledge, and I haven't met with Friant yet, and I am not sure that Friant is in the room and I know that they are not on the panel to testify, but if there is such a memorandum of acceptance, I would like to know, if it is at Friant's doorstep, whether Friant has considered it yet and, if so, what is their answer to that memorandum, but also whether or not they have even received it. And I don't know if there is a way to ask somebody from Friant. I mean, I am not even sure that anybody from Friant is here, but I do know that they are not scheduled to testify, but I would like to get the answer to that information.

Mr. CALVERT. Well, we can certainly keep the record open and have them put in a written response to that question.

Mr. RADANOVICH. OK, because I would like to know the answer to that. My desire is to resolve that conflict before this legislation gets passed, as you know.

Mr. RALEY. Ours, too, Congressman, and so we are very excited about discussions, and we believe that in some cases the best thing for the Federal Government to do is stay out of the way of productive work by the people on the ground.

Mr. RADANOVICH. If there is an agreement or a possibility of agreement out there in some type of form or document, I would request that you become familiar with it, if you don't mind, and also contact both Friant and Westlands just to see what their intentions are regarding that.

Mr. RALEY. I will anxiously do so, because I hope it will allow us to move forward on some of the complex issues that you know better than I, but that I have become familiar with in the preceding 8 months.

Mr. RADANOVICH. OK. Thank you. I do have one other question. It may be premature, but I am wondering if the administration has a viewpoint established between the two versions of bills, the one in the House and the one in the Senate, with regard to their position on water storage.

To my knowledge, the Senate version would set actually a water project further off into the future by requiring more studies before there is implementation of the project. This bill is a little more aggressive in getting those sites established. And knowing the difference between the two, does the administration have a viewpoint as to which one that they would prefer to see at their desk?

Mr. RALEY. The administration's position on this issue in general is limited to that articulated by the Secretary last summer, but I can also say that we are committed to the principle of balance, as I alluded to in my opening remarks, balance amongst the many goals, including storage and environmental restoration.

Mr. RADANOVICH. I would request the administration to side in favor of a bill that is more aggressive in water storage. I think the administration is going to have to weigh in on this because California has proven itself, on both electricity and water, to stick its head in the sand and ignore reality until we have emergencies. And it is my desire to get a bill that is very aggressive on getting water storage in as soon as possible, and I wish—I would like to

see the administration weigh in on that and be an influence in making sure that we end up with a bill like that.

Mr. RALEY. I will take that personally to the Secretary.

Mr. RADANOVICH. Thank you, sir. Thank you.

Mr. CALVERT. I thank the gentleman.

Ms. Solis?

Ms. SOLIS. Thank you, Mr. Chairman. I have two questions.

Mr. Raley—what are the implications of the recent (b)(2) court decision for the State water project and for the urban Southern California Water Project, and will that in effect result in some major revisions, if you could elaborate?

Mr. RALEY. Congresswoman, I am not trying to evade your question, but given that your focus is its effect on the State side of it, I prefer to defer to my colleague from the State of California, because I can address the efforts we are proceeding with to address that issue to the Federal agencies, but the State agencies have a separate role and I don't want to impinge on their prerogatives. If that is—maybe I misunderstood your question.

Ms. SOLIS. That is fine, but I also want to touch on the fact that you do have a responsibility for implementation in urban areas, so it isn't just specifically to Southern California, but can you shed any light on that?

Mr. RALEY. Well, I apologize for misunderstanding the question. We very acutely understand that responsibility, and that is the very reason that we had a meeting, and with the responsible agencies, to ensure that they report to us on what their position is on this critical issue of the impacts, if any, of the court's (b)(2) decisions on the operations of State and Federal components of the water supply for the Central Valley.

Ms. SOLIS. I want to go back and also ask, for my own clarification here, if the administration will be appealing the court ruling and taking steps to uphold the decision.

Mr. RALEY. The administration has not made a decision on any aspect of future legal proceedings or options for the court's ruling. However, it is my understanding that it is a final court order and that absent additional steps, we need to comply with it.

Ms. SOLIS. And will your department collaborate with the Assistant Secretary for Indian Affairs to ensure that Native American rights and interests are also protected?

Mr. RALEY. We have had specific discussions, I have personally had discussions with Assistant Secretary McCaleb and his staff about CALFED in general and specific issues that have arisen as time has progressed, and we will continue to do so.

Ms. SOLIS. One of my concerns deals more with the restoration aspect and how we are still going to continue to meet the intent of the law and environmental issues and Endangered Species Act requirements. How we are going to continue to meet the intent of the law, the 800,000 requirement that we still have to abide by.

Mr. RALEY. My understanding is, and I may not be aware of something, but Section (b)(2) of CVPIA and the remainder of CVPIA remain in full force and effect. What the court has done is concluded that the implementation and the accounting system for certain aspects of that wasn't within the scope of the law, but the 800,000 acre-foot component of CVP, I am not aware of any basis

for concluding that that does not remain to be one of the many legal requirements applicable to the Central Valley Project.

Ms. SOLIS. So you will continue to move down that path, see that we do stay on course and meet the parameters of the law?

Mr. RALEY. Yes, ma'am.

Ms. SOLIS. Thank you.

Mr. CALVERT. I thank the gentlelady.

Mr. Walden?

Mr. WALDEN. Mr. Chairman, I have no questions for the witness. I just hope that you resolve the CALFED situation so that Mr. Raley can solve the Klamath Basin situation.

[Laughter.]

He has been most helpful in that endeavor. Thank you.

Mr. CALVERT. Thank you.

Mrs. Napolitano?

Mrs. NAPOLITANO. Thank you, Mr. Chair.

There are several questions that I had that have already been addressed, but one of the major areas of concern is, how is Judge Wanger's decision going to affect Southern California's ability to meet the 4.4 plan, which was a requirement of the Department of the Interior agreement with the State?

Mr. RALEY. Congresswoman, I am not aware that any aspect of the court's decision will adversely affect the State of California's ability and need to comply with the deadlines and components of that suite of agreements, but then the decisions—

Mrs. NAPOLITANO. I am not speaking of the agreements. I am speaking of the water supply to Southern California.

Mr. RALEY. I am not aware of any negative impacts, but then we are still studying and trying to understand the implications of the judge's decision. We are going to follow it. We just, with something as complex as CVP, it takes some time to understand how that translates into deliveries and other operational decisions on the ground.

Mrs. NAPOLITANO. I certainly would want to make sure that that is not forgotten when you are doing the review and the translation of what it actually will affect.

Mr. RALEY. I can assure you that both issues are at the forefront of our list of priorities.

Mrs. NAPOLITANO. And then to what extent is the administration prepared to commit to solving this issue, and what timeframe do you have in mind?

Mr. RALEY. I am sorry, Congresswoman, which issue? The California 4.4 issue or the—

Mrs. NAPOLITANO. No, no, no. The (b)(2) decision of the judge.

Mr. RALEY. We have engaged multiple agencies that have responsibility with respect to (b)(2) accounting, and as well as the entire CALFED ROD, to develop an administration position on what the implications of that decision are. We have communicated with the State of California. In fact, the very evening that I heard about the decision, I talked to representatives from the State to commit to working through this with them, and we are just simply going to proceed and not allow anything to take us from the course of staying with the concepts of the ROD.

Mrs. NAPOLITANO. That is great, and given the fact that we are going to be facing time constraints in the State of California in regards to water, what timeframe do you have in mind? What can you guesstimate, if you will, even if it is—is it several months? Is it a year? Is it—

Mr. RALEY. Well, there are two operative dates. The first is, tomorrow the bureau will announce its decision with respect to allocations, which obviously has implications, some implications for the State and the State project.

Second, Secretary Nichols and I are working to clear our calendars and find a time so that we can have a multiday working session in California to make some decisions and move on.

Mrs. NAPOLITANO. So, in other words, it is immediate. It is pending. It will be in a mode of moving forward immediately.

Mr. RALEY. Yes, ma'am.

Mrs. NAPOLITANO. OK. Thank you. Thank you, Mr. Chair.

Mr. CALVERT. I thank the gentlelady.

Mr. Macaulay, I have a couple of questions and then we can move on.

What is the State of California willing to do to help the Central Valley Project meet its obligations for water supply south of the delta to CVP water users?

Mr. MACAULAY. Mr. Chairman, we are working with the bureau on a number of ventures. First is the Joint Point of Diversion, which I detailed in my written and oral testimony, which is simply getting permission from a regulatory agency in California for our project to pump water for the Federal project. We are also moving forward aggressively to help South Delta farmers continue to divert from South Delta channels, so that the lower water levels which are caused by the additional pumping won't hurt them.

The second thing we are doing is certainly supporting the bureau in a number of separate efforts they are working on, which are detailed in Mr. Raley's testimony, such as surcharging San Luis Reservoir this year, an idea the San Luis and Delta-Mendota Water Authority has come up with to raise the lining in the Delta-Mendota Canal for about a half a mile, and a number of other specific issues.

Mr. CALVERT. Please explain how the State identified opportunities for a more flexible operation of the State Water Project, so that water supplies can be increased and made more reliable while still providing appropriate ecological protection and improvement. And do you believe the methods could have application to the CVP? And maybe follow up on some of the comments that Mr. Raley made in relation to that.

Mr. MACAULAY. Well, I would say two points. Near term, we are continuing to work on Joint Point. And again, as I indicated in my testimony, we have pumped more than 5 million acre-feet for the bureau, averaging a quarter of a million acre-feet a year. We are going to continue to do that, and as much as we possibly can beyond that.

Second thing, long term, is we are making large investments, hundreds of millions of dollars of investments in new facilities in the southern delta, to be able to more efficiently use our own

pumping plant, which allow us to pump more water for our customers and to pump more water for bureau customers.

Congressman Dooley's chart I think really does make the case for why these South Delta long-term facilities are needed. That 300,000 acre-feet in Shasta could move south of the Delta in the fall, later on this year, if we had the capability of pumping that water through the Delta. That requires better fish screens, permanent operable barriers to protect South Delta farmers as a result of the impacts of pumping more water, and some separate on-the-ground ecosystem restoration measures in and around the pumping plant.

Mr. CALVERT. Thank you.

Mr. Dooley, you have any follow-up questions?

Mr. DOOLEY. Yes, I do.

Mr. Macaulay, when you—in your oral statement I thought I understood you to say that you were hoping that we could initiate some scientific investigation that could aid us in our operation enhancements. Is that basically what you said, something of that nature?

Mr. MACAULAY. Yes, but if I may add to that, science has been an underpinning of the CALFED program since its inception, and perhaps Executive Director Patrick Wright will speak to that. So it is nothing new. I mean, that aspect of science, aggressive science, is new to us in California only in the last year and a half since the ROD. We need stronger support for that science program, and again, real world science where you have a better understanding of what makes fish populations react. It is not just, as we all have heard for many years, "take at the pumps."

Mr. DOOLEY. And that leads to, I guess, my next question, where you were talking about we could have utilized perhaps some of that water if we could increase the capacity at the pumps.

And I guess, Mr. Raley, what I am concerned is, we have—the most recent 50 percent forecast shows that in June exports will be reduced to approximately 36,000 acre-feet, and this rate of exports is nearly 200,000 acre-feet below the permissible level. And has Interior done an analysis of the benefit to the fishery resulting from this export reduction? I mean, it is really on—I mean, if I hear Mr. Macaulay right, we don't have some of this information that is allowing us to make some of these decisions as well as we would like.

Mr. RALEY. I think I would prefer to characterize it as that we believe that we may now have better information that existed at the time those decisions were made, and that is the reason why I had suggested to CALFED that we consider a review of those assumptions and an implementation of not only the term but the practice of adaptive management, so we can make better decisions and learn from the science we have developed in the interim. So we are going to be pursuing that effort to make sure that we are using the right science.

Mr. DOOLEY. And I guess, you know, and, you know, I have requested the Secretary request NAS to do a study, similar to what they did in Klamath, because what we found in Klamath is that when they had researched and assessed some of the decisions that were being made there in terms of water allocation in order to

protect fish, they found out that they weren't based on really sound science.

And that is my concern here, is that if we would increase the pumping capacity just in June, that would provide another 10 to 15 percent of water allocation south of the delta. And, again, this, you know, is what some of us think, you know, where we can get into the discretionary authority.

And I guess one other point I want to make, just to clarify where the administration's position is on the assurances language—and you might not be able to answer this point—but I met recently with some people that were representing a Friant irrigation district, that said that there were bureau officials who stated that they could not—or they implemented the assurances language in the CVP, that Friant would lose water to Westlands. Is that a department position?

Mr. RALEY. It is not.

Mr. DOOLEY. Thank you. One other issue is, in terms of—on the Record of Decision, there was a lot of attention given to the Environmental Water Account and how this could be coupled with (b)(2) to be used to meet the 65 to 70 percent water delivery south of the delta. And my question is, is the Interior—do they anticipate using the EWA account to increase allocations south of the delta to ag contractors?

Mr. RALEY. We want to use all the tools available to reach the target of 65 to 70, including the Environmental Water Account and some of the other issues that you pointed out and others have pointed out to us in the preceding months.

Mr. DOOLEY. So at this point the bureau has not—I mean, the bureau does not—does the bureau intend to provide, to utilize EWA to meet this 65 to 70 percent? I mean, you made an allocation, you know, just recently that was at 45 percent. I mean, we have, you know, CALFED participating in an EWA. I mean, is there—you know, is it not department policy to provide that, you know, to use some of that water to meet that 65 to 70 percent?

Mr. RALEY. From the department's perspective, we want that Environmental Water Account used most efficiently, but in terms of it being—this is one of those issues that the department does not have the final or the only say on the management of the Environmental Water Account. That is managed through the structure of CALFED, and so we don't have the ability, Congressman, to simply say, "This is how the Environmental Water Account will be used." We have to work with our partners.

Mr. DOOLEY. To your knowledge, last year was any EWA used to get up to, to try to get to the 65 to 70 percent for south-of-delta ag contractors?

Mr. RALEY. There were certainly attempts. I have had incomplete—just simply they have not had the opportunity to complete the analysis of the actual benefits to south-of-the-delta deliveries resulting from the operation of the EWA, and that is an issue that was brought to my attention several months ago, and it is one that we are pursuing.

Mr. DOOLEY. I guess, you know, and this is just a closing statement, that, you know, I mean, we sat through numerous hearings on the Record of Decision and how that was going to provide great-

er assurances and certainly water deliveries. We were told that the department is going to have the regulatory discretion at the 65 to 70 percent. They were promoting the Environmental Water Account as another tool that was going to provide water south of the delta.

Now, the record to date is, is that we haven't seen the discretion to get to the 65 to 70 percent. The record to date also doesn't demonstrate there has been any EWA water that has been provided south-of-delta to ag contractors. And so, you know, it is—you know, this is creating, you know, just an environment of distrust among a lot of my constituents on whether or not there is a real commitment, you know, to implement this Record of Decision in a manner that does, you know, provide greater certainty to a lot of the folks that I represent in the San Joaquin Valley.

Mr. CALVERT. I thank the gentleman.

If there are no further questions for this panel, we will have a list of questions that will be submitted to you, and if you could answer those in writing, I would like to get to the second panel in the interests of time.

Mr. RALEY. Mr. Chairman, I would be happy to do so, and will try to do so in a timely fashion.

Mr. CALVERT. We thank both of you for your time, and look forward to working with you in the future.

Next we have our next panel: Mr. Patrick Wright, the Director of the CALFED Bay-Delta Program; Mr. Dan Nelson, the Executive Director of the San Luis and Delta-Mendota Water Authority; Mr. Walter J. Bishop, the General Manager of the Contra Costa Water District; Mr. Edward R. Osann, consultant representing the National Resources Defense Council; and Mr. John Stovall, General Counsel, Kern County Water Agency; and Timothy Quinn, Vice President, State Water Project Resources, Metropolitan Water District.

If everybody is situated, we will start off with Mr. Wright. You can begin your testimony when you are able. Thank you.

STATEMENT OF PATRICK WRIGHT, DIRECTOR, CALFED BAY-DELTA PROGRAM

Mr. WRIGHT. Thank you, Chairman Calvert, and thank you all for inviting me to testify here today with my State and Federal colleagues and stakeholders on the CALFED Bay-Delta Program, and more specifically on water project operations in California. I have included in my written testimony a summary of the Bay-Delta Program's approach to meeting the State's long-term water needs, and you have heard a great deal of testimony already from my State and Federal colleagues with respect to their specific plans on water project operations this year.

As you know, the CALFED Bay-Delta Program has launched the largest and most comprehensive water management plan in the Nation. The framework for California's water future we believe is a balanced and integrated approach to reducing conflicts over our limited supplies and to address the State's long-term water needs.

The key to its success, as you will hear today, is we need the leadership of the State and Federal agencies. We need Federal, State and local funds. And, most importantly, we need to continue

to meet the ambitious deadlines and commitments that are in the plan.

As the plan was being put together, the greatest challenge in retrospect was not developing the long-term plan, as contentious as that was. We concluded early on that the key to meeting the State's long-term water needs was to develop a diversified set of water sources, as many of the local agencies in California are doing: everything from surface storage to ground water storage to recycling to water conservation, every tool that we have at our disposal.

The biggest challenge was dealing with conflicts over our existing supplies until those investments begin to pay off. In each of the 2 years, actually several years before the CALFED plan was adopted, we had major crises annually over water project operations: A Delta smelt crisis 1 year, a Delta Cross Channel crisis with salmon the next year. We simply do not have the flexibility in our current system to meet all the competing needs.

And so, again, we are confident that in the long term we can meet those needs, but we recognize increasingly that if we can't meet the immediate commitments in the plan, we are not going to have the credibility of the stakeholders and the Congress and the legislature to develop those long-term solutions.

So the CALFED plan included several short-term commitments to try to deal with that problem, first by investing heavily in infrastructure improvements. We invested, in each of the last 2 years, over $300 million for water quality, water supply projects. We developed a drought contingency plan and facilitated the transfer of over 300,000 acre-feet last year to areas in need. We developed an innovative Environmental Water Account that for the first time ever provided assurances to all south-of-delta water users that their supplies would not be further reduced because of Endangered Species Act requirements.

And, finally, and what I hope will be most important is, by hiring elite scientists and developing an independent science program, we are going to make sure that we have independent science attached to all elements of the program. We have already conducted independent reviews of workshops on Delta smelt, on salmon, on splittail; a 3-day workshop on the Environmental Water Account and how the agencies are allocating that water.

These and several other workshops underway are leading to fairly fundamental changes in how the system is likely to be operated. And as Secretary or Assistant Secretary Raley described, we are planning a series of workshops in April to specifically focus on water project operations and the science that underlies them.

The key, as he said, is to integrate science into our regulatory programs, not have panels come in later and second guess decisions after they are made. That process is well underway, and hopefully it will be accelerated.

We have not been successful, however, in meeting the goal of increasing supplies to south-of-delta CVP contractors. We understand that this target is going to be difficult to reach. In the last several weeks and months we have had a number of discussions with the agencies and the stakeholders on how to do that.

I think, to sum it up, the general consensus is, everyone supports meeting the goal but no one wants to share the risk, from the Santa Clara Water District that is worried about its quality and supply, to the State water contractors that are concerned about the impacts on having them provide too much flexibility, to the south-of-delta farmers who are worried about increasing pumping and the impacts it is going to have on them, and all round the table folks are concerned about the risk that is out there.

It is clear to me, then, as you heard from Secretary Raley, that we need to pull together the leadership of the agencies fast and put together and operations plan, a new plan that puts us back on track toward meeting the commitments that are in the plan while minimizing impacts to the other users.

Our goal should be to meet three objectives: One, we have got to protect fish. Two, we have got to meet the 65 to 70 target. And, three, we have got to maintain water supply reliability assurances for the rest of the contractors south of the delta. Unless we achieve all three goals, we are simply trading instability in one area for instability in another.

I am confident that we have got the tools and we have got the energy and the resources to do it. We simply need to get the leadership together to put together a plan that gets us there. To put it simply, the credibility of the program, and certainly the reauthorization and our other funding requests depend upon us showing that we are serious about meeting the commitments that are in the plan.

Thank you again for hearing my testimony.

[The prepared statement of Mr. Wright follows:]

Statement of Patrick Wright, Director, CALFED Bay–Delta Program

Thank you for inviting me to testify on the CALFED Bay–Delta Program and water project operations in California. I have attached to my testimony a summary of the CALFED Bay–Delta Program's approach to meeting the state's long-term water needs, and will defer to the testimony of my state and Federal colleagues to provide you with more detail on water project operations this year.

In summary, the CALFED Bay–Delta Program has launched the largest and most comprehensive water management plan in the nation. The Framework for California's Water Future is a balanced and integrated approach to reduce conflicts over our limited supplies and to address the state's long-term water needs.

It calls for the most aggressive water conservation program in the nation, together with specific timetables for developing over six million acre feet of new water storage projects the biggest investment in the state's water infrastructure in 40 years.

The key to its success will be maintaining and strengthening the leadership of the agencies and stakeholders; securing Federal, state, and local funds; and meeting the ambitious deadlines and commitments in the plan.

Our greatest challenge in putting the plan together came in developing short-term strategies to increase the reliability of supplies while the long-term infrastructure investments are being made. In each of the years preceding adoption of the CALFED plan, we had major crises over water project operations that undermined public confidence in the Program.

The CALFED Program addressed this challenge in several ways:

- By investing in short-term improvements in water supply reliability and water quality. Last year, we allocated over $300 million to water districts throughout the state.
- By developing a drought contingency plan, and facilitating the transfer of over 300,000 acre feet.
- By developing an innovative Environmental Water Account to set aside water for fish without reducing allocations to other users. Last year, for the first time ever, south-of–Delta contractors received commitments that their supplies would

not be reduced during the spring and summer because of additional regulatory restrictions.

- And by hiring a lead scientist and launching a science program to provide independent reviews of all aspects of the program. This past year, the science program conducted independent reviews of the science surrounding both our listed species—Delta smelt and salmon, and a candidate species—Sacramento splittail, and conducted a thorough, 3-day review of the science underlying use of the Environmental Water Account for listed species. These and several other workshops, including a series of studies on the operations of the Delta Cross Channel, are leading to fundamental changes in our thinking about how the Delta functions. We are now planning a 2-day workshop in April to consider the recommendations from these independent evaluations, and to further review the science surrounding water project operations and the Delta.

We have not been successful, however, in meeting our goal of increasing supplies to south-of–Delta CVP contractors. The CALFED Plan anticipated that a series of operational measures and cooperative water management actions would increase allocations by 15% to these contractors, which would increase their allocations to 65–70% of contract totals.

We understand that this target is going to be difficult to reach. In fact, during the last several weeks and months, virtually every interest group has expressed concern about one or more of the measures under consideration to meet this target from the Santa Clara Valley Water District, which is concerned about the potential risk to the quality and reliability of its supplies; to the farmers in the South Delta, who are concerned about the potential impacts to water levels in the Delta from increased pumping; to environmental groups, who are concerned about the potential risk to Delta fisheries. Each of these groups supports the goal, but no one wants their supplies to be at risk.

It is clear, therefore, that we are going to need the leadership of the agencies to sort through the alternatives under consideration and develop an operations plan that puts us back on track towards meeting the commitments in the plan, while minimizing impacts to other users. That's why I strongly endorse Assistant Secretary Raley's call for the agencies to develop a new plan as soon as possible. To put it simply, the credibility of the Program depends on it.

Thank you again for hearing my testimony.

[An attachment to Mr. Wright's statement follows:]

ATTACHMENT 1

SUMMARY OF CALFED BAY–DELTA PROGRAM'S APPROACH FOR MEETING LONG–TERM WATER NEEDS

The Subcommittee's recognition that water needs in California exceed the reliable supply of the State is indicative of the importance of this issue. The CALFED Bay–Delta Program concluded its five-year planning phase last year and has started implementation of a program that may take several decades to complete.

As a brief background, California's water managers must deal with highly variable conditions. Most of the natural runoff originates from rain and snow during the winter in the northern part of the state while the largest population centers are in the southern part of the State. The natural runoff changes widely from season to season and from year to year, requiring water storage and conveyance facilities to redistribute water to the drier periods and locations. Water needs continue to grow with increasing population and evolving environmental flow requirements while some water supplies, such as those from the Owens Valley and the Colorado River, have actually decreased. To make management of these conditions even more difficult, there has been only limited expansion of California's water supply system during the past three decades.

However, finding solutions to water reliability problems in the 21st Century requires looking beyond simply adding new facilities. While facilities are needed, CALFED's approach is to consider the system as a whole, with all its interrelated parts. This includes better operation and management of the existing system, better use of existing water supplies, and simplifying the procedures and safeguards so water users can willingly transfer water to other users. The CALFED approach also requires a change in how we define water needs and water supply reliability.

Overview of California Water Needs

Traditionally, many people have viewed water supply reliability by looking at the size of the "gap" between estimated water needs and the amount of water the

system can provide each year. In this context, a large gap means the system has low water supply reliability. The latest California Water Plan Update (1998) estimates that by year 2020, the need for water could be 2–6 MAN larger than what the system can supply. While some might dispute the magnitude of this gap, most agree that in at least some regions of the state, the economy, environment, and lifestyles will change significantly for the worse if appropriate measures and actions are not taken. Other considerations are needed to convey a comprehensive picture of water management issues facing California:

- First, the water system must be considered as a whole. At CALFED, we are often asked how much additional water supply a new reservoir might add. Due to the complexity of the system, there is not a single answer and it greatly depends on how the project is integrated into the system. For example, Southern California may not benefit from water supply created from a new Sites Reservoir in Northern California unless South Delta Improvements are implemented and Delta export capacity is increased. However, operation of Sites Reservoir for local agricultural supply and to—improve operational flexibility for the Environmental Water Account would give a different answer for water supply reliability.
- Second, California water management goals go beyond trying to balance projected water needs and supply. Simply looking at the size of the gap does not acknowledge that water supply reliability includes other goals. For example, improved water quality, the need to preserve flood control and power generation values, and the need to improve flexibility so project operations can be changed as needed to better response to unforeseen conditions are all important parts of a reliable system. In addition, the cost of new water supplies can affect the size of the gap.
- Third, there are other tools (beyond new storage and conveyance facilities) that must be used to help meet California's water management goals. Examples include:
  - * Improving the integration of operations of the State and Federal water projects with regional projects. For example, the new regional groundwater projects developed by local districts could be coordinated with S.P. and CVP operations to improve system-wide operations.
  - * Facilitating transfers between willing parties to reduce the economic consequences of critical water shortages.
  - * Water conservation and reuse to make better use of existing supplies.
  - * Improve environmental conditions to limit the need for further environmental water requirements.

Approach to Providing for Water Needs

Our approach to providing for water needs includes broad planning for the California Water Plan Update and more specific implementation by a cooperative effort of CALFED agencies and local and regional water districts.

California Water Plan Update—The State is continually working on 5-year updates to the California Water Plan Update to provide a broad overview of Statewide water use, existing supply facilities and programs, and options for improving water supply reliability. More specific planning, such as the ongoing Colorado Water Use Plan, will be included in the next revision to the California Water Plan Update in 2003.

Colorado Water Use Plan (formerly the Colorado River 4.4 Plan)—For many years, southern California has used 5.2 million acre-feet of Colorado river water annually to supply urban and agricultural users, far exceeding its allocated share of 4.4 million acre-feet. The Colorado Water Use Plan provides "its Colorado River water users with a framework by which programs, projects and other activities will be coordinated and cooperatively implemented allowing California to most effectively satisfy its annual water supply needs within its annual apportionment of Colorado River water."

CALFED Plan—The CALFED Program's commitment to a balanced and integrated approach is what sets this effort apart from any other large-scale water management program in the nation. Attachment 2 provides a map and list of water supply reliability highlights accomplished during our first year (2000–2001) since the CALFED Record of Decision. The Program has made significant progress to improve California's water supply reliability by providing grants and loans totaling about $200 million. The map demonstrates that we have been able to make progress throughout the CALFED solution area extending the length of the State. During Stage 1 (first 7 years following the ROD), the CALFED Program will continue to make significant progress on:

- Operational improvements of the existing system such as the Environmental Water Account and Joint Point of Diversion.
- Conveyance improvements to allow more efficient and timely movement of water to areas of need.
- Groundwater storage projects in cooperation with local water districts to expand dry year water supply and conjunctive use groundwater with surface water supplies.
- New and expanded surface water storage to benefit all water users, including the environment. Attachment 4 includes a summary of how CALFED is proceeding with the five surface storage projects identified in the ROD.
- Facilitate water transfers between willing parties.
- Water quality improvements to make water available for more uses and reuses
- Watershed projects to improve runoff conditions.
- Projects to improve environmental health of the system and reduce the conflict between environmental and agricultural/urban uses of water.
- Regional implementation strategies that include incentive funding for local groups to develop collaborative, multiple purpose projects to meet their needs. Examples include the Sacramento Valley Water Management Agreement and the Bay Area Blending and Exchange Project.

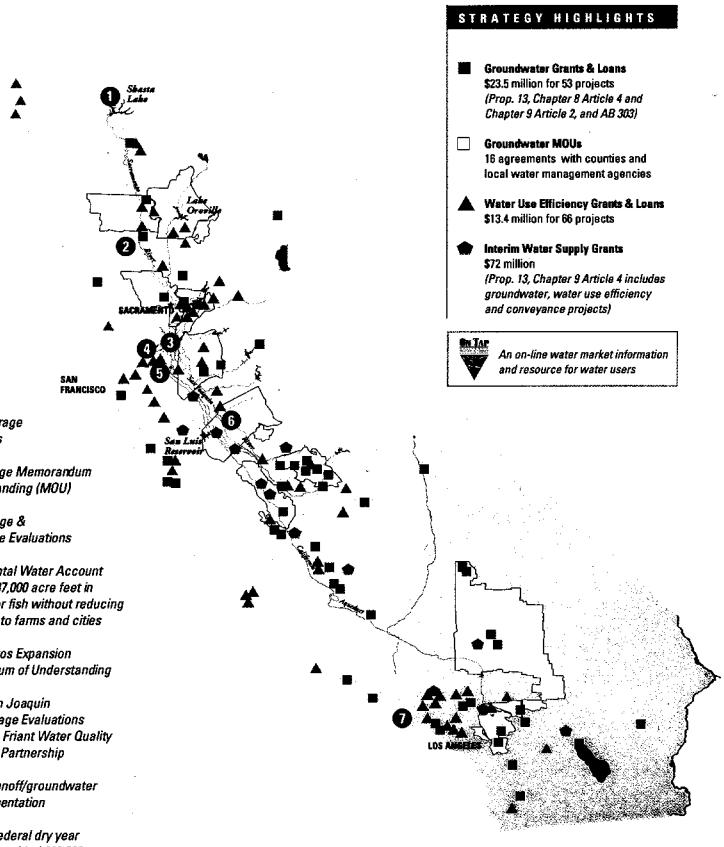
We have made projections in potential improvements in water supply reliability that are likely by year 2010 from the Program assuming continued funding. Attachment 3 includes a chart showing potential improvements of approximately 3 million acre-feet annually by 2010. The chart is accompanied by a ballpark indication of the magnitude of contribution to the water supply reliability from a variety of water management actions.

Local and Regional Planning—Beyond CALFED, there are other locally and regionally focused planning processes that help improve California's water supply reliability. A number of recent projects have been designed to provide important additional storage for regional and local water systems. The recently completed Diamond Valley Lake provides 800,000 acre-feet of additional storage for Metropolitan Water District. Projects like this can significantly enhance the reliability, particularly when combined with improved operations of the State and Federal projects.

[Attachments 2, 3, and 4 follow:]

Attachment 2

2000-2001 CALFED WATER SUPPLY RELIABILITY HIGHLIGHTS



1. *Shasta Storage Evaluations*
2. *Sites Storage Memorandum of Understanding (MOU)*
3. *Delta Storage & Conveyance Evaluations*
4. *Environmental Water Account provided 287,000 acre feet in transfers for fish without reducing allocations to farms and cities*
5. *Los Vaqueros Expansion Memorandum of Understanding*
6. *• Upper San Joaquin River Storage Evaluations*
   • MWDSC - Friant Water Quality Exchange Partnership
7. *LA urban runoff/groundwater study augmentation*
8. *State and federal dry year programs provided 298,000 acre-feet to water short areas*

Attachment 2 (continued)

WATER SUPPLY RELIABILITY

PURPOSE

- Water Supply Reliability encompasses an array of projects and approaches to expand water supplies and ensure efficient use of the resource

GOALS

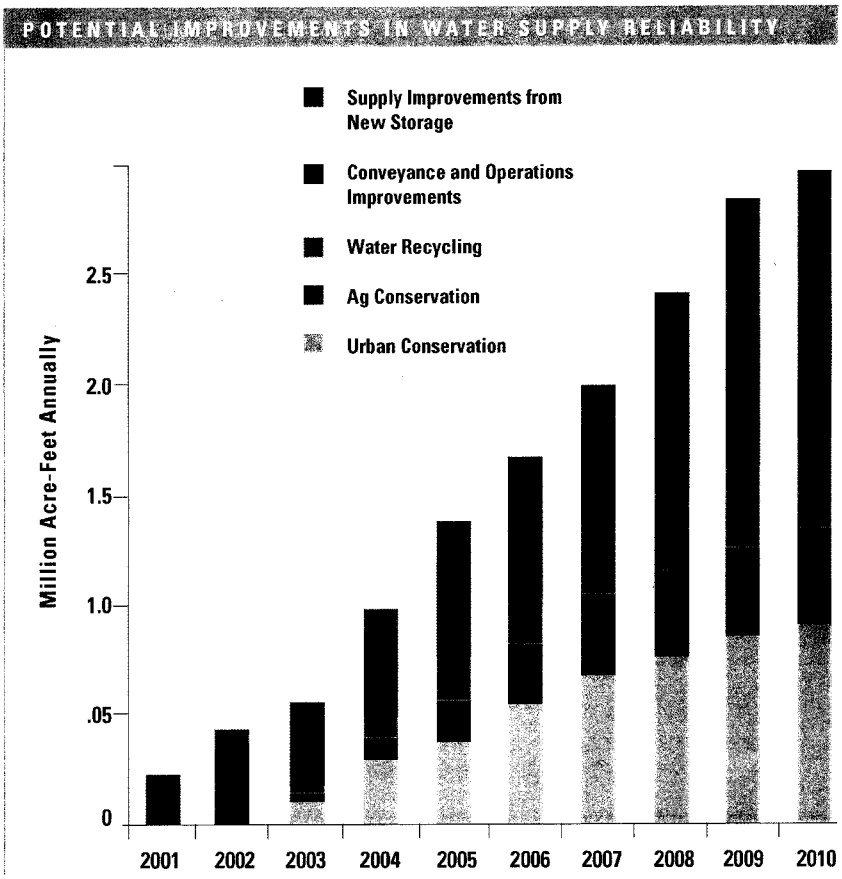
- Working with local and regional agencies, the Program has identified actions that could increase California water supplies by nearly 3 million acre-feet over the next 10 years—enough water to meet the needs of 6 million families annually

ACCOMPLISHMENTS

The CALFED Program made significant progress in the first year to improve California's water supply reliability by providing grants and loans totaling about $200 million, which will improve statewide operational flexibility and increase water supply reliability and improve water quality

- **Storage**
  - Initiated or continued planning studies of 5 surface storage projects: Shasta enlargement; Sites Reservoir; In-Delta Storage; Los Vaqueros Expansion and Upper San Joaquin Storage. Completed Memoranda of Understanding with local partners for Sites Reservoir and Los Vaqueros Expansion planning studies
  - Completed 16 Memoranda of Understanding or Letters of Intent with 30 local agencies throughout the state to study groundwater storage improvements
  - Allocated $74 million in loans and grants to local agencies for planning and implementation of groundwater storage improvements
- **Conveyance**
  - Continued design of the Tracy Fish Test Facility to provide critical data on the effectiveness of screening state and federal water project facilities in the South Delta
  - Continued planning and design of permanent fish barriers to Clifton Court Forebay operable tidal and fish barriers in an effort to increase periodic pumping to 10,300 cubic feet per second
- **Transfers**
  - Provided public information and disclosure throughout the year for the "ON TAP" web site, an on-line water market information resource for water users
  - Oversaw development of a standardized method to establish transferable water
  - Continued meetings of interested stakeholders to address and resolve water transfer issues and explore changes to existing law
- **Water Use Efficiency**
  - Awarded $13.3 million for 65 projects—including 37 urban and 28 agricultural
  - Moving forward in defining "appropriate measurement" of water usage and certification of urban Best Management Practices
  - Continued refinement of quantifiable objectives regarding oversight and coordination for agricultural water use

Attachment 3



Attachment 3 (continued)

Potential Improvements in Water Supply Reliability

Water Management Action	Acre-Feet/year
Water Use Efficiency (first 7 years)	
Urban Conservation	520,000 to 690,000
Agricultural Conservation	260,000 to 350,000
Water Reclamation	255,000 to 310,000
Potential Increase from Water Use Efficiency	**Up to 1.4 Million Acre-Feet/year**
Conveyance and Operational Improvements	**Up to 600,000 Acre-Feet/year**
Includes: SWP Pumping of (b)(2) Upstream Releases, Export/Inflow Ratio Flexibility, Increased Banks Pumping Plant Capability, Joint Point of Diversion, and San Luis Bypass	
Potential Increase from New Storage	**600,000 to 900,000 Acre-Feet/year***
Total Potential Increase in Water Supply Reliability from Water Use Efficiency, Conveyance and Operations Improvements, and New Storage:	**Up To 2.9 Million Acre-Feet/year**

*Storage Capacity versus Water Supply Reliability

Total increase in storage capacity is not a direct measure of increased water supply reliability. The estimate of increased water supply reliability provided here is the quantity of water expected to be available annually from new storage during extended dry periods.

New storage capacity would also be used to provide improved flows and reduced effects of diversions for fish, improved water quality, and improved conjunctive management of surface and groundwater.

Potential New Storage Capacity*

CALFED Storage Projects	Acre-Feet
Enlarge Shasta Lake	300,000
Enlarge Los Vaqueros Reservoir	400,000
In-Delta Storage	250,000
Sites Reservoir	1,800,000
Upper San Joaquin River Storage	250,000 to 700,000
Groundwater Storage and Conjunctive Use	500,000 to 1,000,000
Total Potential New Storage:	**4.5 Million Acre Feet**

Attachment 4

CALFED SURFACE STORAGE PROGRAM PROJECT SUMMARIES

Shasta Enlargement

Shasta Lake and Dam

Description: Shasta Reservoir could be enlarged by 290 TAF by raising Shasta Dam 6.5 feet at an estimated cost of $170 million. Benefits would include increased cold water reserves for downstream fishery benefits, enhanced operational flexibility to maintain instream flows and water quality, and up to 40 TAF of dry year water supply. About 2,000 acres of habitat would be inundated, including a portion of the McCloud River that is protected under California Public Resource Code 5093. Some candidate species for State and federal listing and species of special concern would be affected.

Status: USBR, in coordination with DWR, is conducting studies to evaluate the feasibility, impacts and mitigation strategies for the proposed Shasta Enlargement project. Coordination continues with local landowners on the McCloud River arm to conduct environmental surveys in order to address issues concerning adverse impacts to the wild and scenic status. USBR, with assistance from DWR, will continue to complete hydrologic and hydraulic studies necessary to assess impacts to the McCloud River. If the project will adversely affect the McCloud River, as described in Public Resources Code 5093, State agencies will be unable to issue permits or otherwise participate in project implementation.

Sites Reservoir

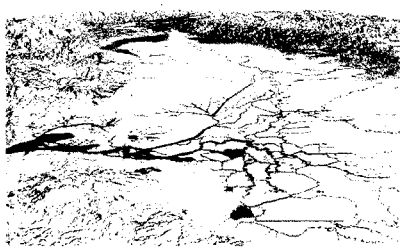
Sites Reservoir Footprint

Description: Sites Reservoir, a North of the Delta Offstream Storage alternative, with a storage capacity of up to 1.9 MAF, would serve as an offstream storage reservoir filled primarily through pumped diversions from the Sacramento River and its tributaries. Costs of the project are estimated at a minimum of $800 million; the cost could be higher depending on the choice of conveyance facilities. This new storage could provide enhanced operational flexibility for managing fisheries and water quality, improved Sacramento River diversion management, and up to 270 TAF of dry year water supply. Footprint impacts appear to be minimal, with the most significant loss of wildlife habitat being about 900 acres of oak-woodland and up to 70 acres of potential fairy shrimp habitat.

Status: Public scoping for the North of the Delta Offstream Storage Project has been completed and work is underway to complete feasibility studies and prepare environmental documentation by the end of 2004.

In-Delta Storage

Description: The Delta Wetlands project would convert two Delta islands (Webb Tract and Bacon Island) comprising 11,000 acres into surface storage facilities and two islands (Bouldin Island and Holland Tract) comprising 9,000 acres into managed habitat. Together, the two storage islands would provide approximately 220 TAF of new storage capacity. Cost of the project is estimated at $770 million as re-engineered by DWR and USBR, although reducing the maximum diversion capacity could lower the overall cost while maintaining the benefits of the project. Storage in the Delta would provide enhanced operational flexibility for managing Delta fisheries and water quality problems, up to 120 TAF of average annual water supply and up to 55 TAF of dry year water supply.



California Bay-Delta Relief Map

Status: A feasibility evaluation was conducted consistent with the CALFED ROD directive to review the Delta Wetlands (DW) Project. DWR and USBR reviewed information provided by the DW Properties Inc., including information presented in the EIS/EIR. In conducting this evaluation, DWR and USBR recognize that any large project undergoes modifications of project features and design details throughout the various phases of development. In this light, DWR and USBR have concluded that the project concepts as proposed by DW are generally well planned. However, the project as proposed requires modifications and additional analyses before it is appropriate to "initiate negotiations with DW Properties or other appropriate owners for acquisition of necessary property." (CALFED ROD, page 44). DWR and USBR plan to work with DW Properties and other stakeholders to identify design or configuration changes that could make the project feasible for public ownership. A project management plan including details of study tasks to be completed in the next phase of the investigation is being developed.

Los Vaqueros Reservoir Enlargement

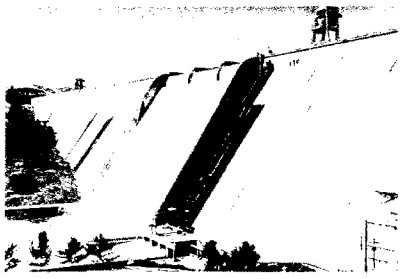
Description: Los Vaqueros Reservoir is an offstream storage facility located near the Delta in Contra Costa County. The existing Los Vaqueros Reservoir has a storage capacity of 100 TAF; an enlargement up to a total storage volume of 500 TAF is being considered by CALFED. Cost of the project is estimated at about $1 billion. Work includes evaluating the feasibility of expanding Los Vaqueros Reservoir, interconnecting Bay Area conveyance facilities, and developing stakeholder agreement on integrated operation of water supply facilities. These improvements could enable Bay Area water agencies to more effectively address water quality and supply reliability concerns on a mutually beneficial and regionally-focused basis. The expanded reservoir would inundate an additional 1,700 acres of grasslands, woodlands, and riparian and terrestrial wildlife habitat, including existing Los Vaqueros Reservoir mitigation land.

Los Vaqueros Reservoir and Dam

Status: The Los Vaqueros and Bay Area Blending/Exchange MOU's between CALFED agencies and local partners have been signed and are being implemented. Pre-feasibility studies, environmental review, and minor public outreach will culminate in a Draft Project Concept Report ready for public feedback by March 2002. USBR is entering into a Financial Assistance Agreement with Contra Costa Water District to continue the pre-feasibility studies initiated last year. The focus of the continuing studies in 2002 will be to further the engineering alternatives analysis, environmental review, economic feasibility, public input and outreach, and operations and water quality modeling work necessary to prepare for the required November 2003 advisory vote.

Upper San Joaquin River Storage

Description: An additional 250 to 700 TAF of storage in the upper San Joaquin River watershed, through enlargement of Millerton Lake at Friant Dam or a functionally equivalent storage program, could be designed to contribute to restoration of and improve water quality for the San Joaquin River. This project would also facilitate conjunctive management of water exchanges that improve water quality of deliveries to urban communities. Other benefits would include increased hydropower production and flood control. Additional project formulation will be necessary before costs and water supply yield estimates can be made.

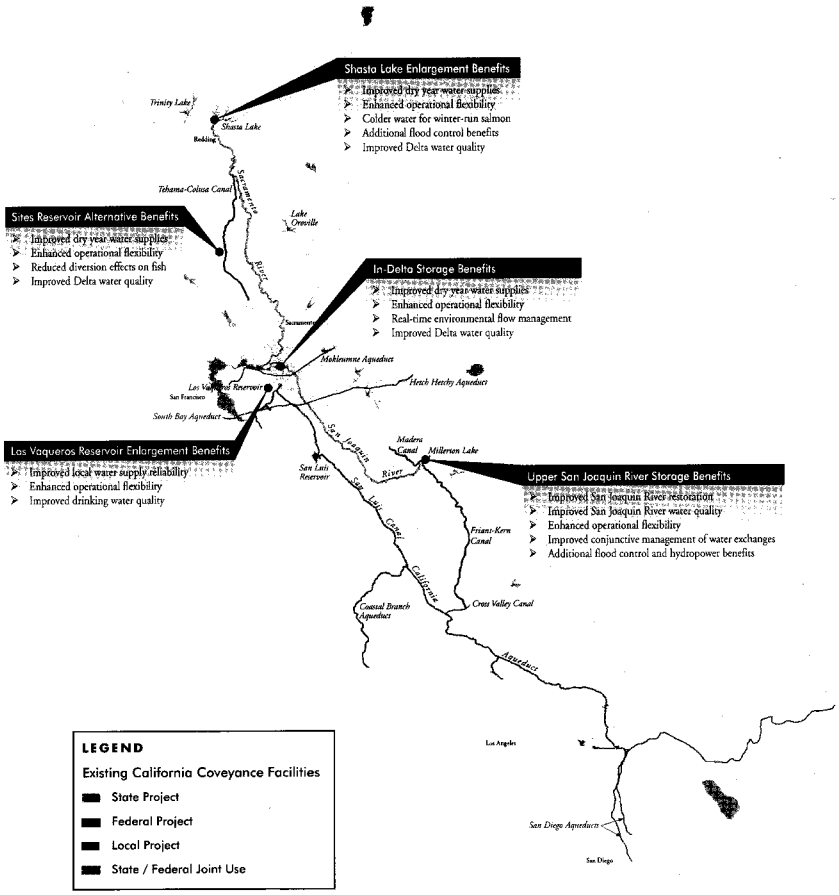


Millerton Lake's Friant Dam

Status: USBR is providing support to and participating in a reconnaissance level analysis of a comprehensive list of water supply alternatives to support the San Joaquin restoration effort being conducted "to Achieve the Mutual Goals of the Natural Resources Defense Council (NRDC) and the CVP Friant Division Water Users". This list of alternatives includes new storage in the San Joaquin watershed. To avoid duplication of effort, USBR will review and consider adopting the analysis as a means of satisfying ROD action 31 once it is completed and continue to closely coordinate with the Restoration Work Plan.

A plan of study is being developed that will describe the expected feasibility study tasks, the critical path items, critical milestones, and a cost estimate of the study. Reclamation and DWR have begun developing a memorandum of understanding (MOU) to define the roles and responsibilities of the lead agencies during the planning phase and the relationship with the local partners.

CALFED SURFACE STORAGE PROGRAM



Mr. CALVERT. I thank the gentleman.

Mr. Nelson, you may begin your testimony.

STATEMENT OF DANIEL NELSON, EXECUTIVE DIRECTOR, SAN LUIS AND DELTA-MENDOTA WATER AUTHORITY

Mr. NELSON. Mr. Chairman, members of the Committee, good morning. I am Dan Nelson. I am the Executive Director of the San Luis and Delta-Mendota Water Authority, and I appreciate the opportunity to appear before you today.

And, Mr. Chairman, I would like to take this opportunity to congratulate and to thank you on a job well done in the development and introduction of H.R. 3208. Your thoroughness, leadership, and objectivity are admired and appreciated. Californians are truly fortunate to have you in this leadership position. We sincerely thank you for that.

As brief background, the San Luis and Delta-Mendota Water Authority is a joint powers authority of 32 member-agencies. The bond between all of these districts is, they comprise all of the CVP districts that take their waters through the Federal Tracy pumping plant south of the delta. It is on behalf of the 24 ag service districts that my oral testimony is primarily focused on.

There are three points that I would like to leave with you today. First of all, that the disproportionate impacts that we talk so freely about are real. They affect real people, they affect real jobs, and they affect real rural communities.

The second point is that the short-term CALFED supply crisis has been entirely avoidable; that we do have discretion and operational flexibility, and have had for several years, to be able to meet easily the water supply objectives that are pointed out in the Record of Decision.

And, last but not least, the third point that I would like to leave you with is, as a result of what we have experienced over the last several years and more importantly this year, that legislative assurances are indeed necessary to ensure that CALFED moves forward in a balanced way.

It is to this third point that I would like to focus on in a little more detail. About 7 years ago, California water resource managers were presented with some major challenges in the form of the Endangered Species Act, the Central Valley Project Improvement Act, and the Clean Water Act. It changed fundamentally the way that we operated both the Central Valley Project and the State water project, and we came together with other agricultural and urban agencies, as well as the State and Federal agencies, to try to come up with a balanced operations plan which balanced the fishery needs, water quality needs, and water supply needs for a temporary basis.

We were actually successful in doing that. We entered into the Bay-Delta Accord, which again accomplished, at least temporarily—it was held as revolutionary, it was held as a truce to the water wars, etcetera. At that time the ag service contractors in our area had a 75 percent supply. We gave up 500,000 acre-feet as part of the Bay-Delta Accord for this stability of a 75 percent supply, and the expectations that through the CALFED process, that our supplies would improve.

The theme for the last several years has been promises made, promises broken, and a classic example of that is in reference to past Secretary of Interior Bruce Babbitt, his quote after signing the accord: "A deal is a deal. We have made a deal, and if it turns out that there are additional requirements of any kind, it will be up to the United States and the Federal agencies to come up with water."

In addition to that, in working through the CALFED process, there were several principles that were developed and dismissed, principles such as "no net loss," "we all get better together," and last but not least, when we were continuing to have these conflicts in the implementation of the accord, we were assured that all of these issues could be worked out administratively. Hence, the process debacle.

Again, when we signed the accord, we had a 75 percent supply and expectations to get better. Here I sit before you several years later, $50 million of CALFED planning, in the second year of CALFED implementation, with a 45 percent supply. That is 600,000 acre-feet, a good size reservoir, 600,000 acre-feet less water today than when we signed the Bay-Delta Accord.

And here we are at the crossroads once again of moving forward to the next benchmark of CALFED, the next phase of CALFED, authorizing CALFED legislatively, and we are being asked once again, "Trust us. This time we really do mean it. We are really sincere about getting you this administratively." Well, Mr. Chairman and Committee members, we are having a really tough time with that, and we are struggling very much with the notion that this is going to be different than it has been over the last several years.

In closing and in summary, we look forward to working with the Department of Interior and other CALFED agencies on a 2000 ops plan that works for everybody and meets the water supply goals and meets our environmental objectives. And, in addition to that, to support the passage of H.R. 3208.

Thank you very much for this opportunity.

[The prepared statement of Mr. Nelson follows:]

Statement of Daniel Nelson, Executive Director, San Luis & Delta–Mendota Water Authority

Mr. Chairman, members of the Committee: Good morning. I am Daniel Nelson, Executive Director of the San Luis & Delta–Mendota Water Authority, and I appreciate the opportunity to appear before you today to discuss an issue of vital importance to the State of California, indeed, the nation.

At the outset Mr. Chairman, I would like to extend our appreciation for your efforts to ensure that the CALFED Program is implemented in a balanced and innovative manner that links progress on environmental restoration and enhancement with progress on water supply and water quality improvements. Farmers on the westside of the San Joaquin Valley are particularly appreciative of your efforts to ensure a 70% allocation to south-of–Delta Central Valley Project agricultural service contractors in normal years. Inclusion of section 103(a)(4) in H.R. 3208 which provides this supply will help sustain agriculture in the San Joaquin Valley, an industry that provides significant benefit to the state and the nation, during the first four years of Stage 1 of the CALFED Program. From this floor, we expect that the CALFED Program will restore our water supplies to a level adequate to meet the needs of our region. For the reasons that I will describe in my testimony, without the inclusion of section 103(a)(4) in H.R. 3208, there would be little hope that the water supply improvements promised in the Framework for Action and the CALFED Record of Decision will ever be realized.

The San Luis & Delta–Mendota Water Authority

The San Luis & Delta–Mendota Water Authority is a joint powers authority organized under California Law. Its 32 member agencies are water and irrigation districts that contract with the Bureau of Reclamation for the receipt of water from the Central Valley Project. These member agencies provide water for irrigation to approximately 1,200,000 acres of land within the western San Joaquin Valley, San Benito County, and Santa Clara County and water for municipal and industrial use throughout the same area. The area served by the Authority's member agencies is among the most fertile, productive and diversified in the nation. Rich soil, a good climate, and innovative farming techniques have helped to place the area served by these agencies among the most productive farming regions in the nation. Farmers in this region produce over 50 different commercial fiber and food crops sold for the fresh, dry, canned or frozen food markets; domestic and export. With an adequate water supply they could produce crops worth more than $2 billion dollars. One of the Authority's member agencies, Santa Clara Valley Water District, is responsible for providing water to 1.8 million people and to the vital high-tech computer industry known as "Silicon Valley". This multi-billion dollar industry is critical to the economic health of California and the nation.

Both agriculture and the computer chip manufacturing industry depend on adequate, reliable supplies of water. These water supplies, and consequently the agriculture and industry they support, are at risk. It was our hope that the CALFED Program would restore the adequacy and reliability of the water supply necessary to sustain agriculture and industry within the service areas of our member agencies, but we were wrong. The CALFED Program has failed to meet its water supply objectives for south-of–Delta Central Valley agricultural water service contractors, and unless the Department of the Interior modifies the manner in which it is implementing the Central Valley Project Improvement Act, there is little chance the Program will ever achieve those objectives. Like every other region of the arid west, the ability of our farmers to produce crops and generate this economic activity depends on the availability of an adequate, reliable source of water.

Historical Reliability and Adequacy

To put this discussion in historical perspective, it is necessary to point out that until 1991, deliveries to the Authority's member agencies were highly reliable. For a period of nearly forty years, from the early 1950s to 1991, water supplies for south-of–Delta CVP ag service contractors were reduced only two times, in 1977 and 1978. These reductions were a result of the extraordinary drought conditions in 1977, the driest year on record in California. However, in 1991 a new era of Project operations began.

Reductions in Supply Due to Regulatory Constraints

In 1991, the winter–Chinook salmon was listed as a threatened species under the Federal Endangered Species Act. Because of this listing, new restrictions were imposed on the Project. In 1992, the Delta smelt was listed as a threatened species under the Federal Endangered Species Act, and additional restrictions were imposed on the Project. Also in 1992, the Central Valley Project Improvement Act was passed by Congress and signed into law by former President George Bush.

The purposes of this Act were:

(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;
(c) to improve the operational flexibility of the Central Valley Project;
(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;
(e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento–San Joaquin Delta Estuary;
(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors.

Bay–Delta Accord

California water users were faced with several over-lapping regulations and an unorganized array of Federal and state agencies trying to implement them. Simply stated, there was chaos. The Authority teamed with the Metropolitan Water District of Southern California to initiate discussions with other ag/urban stakeholders, environmentalists, and state and Federal agencies. These discussions resulted in the

1994 Bay Delta Accord of which the Authority is one of the signatories. At the time, the Accord was hailed as a revolutionary agreement that would provide for the immediate protection and restoration of the Bay–Delta ecosystem and water supply reliability for water agencies that relied on exports from the Delta. As part of the Accord, south-of–Delta CVP ag service contractors voluntarily committed up to 500,000 acre-feet of water for restoration of the Bay–Delta ecosystem pending the outcome of water right hearings to determine the responsibility of other water agencies to provide water for this purpose. Under the Accord standards, they could expect that on average they would receive 75–80 percent of their existing contract amounts. However, their voluntary commitment to provide 500,000 acre-feet for restoration of the Bay–Delta was made in reliance upon former Secretary of the Interior Bruce Babbitt's promise, "Basically, what we're saying is a deal is a deal. We've made a deal, and if it turns there are additional requirements of any kind, it will be up to the United States and the Federal agencies to come up with the water." (Emphasis added.)

Breach of the Accord

Unfortunately, Secretary Babbitt's commitment was soon forgotten. In November 1997, Interior released a final administrative plan for the implementation of CVPIA section 3406(b)(2) that would have taken additional water away from south-of–Delta CVP contractors. Because the Authority concluded this plan was inconsistent with the law, it challenged the plan in court and prevailed. In response to the U.S. District Court's judgment that the 1997 plan was inconsistent with the law, in October 1999, Interior released another final decision on the implementation of CVPIA section 3406(b)(2). Under the October 1999 plan, which has been implemented pending the outcome of another Authority legal challenge, water supplies for south-of–Delta CVP ag contractors will average 45 to 50 percent of their existing contract amounts. In general, the CVPIA has been implemented by Interior in a manner that has reallocated more than 1,000,000 acre-feet of CVP water away from farms, ranches and rural communities that relied upon this water for decades. Moreover, virtually all of the water supply reductions that have resulted from implementation of the Act have been imposed on south-of–Delta Central Valley Project agricultural water service contractors.

Most of my comments today will focus on water shortages and CALFED assurances to these ag service contractors, since they have suffered the greatest impacts. But it should be recognized that implementation of CVPIA has also resulted in chronic shortages for south-of–Delta municipal and industrial contractors, poorer water quality in San Luis Reservoir for drinking water treatment, and even the threat of interruptions in supply to Silicon Valley during the summer months.

Disproportionate Impacts

The disproportionate impact of these regulatory requirements on the water supplies of west side farmers was recognized by Governor Gray Davis and former Secretary of the Interior Babbitt in June 2000, when they signed the CALFED document entitled "California's Water Future, A Framework for Action." The framework correctly noted that south-of–Delta CVP ag contractors have been "disproportionately affected by recent regulatory actions." A key commitment in the Framework was a provision stating that during the first four years of Stage 1 of the CALFED Program, south-of–Delta CVP ag contractors would receive in normal years 65 to 70 percent of their contractual water supplies. In other water year types there would be comparable improvements. The Authority and its member agencies supported the framework based on this commitment. But somehow between the signing of the framework agreement and the issuing of the formal Record of Decision and the allocation to south-of–Delta CVP ag contractors in the first year of Stage 1, the commitment to restore that portion of our water supplies was forgotten.

In the first year of Stage 1 of the CALFED Program, notwithstanding near normal water supply conditions, south-of–Delta CVP ag contractors received an initial allocation of 45 percent, which was subsequently raised to 49 percent. We are now approaching the second year of Stage 1 of the CALFED Program, and on January 25, 2002, Reclamation projected a 45 percent allocation for south-of–Delta CVP ag contractors and a 75 percent allocation for M&I contractors despite a forecast that this water year will be an above-normal year. Meanwhile, b(2) was allocated 100%. This announcement is a clear indication that absent clear direction from Congress, the Fish & Wildlife Service, which is responsible for prescribing fish and wildlife actions under CVPIA, will not allow the Bureau of Reclamation to take the discretionary actions required to accomplish the water supply objectives established by the Framework for Action and the CALFED ROD.

This conclusion is based on the negotiations among Federal and state agencies that led to the Framework for Action and the technical analyses on which Interior based its conclusion that it could provide an additional 15 percent allocation to south-of–Delta CVP ag contractors in normal water years with comparable improvements in other year types.

On March 8, 2000, during discussions that preceded execution of the Framework for Action the Regional Director of the Bureau of Reclamation made a presentation concerning the manner in which Interior was implementing CVPIA. His conclusions were as follows:

It is important to ensure Interior's b(2) policy is implemented in a balanced manner that encourages sound water management practices and eliminates uncertainties for other CVP water users. The existing policy:

(a) focuses the majority of the water supply impacts to a small amount of CVP contractors;

(b) results in greater impacts to CVP delivery capability in wetter periods, thereby limiting ability to implement sound water management practices (e.g., groundwater banking, surface water storage, etc. which are critical for allowing water users to maintain stable water supplies during drought periods);

(c) incorporates real-time decision-making and reset accounting measures that create water supply uncertainties for farmers during the onset of the irrigation season;

(d) provides preferential treatment for b(2) water which may be inconsistent with the CVPIA's intent;

(e) allows b(2) water to be rescheduled without considering potential impacts to other CVP water users; and

(f) results in the State of California's ability to capture b(2) water.

Changes to the existing b(2) policy should be considered to ensure that Interior is implementing b(2) in a balanced manner that encourages sound water management practices and reduces uncertainties for other CVP water users.

A copy of Regional Director Snow's presentation is attached hereto as Appendix 1, and I request that it be made part of the record.

Improved Water Supplies Resulting from the Exercise of Discretion

To determine whether a more balanced implementation of the CVPIA could be achieved, the CALFED agencies conducted technical analyses. These analyses established that by exercising existing discretion, water supplies for south-of–Delta CVP contractors could be increased in normal water years by 15 percent, to 65 to 70 percent, with comparable improvements in other water year types. Further, these increases could be achieved in a manner consistent with existing law, including the CVPIA, the Endangered Species Act, and the Clean Water Act, and without doing any harm to environmental resources or reducing water supplies to other CVP contractors. However, in actual CVP operations, the Fish & Wildlife Service has refused to allow Reclamation to take the discretionary actions required to accomplish the water supply improvements that were achieved in the technical analyses. It is principally for this reason that in the first year of Stage 1 of the CALFED Program south-of–Delta CVP ag contractors receive only a 49 percent allocation and in the second year of Stage 1 of the CALFED Program Reclamation projects that it will be able to allocate only 45 percent to these contractors. In other words, CVPIA is still being implemented in the manner that led the Regional Director to conclusions expressed on March 8, 2000.

For the 2002 water year, Reclamation and south-of–Delta CVP ag contractors have identified numerous discretionary actions that would improve water supplies for these contractors. These actions, which include use of (b)(2) water with the Environmental Water Account and reducing the quantity of (b)(2) water used this year under section 3406(b)(2)(C) and 3406(b)(2)(D), when combined with the changes to Interior's (b)(2) accounting decision ordered by the District Court, could increase our water supplies by as much as 30 percent.

Objective Science Review

The recent release of the National Academy of Science review of the science supporting Klamath fishery actions has stirred ongoing concerns in California that many of the fishery actions and regulations are without a scientific foundation. For years stakeholders have been requesting a thorough review of the science underlying environmental requirements that are reducing water supplies by over a million acre feet. For example:

- Water users have waited for the State Water Resource Control Board to conduct its triennial review of its 1996 Delta requirements whose underlying relationships have been significantly altered since the arrival of the Asian clam.

- Water users have requested a review of the underlying science of Delta water project requirements in the Garamendi Process Fish Group in mid–1997 and were told by the Federal agencies that that would not be a function of the group.
- Water users requested an evaluation of population level effects in CALFED's 1999 Water Management Development Team process and were told by the Federal agencies that it could not and would not be done.
- Water users have requested a revision of the 1995 Native Fishes Recovery Plan, many of whose underlying premises have changed, but the Federal agencies refuse to conduct such a review.
- Water users assumed that a portion of the $50 million dollars spent during the five-year development stage of the CALFED program would be spent reviewing the science underlying water project requirements, but no such review was conducted.
- Agriculture and Urban Water Users (ag/urban) through the Association of California Water Users (ACWA) produced a briefing book showing how to compare the fish benefit/cost ratio of Delta water project requirements to other fish measures. We presented data showing benefit/cost ratios for selected non-water-related actions that were 10 to 100 times more than those that affected water supplies. We hoped for some interest from the Federal and state fish agencies. Instead, they were initially defensive and ultimately dismissive.
- Although the CALFED Science Program has made positive contributions in some areas it has not initiated, nor has it indicated that it will initiate a review of the science underlying the CALFED ROD Regulatory Baseline, despite ongoing requests from water users.

We firmly believe that the Klamath situation is just the tip of the iceberg and agree with Congressman Cal Dooley that a National Academy of Sciences type review is long overdue.

CALFED Package

I must also point out that without the restored water supplies promised by the Framework for Action, the CALFED Program will be of little benefit to south-of–Delta CVP ag service contractors. In fact, the projects identified by the CALFED ROD that involve increasing storage and exchanges in the upper San Joaquin River would further reduce water supplies for south-of–Delta CVP ag contractors. It is ironic that agencies opposing the enactment of section 103(a)(4) because they contend that it might result in reduced supplies for them enthusiastically support the development of projects that will without question reduce water supplies for south-of–Delta CVP ag service contractors. South-of–Delta CVP ag service contractors have been willing to acquiesce to these projects because of the commitment that during the first four years of Stage 1 their water supplies would be restored to 65—70 percent in normal water years, with comparable improvements in other year types. It would be from this supply reliability floor that our water supplies would improve.

The CALFED Program has the potential to solve California's greatest water problems. To succeed, each element of the Program must be implemented with equal vigor. This is critically important because, notwithstanding the potential benefits to all Californians that could result from the CALFED Program, if it is implemented in a way that gives priority to any one of its many purposes, the Program will fail. To date, the south-of–Delta CVP ag service contractor water supply reliability element of the CALFED Program seems to have been ignored. The performance of the Fish & Wildlife Service demonstrates that it has continued to give priority to environmental uses of water without regard to the impact of these uses on achieving the restoration of supplies described by the Framework for Action and the CALFED ROD. It has become painfully apparent that a clear expression of congressional direction is required to compel the Fish & Wildlife Service to implement the delicate balance struck by CALFED's Framework for Action

Thank you.

ATTACHMENT 1

B(2) PRESENTATION

LESTER SNOW

BUREAU OF RECLAMATION

U.S. DEPARTMENT OF THE INTERIOR

DISCUSSION OF SECTION 3446 (B)(2) OF THE CVPIA

INTRODUCTION

It is important to ensure Interior's b(2) Policy is implemented in a manner that is consistent with the foundational purposes of the CVPIA. Section 3402 of the CVPIA states:

"The purposes of this title shall be:

(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;
(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;
(c) to improve the operational flexibility of the Central Valley Project;
(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;
(e) to contribute to the State of California's interim and long term efforts to protect the San Francisco Bay/Sacramento–San Joaquin Delta Estuary;
(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors."

Changes to the existing b(2) policy should be considered to ensure that Interior is implementing b(2) in a manner that is more consistent with subsections 3402(c) and 3402(f) of the CVPIA.

KEY WATER MANAGEMENT CONCERNS

It is important to ensure Interior's b(2) policy is implemented in a balanced manner that encourages sound water management practices and eliminates uncertainties for other CVP water users. The existing b(2) policy:

(a) focuses the majority of the water supply impacts to a small amount of CVP water contractors;
(b) results in greater impacts to CVP delivery capability in wetter periods, thereby limiting ability to implement sound water management practices (e.g., groundwater banking, surface water storage, etc. which are critical for allowing water users to maintain stable water supplies during drought periods);
(c) incorporates real-time decision-making and reset accounting measures that creates water supply uncertainties for farmers during the onset of the irrigation season;
(d) provides preferential treatment for b(2) water which may be inconsistent with the CVPIA's intent;
(e) allows b(2) water to be rescheduled without considering potential impacts to other CVP water users; and
(f) results in the State of California's ability to capture b(2) water.

Changes to the existing b(2) policy should be considered to ensure that Interior is implementing b(2) in a balanced manner that encourages sound water management practices and reduces uncertainties for other CV? water users.

Mr. CALVERT. I thank the gentleman.
Mr. Bishop, you may begin your testimony.

STATEMENT OF WALTER J. BISHOP, GENERAL MANAGER, CONTRA COSTA WATER DISTRICT

Mr. BISHOP. Thank you, Mr. Chairman, members of the Committee. My name is Walter Bishop. I am the General Manager of the Contra Costa Water District, and as background I would like to tell you the Contra Costa Water District is the largest urban contractor of the CVP. We have total reliance on the delta for our water supply, so water quality for us in the delta is a key focus. The quality of our drinking water is directly related to the operation of the State and Federal projects.

My testimony today is going to be broken into two parts. The first part of my testimony, I would like to offer to the Committee six very specific areas that I believe the Secretary has discretion which, if enacted upon, can improve water supplies without hurting the environment. And, second, I would like to look at three areas that I believe are in the long-term focus of the CALFED ROD, which I believe can help us improve water supplies in the 21st century.

Let me start with the areas of discretion. The Secretary of the Interior has considerable discretion in how she approaches things relative to the 800,000 (b)(2) water accounting. Judge Wanger's decision as it related to the offset/reset I will talk about in a minute.

But with respect to the 800,000 accounting, it is upon the Secretary to ensure that areas where water is used, on the American River, for example, for flow requirements, and other CVP issues related to water quality standards, that if there is a double benefit for that water with respect to fisheries, we believe it should be counted against the 800,000.

Second, the Secretary can now exercise her discretion to revise the current policy related to the 800,000 with respect to offset and reset. The timing was particularly fortunate for this hearing with the recent decision, but we believe offset and reset have been ripe and on the table for at least 2 years.

A question was asked earlier as to whether or not this affects State and Federal pumping. The answer is, of course it does, with respect to the assurances given in the ROD. The biological opinion that has been at least suggested may have to be reopened because of this decision.

We would encourage the Secretary, before making that decision, to look at the tools that she has now that weren't in place when these biological opinions were issued. Hundreds of millions of dollars have been spent on habitat restoration and millions of acre-feet of water have been released, and we need to look at the flexibility that the system has today that it did not have when our total reliance was on water primarily for fish restoration.

Third, the Secretary, in conjunction with Federal and State agencies, has discretion with respect to operation of the Environmental Water Account. Questions were asked earlier about that. I think at least the Federal administration has a responsibility to request and ensure that full funding of the Environmental Water Account is included in the budgetary request.

Fourth, the Secretary has the discretion to implement methods to improve the accuracy of forecasting of deliveries. In recent years the actual point, low point in San Luis Reservoir, could have been

more accurately predicted, and in one case over 200,000 acre-feet of additional supplies made available to contractors if that forecast was more accurate. And I think you saw some of that with respect to recent decisions on the Klamath, when very late in the season 70,000 acre-feet was made available as a result of reforecasting the reservoir levels.

Fifth, the Secretary has discretion authority under CVPIA to construct and acquire non-Federal entities, such as water conveyance, conveyance capacity, and wells necessary to provide water for refuges. I believe this is an area in which additional supplies could be made available for refuges and then water supplies from storage could be made available for contractors.

Sixth, and finally, the Federal project can also help meet the water needs of its contractors by expediting water requests for water transfers and providing project power for those transfers when they are made by Federal contractors, when they have been restricted from the deliveries. Now, I know CVP staff is working hard on transfers, but they need to dedicate a consistent level of resources toward this and they need to work hard on streamlining environmental protection permitting processes.

I would like to move now to the three areas where I believe we can have some long-term benefit. First is the role of good science, peer review, and advancements in technology in our decisionmaking. CALFED agencies and stakeholders have consistently called for decisionmaking related to water needs for the ecosystem to be based on strong science.

I think the recent National Academy of Science decision is where we think all decisions need to be made in this way, an outside peer review, and I know CALFED has organized outside panels to review decisions made on allocating water for the Environmental Water Account going to the environment. I would encourage this Committee to request and get some of the information that was provided on that with respect to tracking of the science, with the decisions being made on decisions for water and the fish in the CALFED process.

We believe improvements with respect to monitoring—we are still using nets thrown from either banks or behind boats to talk about where the fish are. Satellite monitoring, acoustic monitoring, advancements in technologies can greatly improve that and help some of our decisions.

Another area where I think we can improve the long-term supply is increased cooperation between State, Federal and local agencies. We heard earlier today that the State has worked through Joint Point in pumping additional supplies.

But one of the key beneficiaries from the CVPIA was the State, with respect to when the CVP releases water and their pumps are at maximum capacity, that water is technically abandoned and can be picked up by the State. Now, there has been some cooperation, but I believe there are still some areas in which some cooperation can improve, and some of the allocated water which could be made available in the south delta can go to the Feds.

Finally, I would like to talk about the key component of CALFED, which is the balanced program. We have all talked about CALFED needs to go forward as balancing. I think there is a mis-

conception that CALFED has storage for future demand. That is not the case. CALFED looked at meeting future demand through conservation, reclamation, and water transfers. Storage, primarily in the CALFED program, is to increase reliability. I want to also mention water quality is one of the tenets, and it was also to do environmental restoration.

The storage that is in the first phase of CALFED is not about meeting future demand in California. And I know Tim Quinn is going to talk later about the strong reclamation/conservation program. The urban agencies are committed to that, but CALFED still needs to be just as aggressive in moving forward with the planning and permitting for storage. It is a key component of how we are going to meet future water quality and reliability and ecosystem restoration. In fact, the Environmental Water Account is a key component to some of the storage going forward.

Mr. Chairman, I realize that some of these suggestions that I made today cannot be implemented immediately. However, I believe it is essential that the administrative agencies become more energetic in the use of their discretion to actively manage the water supplies for the maximum benefit of all the State's needs.

Thank you.

[The prepared statement of Mr. Bishop follows:]

Statement of Walter J. Bishop, General Manager, Contra Costa Water District, Concord, California

Chairman Calvert, members of the subcommittee, my name is Walter J. Bishop. I am the General Manager and chief executive officer for the Contra Costa Water District in Concord, California. The Contra Costa Water District serves 450,000 people and is the largest urban contractor for the Bureau of Reclamation's Central Valley Project. The District was the first contractor to receive water from the Central Valley Project. The Contra Costa Water District is located within the Sacramento–San Joaquin Delta and is totally reliant on the Delta for its water supply. The quality of our drinking water is directly affected by the operations of the Federal and State water projects, more so than any other urban agency in California. Our District has been intensively and constructively involved with other urban and agricultural water agencies, with Federal and state regulatory agencies and environmental organizations in many of the planning and operational efforts to reach solutions on Bay–Delta issues. The District has played key roles in helping the Federal and State agencies, water users and environmental organizations in reaching consensus in a variety of areas including the 1994 Bay–Delta Accord and the joint Federal–State CALFED Bay–Delta Program.

My testimony today will focus on possible solutions for reliably meeting the present and future water needs of urban and agricultural water users and the environment in California. The competition for this finite water supply and increased regulation of the Sacramento–San Joaquin system have resulted in reductions in supplies in some sectors, in particular, the Central Valley Project (CVP) deliveries of water from the Delta to its contractors. At the same time, the ecosystem restoration actions taken since the early 1990s, both flow and non-flow actions, have resulted in significant improvements to fisheries, including listed species such as Delta smelt and winter run salmon. In fact, the increases in Delta smelt population since the Bay–Delta Accord suggest that the Delta smelt may be on the brink of recovery.

My testimony will first consider administrative and operational changes that can be made to meet present water supply and reliability needs. I will then address the question of finding additional solutions to reliably meet future needs in the 21st Century.

Achieving and maintaining a balance of fisheries protection and water supply for existing municipal and industrial and agricultural needs has not been easy. We can improve on what has already been accomplished by:

- using water more effectively through discretionary actions already available to the Secretary of Interior;

- using good science and requiring peer review in decision making while investing in high tech fish monitoring techniques to ensure that measures to protect fish are effective and water is not wasted;
- increasing the cooperation between Federal, State and local projects to maximize the use of available water supply tools;
- implementing the CALFED Bay–Delta Program in a balanced way.

I will address each of these actions in turn.

1. Existing discretion available to the Secretary of Interior to increase flexibility of CVP operations

The Secretary of Interior has considerable discretion to provide increased water supplies through improved operational efficiency without impacting fish species. The Secretary has discretion, consistent with Judge Oliver Wanger's October 2001 decision in the U.S. District Court (Eastern District of California) lawsuit regarding implementation of the 800,000 acre-feet of dedicated CVP yield under the 1992 P.L. 102–575, commonly known as the Central Valley Project Improvement Act (CVPIA), Section 3406(b)(2), to ensure that the accounting for use of the 800,000 acre-feet for fisheries purposes does not ignore the considerable amount of water being used to meet American River flow requirements and the full amount of CVP yield being used to help meet the State of California's Bay–Delta water quality standards. The increased fish flows on the American and increased Delta flows required to meet the Bay–Delta standards provide benefits to fish that were not in place prior to CVPIA and should be taken into account. Accurately accounting for use of the 800,000 acre-feet of dedicated yield will free up limited water supplies for other CVP purposes.

The Secretary will also has the discretion to revise the current policy related to resetting the 800,000 acre-feet accounting for upstream reservoir storage releases in the fall and early winter if that storage is replaced later in the year ("reset"). The current Department of Interior accounting policy allows releases from upstream reservoirs during the period, October through January, to increase river flows to benefit fish but does not allow that water to be rediverted in the Delta to meet urban and agricultural needs. If the upstream reservoirs refill by the end of January, then, even though the fish have benefitted from the releases, they do not count toward the 800,000 acre-feet. This method of accounting compels additional fish releases or export reductions later, and results in further reductions in agricultural and urban water supplies. This reset policy gives the fish a second or third bite at the apple while increasing the harm to water users. If this same faulty accounting policy were applied to CVP water service contracts, then contractors would not have to pay for delivered water if the reservoirs later refilled.

The current Interior policy of offsetting upstream reservoir releases made earlier in the year for fishery purposes against reductions in releases later in the year when exports are cut back to protect fish ("offset") is similarly unfair and unreasonable. This offset policy assumes that even though the water users south of the Delta are directly hurt by reduced deliveries during the irrigation season, and fish have presumably benefitted by the export cuts, even more fish actions can be made because water is still available in the reservoirs north of the Delta. Water in upstream reservoirs, which may or may not be able to be delivered late in the irrigation season or after, is not equivalent to water actually delivered to the farms when it is needed. The loss in water supply reliability resulting from the "offset" policy has been estimated to be between 100 and 200,000 acre-feet annually. The Secretary has the discretion to fairly implement these requirements such that CVP water supplies are not unreasonably impacted.

A Federal Court decision that appears to agree with our concerns regarding "reset" and "offset" was released on February 5 after this testimony had been prepared. District Court Judge Wanger found that Interior's "reset" and "offset" policies both allow more than 800,000 acre-feet to be dedicated to fisheries purposes and found these policies to be arbitrary and capricious. The Secretary needs to revise the 800,000 acre-feet accounting policy to ensure that water supplies to CVP contractors are not unlawfully impacted.

The Secretary in conjunction with other Federal and State agencies also has the discretion to operate the Federal project in coordination with the CALFED Environmental Water Account to maximize the benefits to fish and water users. However, the assets of the Environmental Water Account consist of both water and money to buy water, and consistent Federal funding is needed to make this innovative approach to water management work.

The Secretary in coordination with other Federal and State agencies also has the discretion to implement methods to improve the accuracy of forecasting Federal and State contractor demands from San Luis Reservoir to maximize the use of available storage. In recent years the actual low point in San Luis Reservoir has been

significantly higher than forecasted. Had the contractor demands been more accurately predicted by Interior up to 200,000 acre-feet more water could have been made available to Federal contractors.

The Secretary also has discretion under the CVPIA Section 3406(b)(2)(D) to make the dedicated water that is not needed for fisheries purposes, based on a finding by the Secretary, available for other project purposes. The benefits of the CALFED Bay–Delta Program ecosystem restoration program and other habitat restoration processes implemented since the CVPIA are beginning to restore fish populations within the Sacramento–San Joaquin Bay–Delta system. As these populations continue to recover there will be opportunities for the Secretary to use this water to restore the water supply reliability for CVP contractors. The water needs for fisheries purposes must take into account the other habitat restoration tools that have been and are being implemented since 1992.

The Secretary has discretion and authority under Section 3406(d)(5) of the CVPIA to construct or acquire from non–Federal entities such water conveyance facilities, conveyance capacity, and wells as are necessary to provide water to refuges. Finding alternative sources of water for refuges will make water available for other project purposes.

The Federal project can also help meet the water needs of its contractors by expediting requests for water transfers and providing project power, generated using CVP facilities, to wheel transfer water through the State pumping facilities. CVP staff is already working hard to minimize delays in processing water transfers but lack the resources and procedures to meet the increased demand for transfers. Consideration also needs to be given to streamlining the environmental permitting for transfers of Federal water.

The Federal project can also assist by providing the ability for CVP contractors to carry over water in CVP or non-project reservoirs for use in the next contract year. Contra Costa Water District was unable to carryover water this year because carryover and rescheduling is not specifically provided for in our CVP contract. CCWD often uses its existing Los Vaqueros Reservoir to make releases to meet the District's water quality goals when the Federal and State projects are making releases from upstream reservoirs to meet Delta water quality and fish objectives. CCWD could assist the Federal and State projects meet those Delta ecosystem and water quality goals by reducing its diversions from the Delta during these periods if it could be guaranteed that CCWD could replace that water during times of excess flow in the Delta. This is consistent with Section 3408(d) of the 1992 CVPIA which authorizes the Secretary to enter into agreements to allow project contracting entities, such as CCWD, to use project facilities, in this case Shasta Reservoir, for supplying carry-over storage.

The Secretary should also incorporate these concepts of carryover and rescheduling into the current process of long-term renewal of CVP contracts (required under Section 3404(c) of the CVPIA) to improve operational flexibility of the CVP. Interior is currently reviewing the bases for negotiation of these long-term renewal contracts.

2. Implementation of good science and peer review in decision making while employing improved technologies for project operations.

CALFED agencies and stakeholders have consistently called for decision making related to the water needs for the ecosystem to be based on a strong scientific program. Which employs state of the art technology and independent peer review. Recently, the National Academy of Sciences was asked to peer review the science used in decisions made regarding the Klamath. This type of review should be routine when moving forward with resource decisions on the Bay Delta. Additionally, CALFED has developed a long-term program to monitor the health of the ecosystem and will make decisions based on its findings. Federal agencies involved in this effort such as the U.S. Fish and Wildlife Service and National Marine Fisheries Service need to ensure that they are applying sufficient resources to these efforts.

Adaptive management will not work without the underpinning of a good scientifically sound database. The current technologies used to monitor the location of fish species within the Bay–Delta system are based in large part on outdated technologies such as nets deployed from river banks or towed behind boats. These provide limited insight on where the fish are, in what numbers or where they are heading. High tech methods such as that used in satellite remote sensing, acoustic sensing and other imaging techniques need to be implemented to better understand how to protect and enhance fisheries while restoring water supply reliability. Techniques used in other fields and the resourcefulness of the government laboratories and universities in the San Francisco Bay Area and high tech areas like Silicon Valley should be brought to bear on this problem.

Better knowledge of fish population response to flows, water quality, ocean harvest and other factors will enable the development of better science that can be use to assess the bases for fisheries actions, the results of such actions, and allow real-time adaptive management changes to those fish actions which may not always depend on more water releases.

While high tech fish monitoring may not be able to be deployed in time to directly improve water supply reliability in 2002, research and development needs to get underway now to be able to provide benefits in future years. Additional funding now will ensure better science for guiding and maximizing the efficiency of future project operations to meet all project purposes.

3. Increased cooperation between the Federal, State and local projects.

The ability of the Federal CVP to meet its contractors' water supply needs could be greatly increased if the CVP were able to make more use of the available State storage and conveyance facilities. The State of California already cooperates with the CVP in this regard but Congress should encourage and help facilitate an even greater level of cooperation.

The Federal pumping facility at Tracy in the South Delta is regularly at its maximum capacity. There are times when the Central Valley Project is making releases of previously stored CVP water released from upstream reservoirs to meet fisheries habitat goals, such as maintaining cold temperatures for spawning fish, and is unable to recapture or reuse that Federal water to meet other project needs. This water has to be abandoned by the CVP where upon it is captured instead by the State Water Project using its excess capacity at the State pumping facility[1]. With better cooperation between the State and Federal agencies regulating and managing the water projects, a major share of that water could be pumped for the CVP at the State pumping facility, stored in available CVP, State or local storage facilities, and remain available for CVP project purposes.

The State already provides some wheeling of CVP water through the State facilities and allows temporary use of the State's share of storage in San Luis Reservoir for the benefit of the CVP. However, this joint use of facilities needs to be expanded to enable the Federal project to retain control over its water supplies.

This existing cooperation between the State and the Federal projects is not always one way—in June 2001, for example, the CVP pumped State Water Project water at Tracy to provide water to SWP contractors while the lining of the upper California Aqueduct, a State facility, was being repaired. A similar intertie from the State aqueduct to the Federal canal should be implemented this year to increase the ability of the CVP to deliver water to its contractors. This will allow the CVP to pump water to its full allocated and permitted level rather than being restricted by the reduced downstream canal capacity.

The CALFED Bay–Delta Program calls for increasing the permitted capacity of the State pumping facility in the South Delta to 8,500 cubic feet per second (cfs) initially and eventually to 10,300 cfs. This should only go forward if all impacts on other water users are mitigated; in particular the potential water quality impacts at CCWD's drinking water intakes. However, if the proposed expansions can be implemented without redirecting impacts to others, the Federal agencies should seek to formalize a share of that increased capacity to avoid further exacerbating the current windfall provided to the State project from actions by the Federal project to improve fisheries and the Bay–Delta ecosystem.

One example where Federal–State cooperation would be appear to be straightforward and could help improve a water agency's situation is in the case of Santa Clara Valley Water District, a San Francisco Bay Area urban agency, which is both a State Water Contractor and CVP contractor. Moving some CVP water to Santa Clara and the Silicon Valley via the South Bay Aqueduct rather than through San Luis Reservoir and the San Felipe Project would free up CVP capacity for other contractors while reducing an additional constraint on CVP deliveries, namely water quality issues for Santa Clara related to the low point in San Luis Reservoir storage. This would require agreements with the State and agreements with and between local agencies in the Bay Area. This proposal is currently being studied as part of the CALFED Bay–Area Blending/Exchange Project and the San Luis low point study, and could produce significant water quality and water supply reliability benefits.

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[1] Note that the requirement for releases from Shasta Dam for cold water habitat predate the 1992 Central Valley Project Improvement Act and are not part of the 800,000 acre-feet of CVP yield that is dedicated for restoring anadromous fish. Releases of water to meet the 800,000 acre-feet provisions of CVPIA may or may not fall under the definition of abandoned water, depending on the final outcome of the ongoing 800,000 acre-feet litigation in Federal Court.

As I mentioned earlier, CCWD unsuccessfully sought to carryover some of its CVP allocation in Shasta Reservoir this year. This was water that the CVP did not have to release to meet Delta flow and fisheries requirements because CCWD was taking water directly from Los Vaqueros Reservoir and reducing it diversions from the Delta during balanced conditions. This is an example where Federal project should cooperate with a local agency to meet Federal project goals.

4. Implement all aspects of CALFED Bay–Delta Program in a balanced manner

California's population is expected to increase by more than 8 million within the next 15 years, according to the California Department of Finance. Many of the administrative and operational actions I have already discussed will also help increase the water supply reliability needs in the near term future. Most of the future increases in water demand were identified by CALFED as being addressed by implementing water conservation and reclamation and transfers. However, new groundwater and surface storage projects, in particular those described in the CALFED Record of Decision, are needed to ensure the needed water quality for drinking water and the environment, and to meet the CALFED Environmental Water Account needs. These new storage facilities will allow more efficient use of capacity in existing reservoirs and improve water supply reliability.

New storage can lead to a win-win-win situation. For example, increased storage adjacent to urban areas can be used to capture good quality water during times of high flows when fish needs are being met. During times of low flow in the Delta when the source water from the Delta is typically more salty and fish are more susceptible, urban agencies can rely on the previously stored water to maintain an acceptable water supply for their customers and reduce their diversions from the Delta to the benefit of fish and water supply reliability.

I encourage Congress to put its full support behind ensuring that CALFED is implemented in a balanced way. The new groundwater and surface storage projects outlined in the CALFED Record of Decision are critical components of a balanced CALFED program and a necessary component for ensuring water quality and supply reliability to not only meet California's existing food production, manufacturing, and industrial and municipal needs but also the increased needs as California's population grows during the 21st Century.

Conclusion

Mr. Chairman, I realize that some of the suggestions made in this testimony cannot all be implemented immediately. However, I believe it is essential that the administrative agencies become much more energetic in using their existing powers to intelligently and actively manage their water supplies for the maximum benefit of all the state's needs. It is no longer acceptable to manage water supplies for just a single purpose, ignoring at the same time the opportunities they have to serve additional needs. We must make full use of the powerful tools of flexibility, innovation, cooperation and consensus to meet this challenge and build a better future. Thank you for the opportunity to appear before you today.

Mr. CALVERT. I thank the gentleman.

Our next witness is Mr. Osann, representing the Natural Resources Defense Council.

STATEMENT OF EDWARD R. OSANN, CONSULTANT REPRESENTING THE NATURAL RESOURCES DEFENSE COUNCIL

Mr. OSANN. Thank you, Mr. Chairman. My name is Ed Osann. I am here on behalf of NRDC, the Natural Resources Defense Council. I have a prepared statement. I would like to leave that for the record, Mr. Chairman, and summarize simply a few key points.

Mr. CALVERT. Without objection, so ordered.

Mr. OSANN. First of all, let me start by saying that NRDC strongly supports the CALFED ROD and its balanced implementation. The ROD was the culmination of a 10-year effort of a great number of stakeholders. As you might imagine, we are enthusiastic about some portions of it and skeptical about other portions, but CALFED is the road map for California's water future, and without it we would be looking at a considerably more chaotic situation.

I also agree with the remarks of Mr. Bishop that the bureau forecast, the bureau's early season forecasts on potential water deliveries, have been excessively conservative, and unhelpful in that regard. And to the extent that these can reliably be improved in the future, that would be beneficial both to water users and natural resource managers.

Mr. Chairman, you alluded to last week's decision, and of course it has been the understandable focus of a great deal of discussion here today. We believe that this is potentially very destabilizing. We think that this decision really takes us to the precipice. Where are we, when the key element of the environmental baseline for the ROD, for the ROD of the Secretary, has been yanked out from underneath? Where are we if we don't have a valid biological opinion? Where are we if we don't have a valid NEPA final environmental impact statement?

So we think it is really incumbent upon the Secretary to appeal the decision and to protect the 1999 (b)(2) formulation. Attached to my testimony is a letter to the Secretary in support of the 1999 formulation, signed by virtually all of the principal environmental groups in the State.

The most important thing that Congress can do is enact legislation that will authorize the balanced implementation of CALFED consistent with the ROD. We believe the Senate bill does that. We believe the House bill does not. There are several issues and concerns we have about the House bill.

Notable among them is the assurances language. In objecting to the assurances language, we are not alone. Attached to my statement is a letter to you, Mr. Chairman, signed by the Natural Resources Defense Council, Friant Water Users, Metropolitan Water District, United Farm Workers, and California Trout, all objecting to this singling out of this particular group of beneficiaries for assurances language.

We would urge the Congress to move this year to enact legislation to authorize CALFED in a balanced manner consistent with the ROD. Thank you, Mr. Chairman.

[The prepared statement of Mr. Osann follows:]

Statement of Edward R. Osann, President, Potomac Resources, Inc., on behalf of the Natural Resources Defense Council

Chairman Calvert and members of the Subcommittee. Thank you for the opportunity to speak with you today. My name is Edward R. Osann. I am here today on behalf of the Natural Resources Defense Council (NRDC), an organization with over 500,000 members, 100,000 of them in California, to testify regarding Sacramento–San Joaquin Delta operations and related water supply issues.

By way of background, I have appeared before this subcommittee on many occasions in the past. From 1993 to 1995, I served as Director of Policy and External Affairs for the Bureau of Reclamation. Prior to joining the Federal Government, I served as Director of the Water Resources Program of the National Wildlife Federation from 1980 to 1993. I currently maintain a consulting practice specializing in energy and natural resources policy.

CALFED: Key to the Future.

For the past 10 years, stakeholders and agencies have been working in California to develop a comprehensive plan to address a broad range of complex ecosystem restoration, water quality and water supply issues related to the Bay–Delta system. This extraordinarily challenging effort resulted in a final plan, adopted through the CALFED Bay–Delta Program in August of 2000. This ambitious plan enjoys support from the Bush and Davis administrations, as well as from agricultural, urban,

environmental, and other stakeholder groups. If implemented in a balanced fashion, NRDC believes that this plan will result in significant water supply, water quality, and ecosystem benefits. West side CVP water supply is one of many issues addressed in this plan. In short, the CALFED plan is currently the only map available to help decision-makers navigate complex water problems in California.

Westlands: Reckless Attacks on CALFED.

One of the issues you are considering today is the delivery of highly subsidized water from the Central Valley Project (CVP) to the Westlands Water District and other growers on the west side of the San Joaquin Valley. We acknowledge that growers in this area face significant challenges, but it is important to recognize that they knew of these challenges when they made business decisions to purchase land and sign water contracts in this area. Westlands growers paid lower prices for their land because of the selenium and other drainage problems in this region. These west side interests have always known that their CVP water supplies are junior to other water users and that their CVP contract provides a supplemental supply, to be delivered when available and well short of what they claim to be their full need. Because of these lower land prices, Westlands growers have been able to invest in water transfers, higher value crops and drainage and irrigation systems. They have also been aided by massive water, crop, and other subsidies.

The Central Valley Project, like many water projects, is overcommitted. Water users have succeeded in persuading project operators to write contracts for far more water than they are capable of delivering. In California, the Friant unit of the CVP regularly cannot deliver full Level 2 supplies. The State Water Project has never delivered all of the water for which it has written contracts. In fact, it regularly delivers 60 percent or less of contract entitlements. The West side of the San Joaquin Valley also exhibits this trend, although no more than other water projects. Other water users—in the Friant Unit and the State Project—have recognized this uncertainty and have planned appropriately to meet their needs. Westlands, however, has adopted a different strategy. Its approach has been to attempt to litigate and legislate its way to a more reliable subsidized water supply, at the expense of the ecosystem and other water users. We urge you not to encourage this destructive and destabilizing approach to resolving water issues.

The remainder of my testimony will focus on a number of recommendations which we believe would keep the CALFED program moving forward in a balanced fashion and would result in West side water supply benefits, together with additional benefits throughout the state.

We urge Congress and the Department of the Interior to take the following actions—

1. Support Implementation of the CALFED Program. The CALFED program is already providing benefits to water users, including those in the Westlands Water District. These benefits have included funding for groundwater, water quality, and water use efficiency programs. CALFED has also created an Environmental Water Account, which is helping to restore the Bay–Delta ecosystem and provide growers with greater certainty of supply. Ultimately, a healthy ecosystem, another goal of the CALFED program, will also provide greater certainty for water users.

Congress is currently considering legislation to authorize Federal participation in the CALFED program. NRDC strongly supports S. 1768. However, H.R. 3208, as reported by the Resources Committee, would fundamentally undermine the CALFED program and threaten its success. We have shared with Committee staff a summary of some of the key differences between these bills. We urge the House to pass a CALFED bill this year that implements, and does not alter, the delicate balance in the CALFED plan. Future appropriations for CALFED could be at risk if an authorizing bill is not passed soon.

2. Prevent Rollbacks of Environmental Laws that Would Threaten CALFED. The Westlands Water District has sued the Department of the Interior as part of an attempt to force the Department to withdraw key decisions of the implementation of section 3406(b)(2) of the Central Valley Project Improvement Act. The Department's October 1999 decision has been upheld by the courts in the past. Last week, however, Interior suffered a legal setback in this case. We strongly urge the Department to appeal this ruling and continue to defend the implementation of the CVPIA. We are confident that Interior's October 1999 provision will prevail on appeal. This issue is a critical test of the Administration's support for the CALFED Program. The October 1999 decision is a key foundation for the CALFED program, as outlined in the attached letter to Secretary Norton. In particular, it is important to note that if Interior does not continue to defend (b)(2) implementation, it will eliminate the water supply assurances that have benefited Westlands and all other water users in the Central Valley, Southern California, and the Bay Area. A failure to fully

implement—and defend—the CALFED Record of Decision requirements regarding the CVPIA and the ESA would jeopardize the entire CALFED program. It would directly undermine both ecosystem restoration and water supply reliability for much of the state. Over the long term, it would undermine CALFED programs designed to benefit the entire state's environment and economy. We urge the Department of the Interior not to roll back environmental protections established under the CVPIA, the Endangered Species Act, and the Trinity River Restoration Act.

3. Refuse to Interfere in California Water Allocation Issues. Westlands is seeking legislation to guarantee its CVP water deliveries. Such a provision is included in H.R. 3208 as reported by the Resources Committee. Although less damaging than previous versions, the current language would still undermine the CALFED program, including its environmental protections and its water supply reliability benefits for other urban and agricultural water users. Such legislative assurances also represent substantial interference in state water allocation issues. Attached is a letter opposing legislative water delivery assurances signed by the Friant Water Users Authority, the Metropolitan Water District of Southern California, United Farm Workers, California Trout, and NRDC.

4. Urge the Westlands Water District to drop its Legal Attacks. In the past several years, the Westlands Water District has launched legal attacks to weaken legally-required environmental protections, to halt a project by the East Bay Municipal Water District, to undermine the water supply for farmers in the Friant Unit of the CVP, and, indirectly, to weaken the CALFED water delivery assurances which benefit all south-of-the–Delta water users. As a result of the attack on the Friant Unit of the CVP during 2001, farmers withdrew an offer to sell 200,000 acre-feet of water to Westlands. In short, during the past year, Westlands managers' aggressive legal strategy cost Westlands farmers 200,000 acre-feet of water. Withdrawing this action would allow Westlands to begin to rebuild these business relationships, which benefit both seller and buyer. Westlands' confrontational actions are not leading to durable solutions that will benefit its farmers.

5. Write Renewed CVP Contracts with Responsible Financing and Quantity Provisions. The Bureau of Reclamation is currently negotiating long-term contract renewals in the Central Valley. In the past, Federal subsidies have inflated demand for water and worsened environmental problems. These subsidies also worsen the overproduction and commodity price problems facing agriculture throughout California. For your information, I have attached a Bureau of Reclamation graphic that indicates that over the past half century, CVP water users have repaid only 5 percent of the taxpayer investment of the CVP allocated to irrigation and M&I water. The repayment shown is in nominal dollars, and still leaves Federal taxpayers shouldering all of the interest on this investment for CVP agricultural water users. We urge the Bureau to write contracts that move away from the massive subsidies of the past and that contain contract quantities that accurately reflect the delivery capability of the CVP.

6. Require an Open Process to Develop a Land Retirement Program. Tom Birmingham, the General Manager of the Westlands Water District, has suggested that it might be appropriate to stop farming, or to "retire," up to 200,000 acres of Westlands—one third of the District. In retrospect, some of this land should never have been irrigated. In principle, we agree that an ambitious land retirement program could produce multiple benefits, including environmental, water supply, and water quality benefits. However, despite the fact that NRDC is a party to the litigation in which these issues are being addressed, and despite multiple requests, we have received only scant information regarding pending land retirement and settlement discussions. What information we have received raises serious concerns regarding potential environmental impacts, impacts to other water users, and the appropriateness of the expenditure of hundreds of millions of Federal dollars. We believe that a land retirement partnership could produce broad benefits, but it will not succeed unless it is developed through an open process with other stakeholders—now excluded from the process—at the table. We urge the Bureau of Reclamation to ensure that the process used to develop a land retirement program is an open and inclusive one.

7. Promote Urban and Agricultural Water Use Efficiency. CALFED has undertaken an economic analysis of all water supply options in California. Even without adding the economic benefits of a healthy environment, this analysis shows that the least expensive new water supplies in California are those that focus on improving water use efficiency—for agricultural and urban water users. The CALFED program has a major water use efficiency program.

The CALFED Process has led to a "fragile peace" on water issues in California. This ambitious effort is implementing a balanced program to serve the environment and economy of a state with over 30 million residents. However, the Westlands

Water District, which represents a few hundred landowners, has chosen a different path. We urge Congress and the Administration to pursue the workable recommendations listed above, rather than abandoning this promising approach for the Westlands strategy of confrontation and conflict.

Thank you for this opportunity to address these important California water issues.

Attachments :

- August 28, 2001 letter regarding the CVPIA and CALFED
- February 1, 2002 letter regarding legislative water deliver assurances
- Central Valley Project repayment graphic

[Attachments to Mr. Osann's statement follow:]

Natural Resources Defense Council * Save San Francisco Bay Association * California League of Conservation Voters * League of Women Voters of California * Pacific Coast Federation of Fishermen's Associations * Sierra Club * American Rivers * Friends of the River * The Bay Institute of San Francisco * California Trout * California Sportfishing Protection Alliance * Planning and Conservation League * Mono Lake Committee—CLEAN South Bay * Marin Conservation League * Golden Gate Audubon Society * Santa Clara Valley Audubon Society * Sierra Nevada Alliance * WaterKeepers of Northern California * Friends of the Trinity River * California Urban Creeks Council * Save the American River Association

August 28, 2001

Gale Norton, Secretary
Department of the Interior
1849 C Street, NW
Washington DC, 20240

Re: Implementation of Section 3406(b)(2) of the CVPIA

Dear Secretary Norton,

We are writing to express our appreciation for your continuing efforts to defend the final October 5, 1999 Department of Interior final decision regarding implementation of Section 3406(b)(2) of the Central Valley Project Improvement Act (CVPIA). The "(b)(2)" provision requires the Bureau of Reclamation to dedicate 800,000 acre-feet per year from the Central Valley Project to the restoration of the Bay–Delta estuary and its anadromous fisheries. The October 1999 final decision was issued after years of negotiation, and ultimately litigation, regarding implementation of section 3406(b)(2). It has repeatedly been upheld as legally valid by the Federal court.

We understand that some have requested that the new administration reopen the October 1999 final decision. We write to urge you to reject these requests. Although we disagree with some portions of the final decision, we urge you not to administratively re-open this decision. The CALFED Record of Decision (ROD) is premised on full implementation of the CVPIA, including the commitment to provide 800,000 acre-feet of CVP water to Central Valley fish and wildlife each year. Strong implementation of the CVPIA is critical to restore the Bay–Delta ecosystem and its fisheries. Because of the close relationship between CVPIA implementation and CALFED, any decision to weaken CVPIA implementation would have direct and immediate impacts on the CALFED process. We would like to briefly present a few of these connections.

Environmental Water Account: The Environmental Water Account (EWA) is intended to "provide water for the protection and recovery of fish beyond water available through existing regulatory actions related to project operations," (ROD, p. 54) clearly including the CVPIA. In fact, the size and operating rules of the EWA were determined based on extensive modeling and evaluation which assumed the full use of the 800,000 acre-feet supply of water "pursuant to section 3406(b)(2) of the CVPIA in accordance with Interior's October 5, 1999 decision, clarified as follows" (ROD, p. 56). (The ROD goes on to resolve "offset" and "reset"—two critical CVPIA accounting issues.) The permits which allow water project operators to export water from the Delta, providing the EWA is being implemented, could be invalid if the CVPIA baseline for the EWA were no longer in place.

Endangered Species Act and Delta Pumping Commitments: The Biological Opinions that support CALFED implementation and commitments made to water users regarding ESA implementation, the Environmental Water Account and Delta pumping are explicitly dependent on implementation of the CVPIA as described in the October 1999 final decision and the ROD. In particular, resource agencies found that the CALFED ROD complies with the requirements of the ESA because of the benefits of the full range of protection and restoration tools in the ROD. A weakening of the CVPIA would undermine CALFED's compliance with the ESA and require a reinitiation of consultation. It would likewise undermine commitments made to water users regarding Delta pumping and water supplies.

Balancing: The CALFED ROD requires a finding of balanced implementation. Specifically, this section of the ROD requires that agency actions be "consistent with the intent of this ROD and applicable regulatory compliance documents" (ROD, page 5). Any decision to reverse final decisions regarding implementation of (b)(2) would be inconsistent with the ROD and with environmental compliance documents and would make it impossible to make a credible finding of balanced implementation.

Consistency with the CALFED ROD: Interior signed a CALFED "Implementation Memorandum of Understanding", which is included in the CALFED ROD. One of the implementation principles states that "The Agencies will support the implementation of the CALFED Program as described in the ROD. Agencies will support and implement actions consistent with the ROD" (ROD, Attachment 3, page 5). Clearly, it would be impossible to honor this commitment if Interior were to reverse critical commitments about implementing section 3406(B)(2) made in the ROD.

National Environmental Policy Act: The October 1999 final decision and the clarifications regarding "offset" and "reset" are formally incorporated into the CALFED ROD and environmental documentation. Any change in these positions would affect the validity of the CALFED environmental documents and could require a new NEPA analysis, and most likely the issuance of a supplemental environmental impact statement.

The key to the success of the CALFED program is maintaining the balance in the ROD that attracted broad support from all stakeholder groups and from the state and Federal legislatures. The CALFED ROD resolved a range of outstanding issues and created a package of programs and strategies that will provide broad benefits for all water users and the ecosystem. They key word here is "package." It is not possible to undermine one portion of the ROD without causing that package to unravel, both politically and legally. Any such actions would not merely damage CALFED, they would damage the California environment and economy.

We would be pleased to meet with you to discuss the CALFED program and implementation of the CVPIA. In particular, if you consider any reopening, revisiting or clarification of (b)(2) implementation issues, we request an opportunity to meet with you before you make any decisions. We look forward to working with you to implement the CALFED ROD. Thank you for your consideration of our views.

Sincerely,

Barry Nelson
Natural Resources Defense Council

Cynthia Koehler
Save San Francisco Bay Association

Sarah Rose
California League of Conservation Voters

Roberta Borgonovo
League of Women Voters of California

Dan Sullivan
Sierra Club

Elizabeth Reifsneider
Friends of the River

Nick Di Croce
California Trout

Gerald H. Meral, Ph.D.
Planning and Conservation League

Bob Raab
Marin Conservation League

Arthur Feinstein
Golden Gate Audubon Society

Laurel Ames
Sierra Nevada Alliance

Byron Leydecker
Friends of the Trinity River

Zeke Grader
Pacific Coast Federation of Fishermen's Associations

S. Elizabeth Birnbaum
American Rivers

Gary Bobker
The Bay Institute of San Francisco

Richard Izmirian
California Sportfishing Protection Alliance

Frances Spivy-Weber
Mono Lake Committee

Trish Mulvey
CLEAN South Bay

Kelly Crowley
Santa Clara Valley Audubon Society

Jonathan Kaplan
WaterKeepers of Northern California

John Steere
California Urban Creeks Council

Alan D. Wade
Save the American River Association

FRIANT WATER USERS AUTHORITY
NATURAL RESOURCES DEFENSE COUNCIL
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA
UNITED FARM WORKERS OF AMERICA
CALIFORNIA TROUT, INC.

February 1, 2002

The Honorable Ken Calvert
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Calvert:

Re: Water Delivery Assurances Language in CALFED Authorization Legislation

We represent organizations that are not always in agreement on major water policy issues. This letter, however, expresses our unanimous agreement on issues related to legislation to authorize the CALFED Bay-Delta Program. All of our organizations support the CALFED Program. While we may differ on specific implementation measures, we all believe that the CALFED Program offers the best chance for resolving water problems in a balanced manner that protects and promotes California's economy, jobs, and environmental resources.

While we may disagree on specific provisions, all of our organizations support some form of legislation to authorize federal funds to assure the balanced implementation of the CALFED Program. Most fundamentally, we all agree that such legislation should not include water supply assurance language for the agricultural contractors of the Central Valley Project in the west San Joaquin Valley. A statutory mandate to guarantee water supply levels for one set of water users inherently risks creating a disadvantage for other water users or the environment – directly contrary to the balanced outcomes promised by CALFED. We urge you to oppose such water supply assurance language in any CALFED authorization or other legislation.

Sincerely,

Kole Upton
Chairman of the Board
Friant Water Users Authority

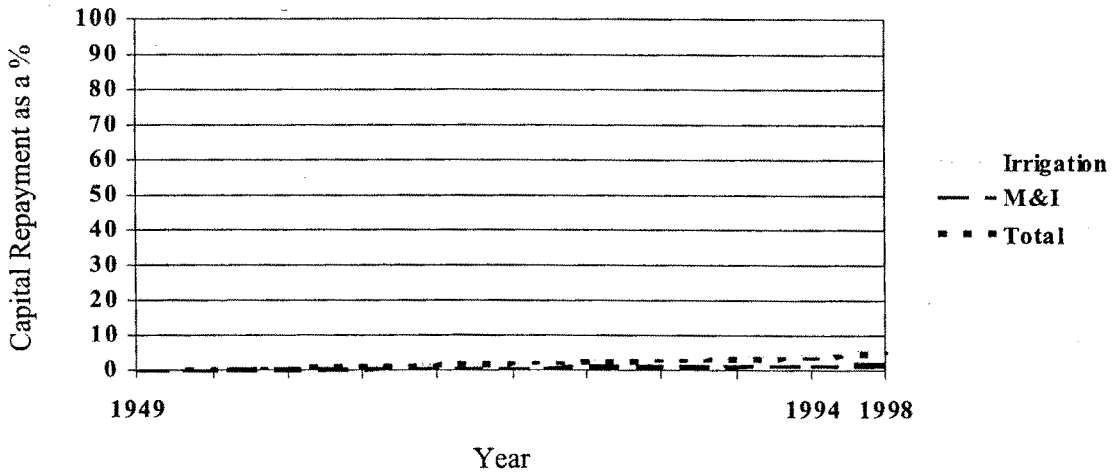
Barry Nelson
Senior Policy Analyst
Natural Resources Defense Council

Ronald Gastelum
President & Chief Executive Officer
Metropolitan Water District of
Southern California

Martha Guzmán
Legislative Analyst
United Farm Workers of America

Nick Di Croce
Board of Governors
California Trout, Inc.

Central Valley Project Repayment
FY 49 through FY 98



	1949	1994	1998	Total Capital Allocation	Unpaid Capital
Irrigation	$0	$53,900,000	$76,000,000	$1,152,200,000	$1,076,200,000
M&I	0	6,500,000	8,900,000	458,800,000	449,900,000
Total	$0	$60,400,000	$84,900,000	$1,611,000,000	$1,526,100,000

Mr. CALVERT. I thank the gentleman.

STATEMENT OF JOHN STOVALL, GENERAL COUNSEL, KERN COUNTY WATER AGENCY

Mr. STOVALL. Thank you, Mr. Chairman. It is a pleasure to be here on behalf of the second largest contractor on the State water project. I am pleased to be here with Mr. Quinn, another minor contractor on the project, and particularly pleased to be here with Steve Macaulay, the Chief Deputy Director of the Department of Water Resources. They have been a consistent and reliable partner in trying to provide sufficient water to the State of California. We are not so sure that the west side CVP contractors would say the same about the bureau.

And by that, I will explain it later, but I don't mean to criticize Mr. Raley and his staff, because in our view they are sort of the new kids on the block here and they deserved a time to get their feet on the ground. But we expect that they do have their feet on the ground now, and we expect them to begin to comply with the law as announced by the courts recently.

To understand the CALFED puzzle, we believe you have to step back and get a little perspective on the situation. CALFED has been a multiyear process which examined dozens of alternatives that were presented to it, and they selected three that were ultimately carefully studied for consideration. It is no surprise to you probably that our agency supported the dual conveyance alternative, but CALFED selected a less intensive alternative, less intensive infrastructure at least, that they are pursuing. We support that vigorously and are working toward its implementation.

What that alternative does though, is to make those infrastructure components that are part of it that much more critical. The groundwater and surface storage is critical, an also critical, as you have heard here today, are the south-of-delta improvements that improve conveyance capacity at the pumps.

Another key, or the key actually to success of all of this, is administrative cooperation and flexibility. If we don't have that administrative cooperation and flexibility, in our view the whole thing falls apart, and we will have a repeat of the electrical crisis that California has suffered. And as the Chairman has pointed out, we can't build ourselves quickly out of a water crisis like we seem to have on the electrical side.

There are three major components required administratively for this solution. The first is, we believe that the bureau must abandon the discredited policies for implementation of CPIA that it has pursued. The court in the Eastern District of California has now ruled that those policies were beyond its discretion and weren't supported by the law. We believe the bureau has the opportunity to vigorously move to follow the law, and we believe that they should use this opportunity to recommit themselves to serving the water needs of Californians.

If they do that, it will go a long way, even if they are providing the 800,000 acre-feet that CVPIA requires, it will go a long way to helping resolve our current situation. Their current policy has in effect driven some of their contractors in desperation to attack water supplies of others, and that has generated tremendous

amounts of discord in the California water community which would be eased significantly if the bureau actually lived up to their obligations.

We all need to stand by the creative efforts of the Environmental Water Account, and support its continuation, because it is a key to resolving the ESA concerns that created such havoc in California in the early parts of the 1990's.

Finally, the infrastructure components here are a balanced package with all of the ecosystem components and other items in the alternative that CALFED has decided to pursue, and it is important that they move together as a balanced package. Key to that is the passage of your bill, the passage of Senator Feinstein's bill in the Senate, and the development of a final product that creates balance and allows us to move forward. We would encourage everyone to do everything possible to make that happen, and that may involve in some cases taking language that they might not be particularly fully satisfied with in order to make it happen.

And with that, I will just be available for questions.

[The prepared statement of Mr. Stovall follows:]

Statement of John F. Stovall, Kern County Water Agency

Introduction

Thank you for the opportunity to present the views of the Kern County Water Agency on the important issues you are considering today related to CALFED and California water supply in 2002. My name is John F. Stovall and I am the General Counsel of the Kern County Water Agency. Additional personal information will be submitted as an exhibit.

The Kern County Water Agency is a local governmental entity with political boundaries encompassing the County of Kern, a territory approximately the size of Massachusetts, Vermont and Rhode Island combined. It has a population of more than 600,000 people. Almost 1 million acres of the most productive farmland in the world and about 400,000 people rely on the Agency for a significant portion of their water supply.

The Agency is the largest contractor for agricultural water on the State Water Project, and also the third largest contractor for municipal water. We contracted and paid for this supply intending to achieve an adequate water supply for the people and lands of Kern County. Although the uncertainties of nature render our exact water supply this year difficult to predict, we are certain that the systems which we have paid (and continue to pay) great sums of money for are now incapable of providing us with the reliable and adequate water supply which was promised. That situation exists throughout most of California, and CALFED and Californians currently face tremendous regulatory obstacles in trying to improve California's water supply.

Solutions to our water supply shortages require cooperative efforts. Those of us relying on the State Water Project are working hard to ensure that unreasonable regulatory restrictions do not further impair our future and our economies. We are also resolved that other water users, stressed by their own situations, not attack our own supplies in desperation. Those interested in an adequate water supply must constantly encourage Federal and State agencies work vigorously and creatively to improve the water supply for all Californians while they meet their statutory environmental responsibilities. Unwise and overzealous environmental regulation in the past has reduced supplies to many California water users. We believe that both the Federal and State systems will now work together to improve water supplies for all.

In 2001 Kern county's people and farms received 39% of their contracted supply in the first dry year after a series of wet years. The State Water Project we bought was supposed to provide a full supply in the seventh year of a drought.

In 2002, it appears as though we may essentially have a mythical "normal" year in the watersheds serving the State Water Project, yet we have a 45% allocation at this time. If that normal year materializes, it is still likely our supply will be significantly below our contracted entitlement. CALFED is supposed to help resolve this problem and the problems of others in the state who are similarly situated, but

CALFED faces a number of serious challenges to the assumptions upon which it was built.

CALFED has chosen to pursue the least intensive of the solution alternatives it identified in the hope that administrative and regulatory flexibility, coupled with minimal infrastructure improvements would suffice. While some creative administrative programs have been implement (the Environmental Water Account for example), other basic components of an administrative solution have been slow in coming (for example, changes in the administration of CVPIA to comply with the law.) Pending challenges to the programs instituted thusfar call into question the viability of those creative programs. Overcoming these challenges will require a cooperative effort by all concerned to either prove that regulatory restrictions can be reasonably implemented to minimize infrastructure requirements, or to implement more significant infrastructure improvements which may be needed to satisfy regulatory requirements.

I turn now to your specific questions:

1. Given that present and future demands of urban, agricultural, and environmental needs exceed the capacity of the project(s), where do we find solutions to reliably meet these needs in the 21st century?

Regulatory flexibility and administrative dedication to meeting the needs of water users are key to reducing infrastructure needs for both projects, the State Water Project (SWP) and the Central Valley Project (CVP), as well as other California water systems. If these are not forthcoming to supplement minimal infrastructure improvements, then we must have more extensive infrastructure solutions.

The solutions currently attempted are essentially the first CALFED alternative that was under consideration. Each of the alternatives relied on significant conservation efforts, but the hallmark of the first alternative was utilization of regulatory flexibility and minor infrastructure improvements to achieve benefits theoretically approaching those of the third, "dual conveyance", alternative.

The first alternative relies heavily on assumptions that administrative solutions have the potential to reach a 65% normal supply for CVP south of delta contractors with minimal infrastructure improvements. Administrative solutions for the CVP are discussed in the response to the next question on general administrative solutions. But the assumptions of regulatory flexibility and the potential for effective administrative relief are now called into question by threats of litigation from those who have been opposed to any infrastructure improvements at all. We believe that prudence requires a careful examination of returning to a more intensive infrastructure solution if the "soft path" of the first alternative proves to be a quagmire.

Fortunately, CALFED has done the groundwork for a significant infrastructure solution; it is the third or "dual conveyance" alternative. Coupled with the significant conservation regimens and storage improvements contained therein, the dual conveyance solution holds the most promise for actually protecting endangered species, and improving water supply and drinking water quality.

Creation of significant off-stream surface storage, enhancement of existing storage, and conjunctive use are all contained in the "dual conveyance" alternative. But the hallmark of the alternative is its namesake, the system of dual conveyance which allows operational flexibility to avoid entrainment of fish and other adverse environmental impacts, enhance source drinking water quality, and avoid impairment of water supply due to catastrophic or regulatory disruptions.

The duel conveyance alternative provides the following benefits:

1) The majority of the water diverted to water users with the duel system will come from the Sacramento River upstream of the Delta and the result is significant reductions (close to elimination) of the THM" precursors currently in the export water from Delta peat soils and bromides due to salt water intrusion from the San Francisco Bay. This will allow urban water waters users to meet all existing and likely future EPA water quality standards using current treatment methodologies.
2) The duel system provides the CVP and SWP operational flexibility to provide all of the fishery enhancement protections currently desired by state and Federal fishery regulatory agencies at no water cost to the projects. The duel system allows the projects to provide these benefits and to increase the average annual CVP and SWP deliveries by about 100 to 150 TAF.
3) The duel system also provides operational flexibility that allows the CALFED proposed storage facilities upstream of the Delta to be fully utilized. With current Delta transfer facilities water supply produced by new storage north of the Delta could only be utilized in very dry years. With the duel system, that storage could be utilized in almost all years and would allow projects such as the

Kern Bank and the East Reservoir to be fully utilized to the benefit of many water users south of the Delta.

Local conjunctive use and water banking projects such as our own Kern Water Bank are also an essential component of a solution to the problem regardless of the CALFED alternative pursued. Responsible local agencies have recognized the necessity of pursuing local and regional responses to the inability of the State and Federal Governments to solve this urgent problem. Conjunctive use has been recognized as a valuable and environmentally beneficial method of storage, and we in Kern County, with the assistance of CALFED, are at the forefront of this effort. Our Agency and others in Kern County created groundwater banking programs to help stabilize our supplies before CALFED was created and continue to work to enhance its capabilities.

The Metropolitan Water District of Southern California is another local agency that has acted on its own to improve its supply. It has developed its own significant off-stream storage project, the Diamond Valley Reservoir. Other local agencies have similar success stories in improving their own water supplies through development of water, without taking water from others. These programs, however, require the cooperation of State and Federal agencies.

Ultimately, if the first alternative is unsuccessful in meeting California's needs then the more significant infrastructure improvements in the form of dual conveyance and more surface water storage will be required. We are working hard to make the first alternative work, but it requires sufficient funding, administrative and regulatory creativity, and good faith by those who led CALFED to try the first alternative with quite limited infrastructure improvements.

2. In your opinion, what administrative or operational changes, consistent with existing law, or legislative changes can be made to meet the goals of water supply and reliability set forth in the CALFED Record of Decision?

As mentioned, if the "soft path" is to provide any relief to the California water crisis, administrative solutions and regulatory flexibility must be forthcoming. Some of these have been implemented and are working reasonably well; the Environmental Water Account is an example. We view the following as the administrative and regulatory actions which must be implemented to make the current CALFED alternative work, and we believe they are possible within the existing statutory framework. It may be however that some legislative improvements are necessary as discussed below. If these cannot be achieved two choices remain: pursuit of the dual conveyance alternative or serious disruptions of water supply for Californians.

Administrative

Reasonable and balanced implementation of CVPIA.

It is true that the Department of Interior and state have environmental responsibilities which must be met. Meeting these obligations must not be an excuse for avoiding their clear contractual and governmental obligations to provide an adequate water supply for the people they serve however. In the case of the Department of the Interior, past policies led the Bureau of Reclamation to discount the importance of its commitment to provide a water supply to its contractors. A recent decision in the Federal courts supports this belief. In the words of the Federal Judge examining the Bureau's implementation of the CVPIA:

> "Interior is contractually bound to provide specific amounts of water to the water districts absent a water shortage. There is no justification to increase the use of CVP "yield" for (b)(2) purposes over 800,000 AF, when (b)(2) uses have not caused or contributed to the increase in CVP yield. Instead, Interior is arbitrarily preferring (b)(2) uses over all other water uses that have claims to CVP yield." San Luis & Delta–Mendota Water Authority et al. v. United States of America, Civ No. F 97–6140 OWW DLB (EDCA Feb.5, 2002) (Supplemental Memorandum Decision and Order Re: Summary Judgment Motion on Offset/Reset) at p. 12 (footnote omitted).

This was done without regard for contractual obligations of the Bureau to their contractors, and without any legal authority. Again, the trial judges' words are instructive:

> The government and the environmental plaintiffs have pointed to no legal authority that authorizes Interior to create accounting concepts of "reset" and "offset" that ignore and do not account for the actual use of CVP yield for (b)(2) purposes in violation of Congress' direction that exactly 800,000 AF of CVP yield are to be dedicated and managed annually for (b)(2) purposes." San Luis & Delta–Mendota Water Authority et al. v. United States of America, Civ No. F 97–6140 OWW DLB (EDCA Feb.5, 2002)

(Supplemental Memorandum Decision and Order Re: Summary Judgment Motion on Offset/Reset) at p. 16–17.

Put simply, the Bureau, without apparent concern for its obligations to its contractors, got very creative in its accounting to take more water from them than Congress intended. It is an example of why we are concerned that the administrative dedication to solving the real problems of California water users may be difficult to develop.

Administrators and regulators should focus their creativity on helping to supply adequate water for Californians. If they do, we believe that the 65% targeted supply for south of delta CVPIA contractors can be met with the minimal infrastructure improvements contemplated in the first phase of CALFED without taking water from other water users. This should reduce markedly the tensions among California water users, and allow those who have attacked the supplies of others to work cooperatively with others.

Flexible implementation of the ESA based on sound science.

The administration of the Federal Endangered Species Act is another case in point. The recent review of Federal actions on Klamath project by the National Academy of Science supports what we have suspected all along. Federal regulatory agencies are relying on their own inclination to take water from water users in a "meat ax" approach to solving environmental problems. We believe a more economically sophisticated approach is required. Before decisions are made that are catastrophic to communities, regulators should give due regard to whether there is actual peer-reviewed sound scientific support for taking the water. The jobs of people, indeed entire communities, depend upon that water.

Klamath is a dramatic example of a problem that has been present in regulatory agencies for a decade: Federal agencies with single purpose missions disregard or discount impacts on humans in their decision making. The troubling new development reflected in the recent San Luis & Delta Mendota Water Authority v. U.S. decision is that even agencies who have clear obligations to serve people, under both contract and mission, have discounted those obligations. This has serious implications regarding the potential for success of an alternative that requires commitment to balance. We are hopeful that those in the Federal Government responsible for water supply will again recognize their contractual commitments, and work to meet those commitments without taking water from other water users.

Achieving reasonable and scientifically sound implementation of the Endangered Species Act may be extremely difficult. It will require dedication within the Department of Interior and elsewhere to serving people while utilizing valid science to both protect the environment and insure that people are not harmed without solid scientific reason. That dedication from the Bureau of Reclamation is necessary to ensure that regulatory restrictions are reasonable.

We believe the existing Endangered Species Act provides the regulatory flexibility to achieve many of the goals if administrative solutions are sought. Existing mechanisms for consultation and habitat conservation planning can achieve solutions that both benefit species and improve water supply. But these solutions are now the subject of legal challenges by radical environmental groups who seek to undo the progress made thus far. We do not believe those challenges will be successful, but if they are then the death of the first CALFED alternative will be their responsibility.

Continuing beneficial use of flood and high flow water.

The history of California water in the past decade has been the actual reduction in existing supplies due to overzealous environmental regulation. A key to making the first CALFED alternative successful is at least maintaining the status quo on existing supplies. Yet recent actions by the Department of Interior threaten historical uses of high flow and flood waters for conjunctive use projects that "bank" such water for use in dry years. In fact, they threaten a substantial source of Environmental Water Account water in normal and dry years. The most basic step in solving our water supply problem is for Federal and State agencies to work with local agencies to preserve existing supplies.

Our Agency has been a reliable partner of the Friant Division of the CVP for many years in taking high flow and flood waters to enhance flood protection in the San Joaquin valley and store those waters for benefit in dry years. We hope to continue that function of storing high flow water for beneficial use in dry years. It will require the cooperation of the Bureau however, and willingness to work with an Agency which has been a reliable partner for many years. We call upon the Bureau to facilitate our use of this water which has both environmental and water supply benefits.

Cooperative Efforts with Other Water Systems.

The Bureau and the State Water Project have long been partners in addressing California's water supply needs. We call upon the Bureau to renew its commitment to being a reliable and trustworthy partner with the SWP. We on the State Water Project join in the concern of CVP contractors at the apparent disregard for their contractual rights that has now been confirmed in Federal court. We are confident that the Bureau will now work hard to meet those commitments. We are also confident that they will work toward cooperative solutions to improve the water supply for all Californians.

Specifically, the Coordinated Operating Agreement has been a stable and unifying landmark in a stormy sea. We urge the Bureau to resist any temptation to enhance its own supplies to the detriment of others. The COA should remain a source of stability that enables the Bureau and the Department of Water Resources to work together to solve the problems that face us and create additional yield in difficult circumstances.

Local agencies must work to improve their own supplies.

It isn't just Federal and State agencies that have administrative problems. Local agencies too are faced with difficult administrative decisions: to take the high and challenging road of working toward improved supplies for all, or the low road of taking water from others. Our agency fully appreciates the frustration of dealing with Federal and state agencies who have occasionally seemed intent on creating rather than solving problems (though we must commend the State Department of Water Resources on their work in trying to help solve these problems.) We are confident that recent court decisions will reawaken a commitment to improving the water supply for Californians. We would encourage all local agencies to give Federal and state administrators a chance to improve supply administratively; passage of HR 3208 is a first step even if some of the controversial provisions have to be modified.

Then, if the first CALFED alternative is not successful it will not be because water users have not tried hard to make it work.

Legislative

The passage of the Calvert and Feinstein bills and achievement of a product that pass both houses of Congress is critical to success. Without the necessary funding and assurance of balance provided by HR 3208 in particular, the future of CALFED and California's water supply is bleak indeed.

Ultimately, if challenges to the program reveal aspects of the program that need additional legislative authorization, then it must be forthcoming. We believe that the program can be achieved with current regulatory authorizations under the appropriate acts however.

Conclusion and Summary

CALFED has been a long process. We are now in the midst of determining if regulatory and administrative flexibility, coupled with relatively minor infrastructure improvements, can achieve the same benefits as the major infrastructure alternative—the dual conveyance alternative. It can achieve significant benefits for water quality, water supply and the environment. If the current attempted "soft path" is unsuccessful, we must be ready to move aggressively to the third alternative to prevent serious damage to California's economy.

Mr. CALVERT. I thank the gentleman.

Mr. Quinn?

STATEMENT OF TIMOTHY H. QUINN, VICE PRESIDENT, STATE WATER PROJECT RESOURCES, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. QUINN. Thank you, Mr. Chairman. My name is Timothy Quinn. I am Vice President, State Water Project Resources, at the Metropolitan Water District of Southern California.

The blessing or the curse of being last, most of what I have got in my testimony has been put before you, so I will try and very briefly summarize how we responded to the two questions that you directed to us in your letter of invitation.

The first question was, given that demands on the existing major projects clearly outstrip supply capabilities, how are we going to balance demand and supply in the 21st century? As I said in my written statement, we think the answer to that question is, in a word, diversification, which has been mentioned by several other witnesses up here.

What I mean by diversification is you have to rely more on local investments and local resources for your reliability future, not at the expense of ignoring the import systems that are important to you, but your reliability to a substantial degree lies in your own back yard. Southern California experience is instructive in this regard.

I came to the district in 1985 as a new upper manager at the district, I was taught the "complete the State water project" speech. It was "We've got a contract for 2.0115 million acre-feet of water, and we want the State to honor that contract and to deliver the water even when it's very dry."

Well, that one-dimensional strategy failed. In 1991 we had widespread mandatory rationing in our service area. Economic damages were substantial. Firms were saying that they couldn't locate plants or expand plants in California because of a lack of reliable water supplies. Chaos reigned.

Yesterday Senator Feinstein said that she didn't want energy to be the forerunner for California water. Well, in some sense it is the post-runner, because we had an energy-type experience in 1991 and it was no fun. It was very damaging to our economy.

In Southern California we determined to start investing in a more diversified strategy, and I think it is worth noting that last year in 2001 our allocation of State project water was very similar to what it had been 10 years earlier in 1991. We didn't push any panic buttons. We pulled water out of our groundwater accounts. We had the cushion of Diamond Valley Lake. Our demands were down because of very aggressive investments in reclamation and conservation. We went for a modest amount of water to a very businesslike dry-year transfer program administered by the Department of Water Resources. We maintained reliability.

CALFED has embraced that strategy. That strategy is essential to the economic well-being of the entire State. That is why we so strongly support the efforts to authorize that diversified strategy. The competitive grant program fits like a glove on a hand for the problem that we are trying to solve with the CALFED program.

Let me turn to the second question. I agree with much of what has been said previously. The fact is, you can't read the commitments in the ROD and then read the projections for supply of the Bureau of Reclamation and come to any other conclusion than this system is broke and it has got to be fixed consistent with the supply commitments in the ROD.

We continue to believe that a statute is not the way to solve that problem. We view this as a problem, a serious problem in administrative discretion. We also don't think that this is about a legal dispute. Whatever happens on appeal, whether Judge Wanger's decision—we substantially agree with his analysis—is upheld or not, there is a problem.

The problem is that Interior has used its discretion to undermine balance instead of supporting the balance that is in the Record of Decision. And the real policy question here is, is Interior willing to use its discretion in a way that supports the balanced outcomes of the ROD or not? If it is, there are a lot of tools available and we think the job can get done. Start with following the judge's order. Look for other ways to apply discretion that accomplish the balance in the ROD instead of disproportionately favoring one use over another.

Over the longer term I think Interior and their contractors are going to have to get much more aggressive. The State water contractors, Kern County, Metropolitan, virtually every State water contractor has gone through some very aggressive form of integrated resources planning, implementing a diversification strategy in their service areas. We went through the difficult job of renegotiating our State water contract, rethinking it from one end to the other, and the Monterrey Agreement dramatically changed how we managed the resources available to us under our contract, and it worked.

Federal contractors have not done either of those things, and we think it is long overdue. The bureau should be working with its contractors and with others to do essentially a Monterrey Agreement, where they are rethinking their own project, how do they deal with the challenges that we are facing today, instead of just relying on the operational procedures that they have always used in the past.

Let me close with a couple of things that are important to Metropolitan. One is, I wish that the Southern California representatives were still here. We are concerned that there could be serious negative impacts on Southern California from this judge's decision. We are hearing rumors that the CALFED agencies may decide that we don't need ESA assurances any longer because a judge has ruled that decisions by the Federal Government were unlawful. The loss of those assurances would be devastating from a Southern California perspective, and we will argue strongly against it.

I think with that I will close and be glad to answer any questions.

[The prepared statement of Mr. Quinn follows:]

Statement of Timothy H. Quinn, Vice President, State Water Project Resources, Metropolitan Water District of Southern California

Mr. Chairman and Members of the Subcommittee, thank you for this opportunity to appear before you on matters of considerable importance to California. My name is Timothy Quinn. I serve as Vice President of State Water Project Resources at the Metropolitan Water District of Southern California.

Today, you have asked witnesses to address two questions:

> Given that present and future demands of urban, agricultural, and environmental needs exceed the capacity of the project, where do we find solutions to reliably meet these needs in the 21st century?
>
> In your opinion, what administrative or operational changes can be made to meet the goals of water supply and reliability set forth in the CALFED Record of Decision?

Mr. Chairman, I will address these questions in order.

Meeting Water Needs in the 21st Century: The Diversification Strategy

Metropolitan believes the answer to the first question is, in a word, diversification. While California's water managers once believed our water supply security rested solely in the completion of large water projects, primarily the State Water

Project (SWP), we have come to recognize we must invest heavily in local resources as well as assure the security of the statewide water supply system.

Nowhere has this diversification strategy been more vigorously implemented than in Southern California. Twenty years ago, Southern California water planners embraced a long-term vision that was one-dimensional: We wanted the state to honor its contract with us for 2.0115 million acre-feet (MAF) of SWP entitlements, even during the driest of years. That vision, for better or worse, was not realized, largely as the result of legitimate environmental concerns.

Today, through Metropolitan's Integrated Resources Plan, we have moved substantially toward restoring the reliability of the region's water supplies by investing heavily in local resources, including:

- Vast reclamation plants to reuse imported water supplies;
- Conservation programs that save more than 700,000 AF annually, equal to the combined water demands of the cities of Los Angeles and San Francisco;
- Groundwater storage projects in Southern California and in partnerships in the San Joaquin Valley and along the Colorado River Aqueduct in which we have accumulated 1.5 MAF of stored water;
- Regional surface storage in Diamond Valley Lake, with a storage capacity of 800,000 acre-feet built at a cost of $2 billion; and
- Strategic use of water transfers with Colorado River and Central Valley agricultural partners.

Due to these investments, water use in Southern California today is about the same as it was in 1975, despite an increase in population of 5 million people.

The importance of these regional resource investments is difficult to overstate. Today, water demands in Metropolitan's service area average about 3.8 MAF. By 2020, regional water demands are expected to average about 4.8 MAF. Our supply challenge is to provide that additional 1.0 MAF for the $680 million regional economy and fulfill our unwavering commitment to implement the California Plan to live within the state's allotment of Colorado River water. Fully 85 percent of the water expected to meet these growing demands will come from regional and local investments. These plans for a diversified supply strategy are not merely written on paper. We are implementing them, committing billions of our ratepayers' dollars.

To be successful, the diversification strategy requires that the CALFED Program be successful. From CALFED, we require better water quality in our SWP supplies to protect public health, assure the success of reclamation investments, and maintain a balance of SWP and Colorado River supplies. We require the financial assistance CALFED promises for the massive investments required in local water supply resources and expensive water treatment technologies that must be implemented, if we are to continue using SWP water in our treatment plants and still meet increasingly stringent drinking water standards. And we require reliable SWP supplies, to replenish our south-of-the–Delta storage capacity when it is relatively wet and meet a portion of dry-year demands.

The CALFED Program has embraced the diversification strategy. At its core, the CALFED Record of Decision (ROD) is an aggressive, balanced plan of action, with deadlines and budget commitments to provide accountability. The CALFED Program strongly emphasizes a commitment to habitat restoration—an unprecedented program now well underway—and to investments in local water supply resources throughout California. It contemplates up to 4.5 MAF of new storage capacity and necessary improvements to through–Delta water conveyance. Equally important, CALFED has successfully implemented an Environmental Water Account, to provide flows for the restoration of fisheries and essential regulatory assurances for water supplies against further takings under the Endangered Species Act.

In Southern California, the diversification strategy is working. A little more than a decade ago, at the end of the 1987–1992 drought with a SWP supply of only 30 percent, mandatory rationing was widespread in Southern California, as it was elsewhere in the state. Economic damages were substantial. Reports were widespread of companies hesitant to expand plants or locate new ones in California due to unreliable water supplies. California water in the early and mid–1990s looked a lot like energy markets at the beginning of the 21st century. Simply stated, chaos reigned.

In sharp contrast, last year with SWP deliveries similarly limited, there was no panic. Instead, water demands had been lowered through aggressive demand management strategies; Metropolitan withdrew water from its groundwater storage accounts and from Diamond Valley Lake; and we purchased a modest amount of water from the business-like dry-year transfer program administered by the California Department of Water Resources. There was no rationing. Reliability of supplies was maintained. At the same time, in part due to the historic efforts to improve habitat and restore beleaguered fisheries, most fishery species of concern appear to be on a recovery trend.

To keep California on this successful track, it is imperative that we fulfill the vision of CALFED. It is for this reason that we so strongly support the efforts to authorize the CALFED Program in H.R. 3208[1], introduced by Chairman Calvert, as well as the efforts of Senators Feinstein and Boxer to pass authorization legislation for the CALFED Program in the Senate.

Administrative and Operational Changes

While overall the CALFED Program provides a sound plan for a secure water future for California, success has not been universal. One of the most notable exceptions is the operation of the Central Valley Project (CVP) both prior to and after the adoption of the CALFED ROD in August 2000.

Recognizing the serious water supply shortfalls experienced by CVP agricultural service contractors in the west San Joaquin Valley, the ROD includes a commitment to increase supplies for this region to 65 to 70 percent of their contract amounts under "normal" hydrologic conditions. Yet, in a January 25, 2002 statement, the U.S. Bureau of Reclamation (Bureau) announced water supply projections that clearly fall far short of this commitment. Based on the current operating guidelines for the CVP, under dry conditions, CVP Westside contractors can expect deliveries of 45 percent, comparable to the current allocation to SWP contractors. But while SWP contractors can expect increased deliveries under more favorable hydrologic conditions, CVP deliveries will be no more than 45 percent even under above-normal hydrologic conditions. Ironically, if the year turns out wet, CVP deliveries will be reduced to 35 percent due to the Department of Interior's (Interior) current plans to implement the Central Valley Project Improvement Act (CVPIA). The current operational guidelines of the CVP are not consistent with the clear commitment in the CALFED ROD to balance water supply and environmental benefits.

Wherein lies the remedy? In a December 11, 2001 letter to Chairman Calvert (Attachment A), Metropolitan's Chief Executive Officer Ronald Gastelum expressed our opposition to statutory remedies for this problem. Like many other water districts throughout California, we believe that statutory protections to guarantee the water supplies of one select group of water users, no matter how carefully worded, inherently pose the risk of putting others at a disadvantage. Such statutory solutions threaten to replace one form of imbalance with another. For this reason, we continue to oppose the so-called "assurance" language in any CALFED reauthorization bill.

Metropolitan believes just as strongly that the remedy lies in appropriate use of administrative discretion, as expressed in a subsequent January 8, 2002 letter to Secretary Norton (Attachment B). We believe that Interior has ample discretion under existing law to achieve the balance promised in the ROD. In recent years, Interior has used its discretion to implement a number of questionable measures in implementing Section 3406(b)(2) of the CVPIA, which dedicates 800,000 AF of CVP yield for specified environmental purposes (b(2) water). Chief among these discretionary acts are three accounting practices for tracking the use of b(2) water that have been labeled "reset", "offset", and "credits". In a decision dated February 5, 2002, the United States District Court, Eastern District of California has now found all three of these practices unlawful. For the reasons set forth below, regardless of the ultimate outcome in the courts, each of these discretionary actions warrants reexamination.

Reset. One of the uses of b(2) water is to release water from upstream storage to augment in-stream flows for specific environmental purposes. Under Interior's reset accounting practice, if storage subsequently recovers due to wet conditions before the end of January, the b(2) account is "reset" as though the delivery of water for environmental purposes had never occurred. Using this logic, it could be argued that if Interior releases stored water for delivery to a CVP contractor and storage levels subsequently recover, then its contract obligations should be "reset" and Interior should still be obligated to deliver the contractor's full contract amount as though the initial delivery had never occurred. The soundness of such a policy is subject to question. Certainly, allowing for "reset" after one project use but not another introduces systematic imbalance to CVP operations which has contributed to the water supply shortfalls in the west San Joaquin Valley.[2]

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[1] As discussed below, Metropolitan continues to oppose the so-called "assurances" language in H.R. 3208.

[2] According to the Federal District Court decision: "[Interior] is not free to use "reset" to "undedicate" and not account for (b) (2) use in a water year, because the current year's overall CVP water delivery capacity has been increased by the windfall of increased precipitation. . . Other than to prefer one competing use for water over another, without legal authority, the

Continued

Offset. The offset accounting practice affects CVP operations during summer months of peak irrigation demand. During these months with virtually no natural precipitation, water generally must be released from storage to be delivered to CVP export contractors. Accordingly, under some circumstances upstream storage will be higher in the system because export deliveries are cut to protect fish as a b(2) measure. Under the offset accounting practice, such shortages of water during peak irrigation months may not count as a use of b(2) water, because, under certain circumstances, the increase in storage "offsets" the loss of export water supply in Interior's accounting methodology. Thus, despite the fact that an environmental benefit ostensibly occurs by reducing exports and the fact that a clear economic harm occurs for the westside water user, Interior's offset accounting practices may treat such water as never being used for b(2) purposes. Like reset, the Federal District Court has found the offset accounting practice arbitrary and capricious and has ruled it unlawful.[3]

Credits. The CVPIA expressly states the purposes of b(2) water include water used pursuant to the state's Water Quality Control Plan (WQCP) and to meet ESA objectives. Water used for these purposes should be fully credited against the 800,000 AF of yield dedicated for environmental purposes under the Act. Yet, Interior's accounting practices place an arbitrary cap of 450,000 AF annually on the amount of water credited for these purposes. When actual impacts on the CVP exceed this amount, this accounting practice makes it likely that more than 800,000 AF will be taken from CVP contractors and used for the environmental purposes of the Act. In an October 19, 2001 ruling, the District Court agreed, ordering Interior to fully credit water used for WQCP and ESA purposes.[4]

Whether within Interior's legal discretion or not, Interior's current b(2) accounting practices are inconsistent with the balance objectives defined in the CALFED plan of action. The use of water dedicated for environmental purposes, whether b(2) or otherwise, should reflect the best scientific information available and attempt to achieve environmental restoration objectives with the least economic impact on others. Interior's practices appear to result in the use of more than 800,000 AF annually. Moreover, many of these practices have the effect of concentrating fish protection actions disproportionately on reducing CVP exports where the scientific support for such use tends to be weaker and the economic costs higher. Regardless of the ultimate outcome in the courts, Metropolitan urges Interior to reexamine its use of administrative discretion in implementing CVPIA and make appropriate adjustments consistent with the objectives of the CALFED ROD to balance water supply and environmental restoration objectives.

Environmental Considerations and the Role of Science

We are aware some interests may be concerned about the implications for environmental restoration of changes in the administration of CVPIA or other environmental laws. Metropolitan strongly agrees that the water supply benefits of the ROD should not be achieved at the expense of environmental restoration. Indeed, the philosophy of the CALFED Program is that we can accomplish both environmental restoration and water supply reliability—and that is the case here.

Already, some have suggested that because portions of the CALFED environmental baseline have been declared illegal there should be an immediate acre-foot for acre-foot increase in the Environmental Water Account or that ESA assurances should be withheld this year from the State Water Contractors and others. Such actions are premature. The ROD contains an orderly, public process based on science for dealing with such uncertainties and addressing whether additional EWA assets should be implemented. Metropolitan strongly urges Interior to follow those procedures.

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reset mechanism is a post hoc rationalization to justify not charging actual (b) (2) use." U.S. District Court, Eastern District of California, Supplemental Memorandum and Order, February 5, 2002, pages 12–13.

[3] The District Court held: "Thus, although CVP yield was actually used for (b) (2) purposes, and not made available for other CVP water users, it was not accounted for under the (b) (2) account. Once water is used for (b) (2) purposes, it must be accounted for. Interior may not use "offset" to "undedicate" and not account for as (b) (2) use, water that has already been used for (b) (2) purposes in a water year." Ibid, page 15.

[4] Emphasizing the importance of maintaining some certainty for CVP Contractors, the court argued: "[I]f it were left to Interior's "discretion" whether or not to count CVP yield used for such [WQCP or ESA] (b) (2) purposes, the annual 800 TAF cap would be illusory. The 800,000 TAF [sic] is intended by Congress as an immutable floor and ceiling on annual reallocation of water from CVP yield for (b) (2) purposes. If Interior uses more than 800 TAF for (b) (2) purposes in any year, but does not count all CVP yield used for such purposes, it violates CVPIA Section 3406 (b) (2)." U.S. District Court, Eastern District of California, Memorandum Decision and Order, October 19, 2001, page 35.

It is important to recognize that California's fisheries are in far better shape today than they were a mere decade ago. That is certainly the case for the three ESA listed species that have been a concern in the operations of the CVP and SWP in recent years: the winter-run chinook salmon, the spring-run chinook salmon, and the delta smelt.

The winter-run chinook salmon has been the subject of intense management activities and, for the first time in decades, the population of this species is on a recovery trend. The winter-run numbered only 191 returning adults in 1991, but last year more than 7,500 adults returned to spawn, the largest number since 1982. If CALFED is able to proceed with plans to restore 42 miles of cold water river habitat for this species on Battle Creek (a Sacramento River tributary near Redding), the winter-run may well be within reach of the population restoration goals of CVPIA and CALFED. Similarly, populations of the spring-run chinook salmon are rebounding on other Sacramento River tributaries. On Butte Creek, a critical spawning area for this species, CALFED restoration efforts with local and statewide cooperation have restored nearly 30 miles of prime habitat. As a result, where once only a few hundred fish returned to spawn, in recent years the returning adults number in the tens of thousands. The Delta smelt population index is also up, having climbed nearly to recovery levels in the past few years.

While these recent trends are encouraging and certainly suggest that we are doing something right through the CALFED Program, the fact is none of these species have yet achieved the sustainable population levels established as goals by both the Federal and state governments. For this reason, any changes in the use of discretion to accomplish water supply objectives must be part of the broader CALFED package that also keeps these and other species on a recovery track. To assure that these decisions are based on the best scientific information and do not undermine environmental restoration efforts, Metropolitan urges that Interior follow the procedures outlined in the ROD and consult the CALFED Science Program for guidance. For the same reasons, we recommend that Interior, in cooperation with the CALFED Science Program, convene an independent panel of scientists to offer advice on the best means of refining CVP operations in a manner that is consistent with the environmental restoration goals of the CALFED Program.

Mr. Chairman, once again, thank you for the opportunity to appear before you today. I would be glad to answer any questions the Subcommittee may have.

ATTACHMENT A

December 11, 2001

Honorable Ken Calvert
Chairman
Subcommittee on Water and Power
United States House of Representatives
1522 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Calvert:

Re: Water Assurance Language in H.R. 3208

On behalf of the Metropolitan Water District of Southern California, I want to commend you for the extraordinary leadership that you have demonstrated in seeking legislation to authorize the CALFED Bay–Delta Program. After decades of gridlock, the CALFED program holds the promise of investing in California's future in a balanced manner that advances the interests of all California water users, its economy and environment. We believe that H.R. 3208 addresses the most important California water issues before the Congress in a generation.

It is therefore with considerable concern that we have watched the debate unfold regarding water supply assurances for certain Central Valley Project agricultural contractors in the west San Joaquin Valley. This so-called assurance language remains one of the most significant obstacles to the passage of this historic legislation. Metropolitan agrees that water supply reliability for these contractors must be addressed in a manner consistent with the CALFED Record of Decision. However, we strongly believe that any attempt to do so in H.R. 3208 or any other Federal legislation is inappropriate. A statutory mandate to guarantee water supply levels for one water user inherently risks creating a disadvantage to others'directly contrary to the balanced outcomes promised by CALFED.

We urge that the assurance language in H.R. 3208 be deleted and, instead, all parties focus on developing effective administrative remedies to resolve the agricultural water supply reliability problems in the west San Joaquin Valley. We are prepared to participate in this administrative process in any way we can to help assure a balanced and fair solution. The passage of CALFED authorizing legislation is too important to put at risk when more effective and equitable administrative solutions are available for such a contentious issue.

Very truly yours,

Ronald R. Gastelum
Chief Executive Officer

cc: Senator Diane Feinstein
Senator Barbara Boxer
Secretary Gale Norton
Governor Gray Davis
California Congressional Delegation

ATTACHMENT B

January 8, 2002

The Honorable Gale Norton
Secretary
United States Department of the Interior
1849 C Street, NW
Washington, DC 20240

Dear Madam Secretary:

Re: Administrative Resolution of Water Supply Assurances Issues

In a December 11, 2001 letter to Chairman Ken Calvert regarding water supply assurance language in H.R. 3208, Metropolitan urged that the Department of Interior (Interior) develop administrative solutions to the water supply reliability concerns of Central Valley Project (CVP) agricultural contractors in the west San Joaquin Valley. We believe that Interior must act now to implement effective and balanced administrative solutions to these water supply problems. Indeed, the success of this effort this year could be critical to the overall success of the CALFED process.

While at times controversial and complex, at it's heart the CALFED process is built upon the foundation of balanced outcomes—a promise laid down in the Framework Agreement of June 2000 and the Record of Decision (ROD) in August 2000. To be successful CALFED must meet the reasonable needs of agricultural, urban, and environmental interests. The CALFED program does not and should not alter the underlying statutory authorities of the participating state or Federal agencies. But, the success of the Program does require that the considerable discretion these agencies have in accomplishing their charge be used to accomplish the fundamental promise of balance as defined in the CALFED program.

While the CALFED program enjoyed many successes in 2001, we believe that the operational plans governing the delivery of export water, particularly to CVP agricultural contractors in the west San Joaquin Valley, is falling considerably short of the promise of balance in the ROD.

Metropolitan firmly believes that Interior has ample discretion to meet this supply objective and that it can do so in a manner consistent with the environmental restoration goals of CALFED and without threatening the supplies of the Friant Water Users Authority or others. It is far better to accomplish this task administratively than to rely on uncertain and time consuming legislative solutions. We respectfully urge you to immediately address this issue, with open participation by agricultural, urban, environmental, and other stakeholders, and commit to developing a solution in a timely manner so that CVP project operations during 2002 achieve the balanced outcomes promised in the ROD.

Metropolitan stands ready to assist in this process in any way that we can. If you would like to discuss this critical issue further, please do not hesitate to call me at (213) 217–6211.

Very truly yours,

Ronald R. Gastelum

Chief Executive Officer

cc: Bennett W. Raley
Assistant Secretary for Water and Science

Mr. CALVERT. Thank you. We have a series of votes on, and I am going to ask a quick question and then I am going to recess the hearing, and Mr. Radanovich is going to come back to chair the hearing because I have to be at another meeting which has already started.

Very quickly, Mr. Wright, please explain the previous administration's policy on offset/reset under the (b)(2) policy. And after that, please explain the judge's decision in regards to this policy made last week, as well as he came to that conclusion, and hopefully you can make that quickly so I could run over and vote.

Mr. WRIGHT. I have never heard anybody clearly and simply explain offset and reset, so I am not going to pretend that I can. What I will say briefly is that—and clearly you need to hear this from Interior—they made certain judgments in interpreting the law that, when you allocate water for fish, if that results in increases in storage, that you some up with a different accounting method than if you simply count every acre-foot that is allocated. And that has been a raging issue ever since the law was adopted.

It is clear that we have new marching orders. As Secretary Raley said, that may change. There may be a stay, there may be an appeal, but for now the court's decision is the law of the land and we are going to, the agencies are going to implement it in that fashion.

Having said that, there is still a lot of work that needs to be done with respect to (b)(2) and EWA water, depending on how the remaining assets are allocated, that certain water users and fisheries come off better or worse. So there is still a lot of work to be done with respect to the relationship between the water that is remaining to balance the three goals that I talked about earlier: to protect fish; to maintain the assurances that the State water contractors are concerned about; and also to meet the target.

Mr. CALVERT. Thank you. I am going to recess this hearing until 12:30. Mr. Radanovich will be coming back to chair the hearing, so if you could please be patient with us, we are going to go off and vote. So we are in recess.

[Recess.]

Mr. RADANOVICH. [Presiding.] OK, we are back in session. I have a real quick question of one person before I turn it over to Cal, and that is to you, Dan. Do we know for sure that it was Arthur Andersen that was the chief accountant for the (b)(2) water? You don't have to answer. That is OK.

Cal, do you want to go ahead?

Mr. DOOLEY. Yes, thank you. I thank all of you for your testimony, and —

Mr. RADANOVICH. Excuse me, Cal. If you don't mind, can we just go for 5 minutes a pop, and we will just go back and forth until all our questions are done?

Mr. DOOLEY. Sure.

Mr. RADANOVICH. OK.

Mr. DOOLEY. I appreciate all your testimony, and Mr. Bishop, I appreciate your suggestions in terms of some specific actions that

could be taken that could address some of the challenges that we face.

I guess, you know, what I hear everyone saying though is that in some ways that what was offered or was presented in the Record of Decision in terms of providing some assurances in terms of south-of-the-delta is that I haven't heard anyone say that they think that we could meet those under, you know, the present circumstances, and there has been some question whether or not we can meet them at all. And, I guess, what has changed from the time that the Record of Decision was being promoted by a lot of you, and certainly people in the Department of Interior, and from what we find this today?

I mean, nothing has really changed, but all of a sudden now for all of the protestations that Secretary Hayes and others made, that we could hit this 65 to 70 percent with operational flexibility, that they promoted to us, now suddenly that seems to have evaporated. Mr. Wright, you made a pretty strong statement in your testimony that you didn't know if we could hit that. What changed? Or did anything change? Or were we sold a bill of goods?

Mr. WRIGHT. Well, I think what has changed recently is, we finally have a group of Federal appointees that are in place and are confirmed that are serious about addressing the problem. We had a lag of about a year or so where, to be candid, we didn't have the kind of leadership that we have needed, and what I am hearing and what you heard from Assistant Secretary Raley is that you now have the commitment from the administration to tackle this problem.

Also certainly, you know, the court case gives us—changes things in terms of our ability to meet the target, and I think—

Mr. DOOLEY. But, I mean, I guess my question is that there are a lot of folks were promoting the Record of Decision, said that we could hit that 65 to 70 percent. The court decision was post that Record of Decision, which gives us greater flexibility, we think, to hit it. But, you know, were people misrepresenting what was possible in the Record of Decision?

I mean, I put a lot of confidence in that. I mean, I encouraged some of my constituents to continue to be supportive of this process because of what was offered, you know, and was presented, and I haven't heard anything today that—you know, I don't know what this was based upon, by a lot of the testimony I have heard.

Mr. WRIGHT. Well, I think that the tools are there, and you would not have heard what you heard from the State and Federal representatives if they weren't—

Mr. DOOLEY. And I guess, you know, maybe Mr. Bishop and Mr. Quinn on this, it is that you both identified some actions that the department could utilize, that could provide for perhaps increased water availability to meet the assurances. Mr. Quinn, I think it was you in particular that expressed a frustration that the department hasn't been as aggressive in utilizing some of these options.

If you are in a position such as we are in Congress, if you have an agency that is not following through and is not enacting, you know, policies to achieve a statutory objective, why shouldn't we be a little more prescriptive? Why should we have the confidence that we can continue to rely on administrative discretion in order to hit

these targets? When you clearly indicate in your testimony that it hasn't worked in the past years, why should we have any confidence it is going to work in the future? And why should we not, as a body of Congress, prescribe to the department that they utilize some of these procedures that both you and Mr. Bishop identified?

Mr. QUINN. The fundamental problem will still remain the use of discretion. The fundamental problem that we have today is that discretion has not been used with an eye toward balance.

The fact is, we have a new administration. That administration has just gotten up in the saddle, and I think we need to—I frankly don't think you should accept the response that you can't get there from here. That has not been demonstrated to my satisfaction. If we think creatively, in a balanced way, maintain our commitment to ecosystem restoration, I have not come to the conclusion that you can't get there from here, and am somewhat disturbed to hear that coming from the Bush administration.

The 65 to 70 percent didn't come out of whole cloth. It was bureau analysts. It was based on studies done by the bureau, and they went to their experts in Sacramento, and they were told that they could accomplish 65 to 70 percent. And now we are being told we can get to 45 percent even if it is wet. Those numbers are not stacking up for me.

But the fundamental answer to your question is, whatever you do in legislation, our concern is to make sure that it doesn't tip the scales. We want discretion applied toward balance. If you have a statute that says, "Apply your discretion for this select group of people," we think that potentially undermines our interests. So does Friant. So do the San Joaquin River group. And even if you get those words in legislation, your fundamental problem is, how are they applying their discretion?

Mr. DOOLEY. Well, I guess, and now that you brought up the assurances language, have you read the last version of that where—you know, I guess, what is it that—you know, we went over it with Secretary Raley, where we are not directing the Secretary, we are giving them maximum discretion, we are providing the protections for water, you know, other water users in terms of quality and cost.

What additional, you know, language would you need in order to give you a greater comfort that what we are trying to do here is to ensure that the Secretary is using their discretion in a practical manner, holding everyone else harmless, in order to achieve a target which was prescribed and which was offered in the Record of Decision? I mean, we made, I made a good faith effort to try to make sure that we could address some of these legitimate concerns, and what more would you suggest we have to do?

Mr. QUINN. Let me start my response by, with no equivocation, this is a problem that must be solved. We are not arguing about whether we should be meeting supply commitments in the ROD. We are perhaps arguing over what is the best strategy to do so in a balanced fashion.

Now, with that firm commitment from us to solve the problem, we continue, with Friant and with others, to have concerns about any language in the bill that is built around the notion of protecting the supplies of a single group. I think that you have shown—

Mr. DOOLEY. But how does it protect the supplies of a single group when it simply says that the Secretary used, to the maximum extent possible—you know, whatever is practical actually it says, not even possible—you know, to try to strive to achieve the 65 to 70 percent? How would that—you know, it is not saying, directing the Secretary, "You hit this." It is encouraging them to do what they can that is practical, while holding everyone else harmless. I mean, I think I find it a gross overstatement that we are trying to carve out a separate group here and providing them some additional protection.

Mr. QUINN. Well, the way we interpret the language, Mr. Dooley, is still that the discretion is to be applied toward an objective of meeting a supply objective for a select group of CVP contractors—

Mr. DOOLEY. Which is consistent with what was in the ROD—

Mr. QUINN. Which is consistent, well, it is consistent with what was—it is consistent with the goal that is in the ROD, but there are other goals in the ROD, and the implication is that you can't get there from here, there is going to be a balancing process in implementing the ROD. I am greatly disturbed. I believe in that commitment in the ROD. I would like to see the bureau fulfill the commitment, but we are hearing testimony today that they can't. So if they have got a statutory requirement to do so, whose hide is it going to come out of? That is the concern that other water users in California—

Mr. DOOLEY. If you could give me an analysis of the statutory requirement that would be in the legislation that I put together, that would require them to hit that 65 to 70 percent, I look forward to that.

Mr. RADANOVICH. Thank you. Also, Tim, while we are on the subject, if you have got an idea about how we can meet that commitment without assurance, can you put it in writing for me or show me the studies that the bureau conducted to come up to that 65, 75 percent? I would love to see you send me some information that shows me how that can be done without a legislative fix.

Mr. QUINN. I would be glad to respond to that, and encourage you to be pressing the bureau for the same information.

Mr. RADANOVICH. Sure. Yes, I would be happy to.

Just on my opening line of questions, I really want to comment on some of the opening statements, because I keep hearing "fair and balanced" as far as when it refers to CALFED and how we have proceeded over these last 7 years in this process, and I—frankly I don't. I would love for somebody to convince me that this has been a balanced approach to accomplishing some of the water needs in this State.

I think that, and I don't have the numbers exact, but the example should be accurate that we have spent about $300 million so far on CALFED, and about 80 to 90 percent of that has been on environmental restoration, which I think is great. I think that that portion of water in California needs to be addressed, but I certainly see a lopsided approach to solving some of these problems.

And Patrick, God bless you, you mentioned some of the things that CALFED has accomplished, and you mentioned in there that progress on assurance—the only people that have got assurance now are the people that had assurance all along, and the only ones

who don't have assurance now are the people that never had assurance. We still have Westlands at 45 percent.

We have got no movement on water storage. CALFED has ducked on all the major water storage issues. They have put them out into the future. We have got a real threat when this—you know, as this law is progressing hopefully into law, that we are going to end up authorizing and giving the green light to spending on more environmental restoration while we simply study storage projects again for the next go round.

And I would like somebody to explain to me how this has been a balanced project so far, and meeting everybody's needs, because I think that is literally just a bunch of crap. And furthermore, what I don't want to hear is how some of the environmental restoration projects have had an ancillary effect by increasing very small, limited amounts of water supply for other users. So please don't tell me, unless you have got a good argument to tell me how this has been a balance so far, don't come to this Committee and say that this is balanced and moving forward.

Patrick, you mentioned three things that CALFED wants to do. You still listed fish ahead of allocation and assurance, and to me that still presents the problem in this plan, and that is that environmental restoration is still the driving force in this thing. Not that I am against environmental restoration, but don't tell me that it is in balance with allocations and assurance and increased water supply, because it is not.

And Mr. Osann, since you are representing the environmental community, feel free to respond, but there still is no commitment from the environmental community that I find that is supportive of increased water supply in California, other than perhaps some type of underground water storage.

So this is what I see from my view, from here. This is going nowhere, and we have got a very good possibility when this bill comes up that we are still not going to address California's most urgent need, and that is increasing water supply so that we can achieve a balance between environmental restoration, agricultural needs, and urban needs. And frankly, guys, I don't see it.

I mean, we have got a good chance of it if this bill passes on the House side and goes into law, but if there is any deviation from that in a conference with what is being proposed in the Senate, we are going to get nothing more than what we see. And if any one of you cares to respond, that is fine, but I feel it is important to make that statement for the record, because I have been hearing a little bit too much about balanced approach, and it is just I have not seen any of that in 7 years on this project.

Tim, if you would, do me a favor and give me a brief explanation of offset/reset. I have been in this business for a while and I don't understand offset/reset and how that pertains to the recent court decision on (b)(2).

Mr. QUINN. I will do my best, and there may be others here who can help me out.

Reset deals with water operations for the CVP early in the water year. One of the uses of (b)(2) water is to release water from Shasta for an environmental purpose, so you have drawn down your storage for an environmental purpose, to do an environmental good.

Then if before January 31st Mother Nature is kind to you and gives you storms, and the storage recovers, then Fish and Wildlife Service resets the 800,000 acre-feet and they get to proceed as though that water use had not occurred.

The judge found that that would lead to using more than 800,000 acre-feet of water. He raised questions about it. If reset were appropriate, why do it just for one use and not for others? And he questioned the balance in the policy that Interior has established.

So that is reset. Offset affects project operation later in the year, in the summer. During the summer months, frequently to deliver water to the export pumps when Mother Nature is not giving you any natural precipitation, you have to release water from storage.

So if you reduce pumping in those months at the export pumps in order to reduce fish entrainment, and later on in the year because of those actions there is a higher level of storage upstream in the system, then the argument is the increased storage offsets the reduced pumping. So despite the fact that the farmer didn't get his irrigation supply in peak irrigation demand and economic harm hurt, ostensibly an environmental benefit occurred, although the science is not strong on just what kind of environmental benefits you get from this particular activity.

The argument was that, similar to offset, it was as though the water had not been used for environmental purpose, and the judge found fault with that as well, arguing both practices would lead to using more than the 800,000 acre-feet, and this judge is very firm. You get 800,000 acre-feet, not 799,999 or 800,001 acre-feet. You get 800,000 acre-feet, no more, no less.

Mr. RADANOVICH. I see. Thank you.

Dan, I have got a question. You were in my office the other day talking about an MOA, and could you tell me what the status of that is and where it is at? And be aware that Friant is now represented in the room, and since they are not here to testify I am going to ask you to let them know that this is out there, because I want to get what their reaction is going to be to this thing.

Mr. NELSON. There have been ongoing efforts to resolve our differences with Friant, and we are on the very front end of even conceptualizing an MOA, and primarily the MOA just establishes sort of a process and how it is that we are going to go about discussing issues, what the issues are. And so it is very preliminary, and the only paper that is out is in very preliminary draft form. Have I put enough caveats on yet? And that is what I know about the MOA.

Mr. RADANOVICH. I was led to believe, at least, that there was an MOA heading toward Friant and you were waiting for their decision as to whether to accept it or not.

Mr. NELSON. Well, there has been an MOA that has been developed as a result of several conversations amongst the potential participants, and now all of the individuals are taking that back home and sort of fleshing it out at home.

Mr. RADANOVICH. Meaning both sides are in this process of doing that?

Mr. NELSON. That is correct.

Mr. RADANOVICH. So there is not a formal MOA that is going to Friant, that Friant is going to make a decision on, as I was led to believe yesterday?

Mr. NELSON. I have just been informed that it is an MOU, not an MOA, just for clarification.

Mr. RADANOVICH. Thanks.

Mr. NELSON. And as well that the Westlands board has adopted this, and it is going to the Friant board here soon.

Mr. RADANOVICH. Would you mind communicating with the Friant representative who is here now, who is not able to testify—his name is Joe Rader, in the back there—to ask him to find out when Friant is going to deal with that issue?

Mr. NELSON. I would be happy to work with Joe on that, Congressman.

Mr. RADANOVICH. Thank you very much. I appreciate it.

Cal?

Mr. DOOLEY. I guess, you know, there has been a lot of talk about the need, you know, to make sure that we are having the independent review on the science and the peer review, and a number of you talked about that. You know, I have requested that the Secretary request the National Academy of Sciences engage in a similar study in the delta as they did in the Klamath. And I guess I would ask, would anyone see that there would be any harm in NAS conducting such a study, and would you all agree that it would provide some value perhaps in terms of operations? Would anyone object?

Mr. BISHOP. Let me just jump in. I am a big advocate of this. I believe that it gets to some of your questions there about whether you deal with some of these discretion areas by being prescriptive in law or allowing the discretion.

I am on the side of, every time Congress has tried to be prescriptive, they have oversight hearings as to whether the prescriptive number was never met. When they rely on what the courts have found over and over, the discretion of the delegated person, and give them the tools and give them the goals and the criteria for applying that discretion, you have a much better outcome.

In this particular case, what we see over and over again is the science is immature, and when the agencies that have to apply immature science—this is whether it be the Clean Water Act, the Clean Air Act, the Endangered Species Act--every time a regulatory agency has to apply science in the absence of a mature, robust, peer-reviewed, accepted science, they err on the side of conservatism. And when you do that, particularly I heard it today, in a changeover administration with leadership not in place, conservatism gets placed on top of conservatism, and you end up with an outcome that doesn't balance the decision at all.

National Academy of Science is one vehicle that has been used by many agencies, regulatory, to come in and put a fresh light on the science and say, "This type of a decision, while being very conservative, is not justified based on the science to date, and you might want to wait, or you might want to try something different."

I alluded to CALFED is trying to do that on the ecosystem restoration program, outside scientists coming in, and some of their preliminary findings, if anybody attended their meetings, were along the same lines, which is they cannot find a cause/effect why water is being released now and what benefit it is going to have

on the fish, but it has been some widely held use that the pumps cause the damage, so therefore that is what you have got to do.

I think the National Academy of Science coming in would look and say, "You have spent $500 million on habitat restoration, ecosystem restoration. You have more tools to deal with the issues, other than water, and we need to review our reliance on water as the only tool for fishery recovery."

And I think that gives you the basis on which now you can have administrative discretion, which is characterized by swinging to one end of the spectrum or the other.

And that is why I would strongly encourage that happening, and happening as a regular basis, and if it has to be put in as a prescriptive reason, how you make these decisions—

Mr. DOOLEY. OK, so I would take that as a yes, then. How about you, Mr. Nelson? NAS review, would you support that?

Mr. NELSON. Absolutely, and we have been requesting for several years that there be independent review of the science behind the regulations.

Mr. DOOLEY. I don't know, Mr. Wright, if you can take an official position on that. Would you have any objection to that?

Mr. WRIGHT. We don't. Obviously we need to discuss that with our State and Federal colleagues. We are clearly committed to independent science. We have had several panels, as I talked about, that include some of the best experts in the country. I think the only issue is, you know, is the National Academy itself, you know, the right vehicle? What are the costs involved? What is the timing involved? There is certainly nobody in the program that has any issue with independent science. It is just trying to find the best vehicle.

Mr. DOOLEY. I am working on the assumption that there wouldn't be any cost to the stakeholders in this, and so it would be, you know, totally independent.

Mr. Quinn, would MWD have any objections, or would you support an NAS—

Mr. QUINN. No, we would strongly support it. We just want to make sure that CALFED's chief scientist is part of the process.

Mr. DOOLEY. And Mr. Stovall?

Mr. STOVALL. Yes, we would support it, and I think sound science is critical. We are already, as a result of Judge Wanger's decision, we are hearing environmental groups sort of chanting the mantra of trying the water somewhere else, and there needs to be a sound scientific review of whether there aren't better solutions than just taking water from people.

Mr. DOOLEY. And Mr. Osann?

Mr. OSANN. Yes, with the approval of the Chair, Mr. Dooley, I would like to have a chance to reply for the record on this.

Mr. DOOLEY. OK. Do you have a preliminary reply or—

Mr. OSANN. My initial sense is that NRDC would not object to an NAS review if you want like a third opinion, bearing in mind that there is a substantial science component, independent science component, built into CALFED, so you are getting a second opinion now, and also bearing in mind that NAS is not going to be going out doing field work. They are going to be doing review of what is

available, and as a priority we would recommend funding the people that are actually doing the work in the field.

Mr. DOOLEY. OK, and the reason why I am—you know, the reason—you know, I have already put this request in, and so your, the statements that you have made is something that I am going to also forward to the Secretary. And Mr. Osann, we will wait for your formal review to support that.

George, did you want to go ahead?

Mr. RADANOVICH. No.

Mr. DOOLEY. Mr. Osann, you made a statement in your written testimony regarding Judge Wanger's decision, that goes to the extent that if Secretary Norton should, you know, obviously appeal this, and you say in your statement, "In particular, it is important to note that if Interior does not continue to defend (b)(2) implementation, it will eliminate water supply assurances that have benefited Westlands and all other water users in the Central Valley, Southern California, and the Bay area."

Now I will say that, you know, some of the water agencies and Westlands in particular look at Wanger's decision certainly as not something that jeopardizes their water supply assurances, and I just, I don't quite understand, you know, what is—you know, how you are making the statement that Westlands is jeopardized by the Wanger decision.

Mr. OSANN. It looks to us as though it casts doubt on the validity of the current biological opinion and the NEPA final environmental impact statement of the ROD, and injects a degree of instability and uncertainty into the whole mix.

Mr. DOOLEY. So what would be the outcome of that, I guess? How does that—I guess I need to play that out in terms of, OK, so it does bring this into question. How does that, you know, reduce the supply of water that is going to Westlands?

Mr. OSANN. What will be the basis for the ESA compliance for the 2002 operation of the pumps?

Mr. DOOLEY. Mr. Nelson, what would be your response?

Mr. NELSON. Well, a quick clarification on a minute point. It doesn't just affect Westlands. It would affect 24 other ag service contractors south of the delta in the same way that it affects Westlands.

With that, the (b)(2) decision, we need to be very clear about what it does and what it doesn't do. We have always had that discretion. I think what you have heard from everybody up here, regardless of what the judge says, this is, the reset and offset is something that has been on the top of the list of discretionary items that should be used in meeting the 65 to 70 percent.

And so notwithstanding whatever it is that Judge Wanger ultimately said or ultimately will say, or what the 9th Circuit appeal court will say, the fact of the matter is, we have discretion to account for the 800,000 acre-feet in a way that doesn't take into consideration reset and offset, which allows the Bureau of Reclamation to use much more than 800,000 acre-feet.

The second point I would like to make is, we have an array of tools that are available to us for meeting environmental objectives. We have (b)(1) water, which is a reoperation of CVP, without any cost to contractors. We have (b)(3) water, which allows the

Restoration Fund, which the CVP water users pay each and every year into, to be used to go out and purchase additional water. We have the EWA to be able to go out and purchase some additional water, as well as several other tools that are available to us to meet our environmental objectives.

Essentially, what the judge has said is, "Department of Interior, you have overstepped your bounds on this one tool."

So I would suggest that we take a couple of steps back, No. 1. Evaluate do we need this level of protection, and that is where the earlier discussion of scientific review, do we need this level of protection for endangered species. And, No. 2, what are the other ways that we accomplish that? What other tools can we use to accomplish that?

Mr. DOOLEY. I guess my final question for the panel is, Mr. Osann provided information where—I think from a number of environmental groups, requesting the Department of Interior appeal the Wanger decision. Have any of the other groups that you all represent, are any of you requesting the Secretary to appeal the Wanger decision? Mr. Quinn?

Mr. QUINN. No.

Mr. DOOLEY. Mr. Stovall?

Mr. STOVALL. No.

Mr. DOOLEY. Mr. Bishop?

Mr. BISHOP. No.

Mr. DOOLEY. Mr. Nelson?

Mr. NELSON. No.

Mr. DOOLEY. Mr. Wright?

Mr. WRIGHT. No.

Mr. DOOLEY. So all of you—yes, Mr. Osann?

Mr. OSANN. Excuse me, Mr. Dooley. The attachment that I provided was a letter in support of the (b)(2) formulation of the department but it was not following the opinion of last week.

Mr. DOOLEY. Oh, excuse me, so I didn't characterize that correctly and I apologize for that.

Are you guys going to be appealing the decision of Judge Wanger, the NRDC?

Mr. OSANN. I don't know. We haven't reached a decision on that yet.

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

And I think on this my—I am finished up my questions—I just want to thank all of you, not only for your testimony today but, I mean, we sometimes have disagreements but I really do acknowledge that each and every one of you have a great deal of expertise and have been a real constructive part of trying to address a lot of the water problems we face out there, and they obviously are very challenging. And I just want to make sure you understand that, you know, I am committed to being a partner with you as we try to further bring clarity and resolution to these issues.

Mr. RADANOVICH. Thanks, Cal, and I want to echo your sentiments as well. It is such a frustrating process, but I remain committed to CALFED and to all of you to try to reach a balanced solution. I still want to hear from each and every one of you, do you all think that this process, everybody is moving forward together? Tim? Come on.

Mr. QUINN. I learned a long time ago, the Member is always right.

Mr. RADANOVICH. Come on, you know me well enough. Just give me a guess.

Mr. QUINN. As I state in my testimony, Mr. Chairman, there are clearly places where we are not achieving the balance that the ROD promised and we need to fix that, but that is far from the conclusion that CALFED is totally broken. We are moving forward on studies for surface storage. That process must continue, and Metropolitan will aggressively support it.

The EWA is out there. It is an enormous step in the right direction, from our perspective. Our ESA assurances, for the first time in my career I could go to my board and say our State project supplies were reliable last year. We got the principle established in the accord, but we never had any means to enforce it. EWA gives us the tool that can provide those assurances, which is why I am so horrified that some are saying because a Federal court makes a decision over here about something other than the State water project supplies, we could wind up losing our ESA assurances.

So I do believe CALFED is part of the solution. They are now in implementation mode. They are moving forward, not exactly the way I would like, but if they don't deserve an A, I don't think they deserve an F either. Perhaps B minus.

Mr. STOVALL. I think, Mr. Radanovich, we would actually concur with you on that as far as what has occurred this far, and to some extent that has been part of the plan. It was known that some of these environmental solutions or impacts would occur first. But we are now entering a critical testing period.

The things that will actually improve water supply—and Mr. Quinn alluded to the EWA, a very significant part of that, improvement of the south delta pumping facilities—are things that are critical to making this happen, and I think critical to making the 65 percent come into reality, and those things are facing environmental challenges now, challenges from groups who actually never really supported CALFED in the first place. It is going to be critical, in our thinking as to the continuation of the CALFED process, if we do actually pass this test and some of these water supply things do start happening now, because now is the time they have to start happening.

Mr. RADANOVICH. Do you see the current Senate version as it relates to implementation of water storage as a positive direction or a negative direction?

Mr. STOVALL. We like Mr. Calvert's bill better in that regard. We think that Mr. Calvert's bill provides more assurances of balance and that this balance will continue. We believe that and support moving Senator Feinstein's bill forward, although we think the protections for balance are very fragile in that bill, and we certainly wouldn't want to see any reduction. We would like to see some improvements of protection for balance out of whatever final product comes out of both houses.

Mr. RADANOVICH. Thank you.

Mr. Osann?

Mr. OSANN. Yes, with regard to your—the points you made earlier about balance and the position of the environmental community relating to storage, I did want to comment on that.

Mr. RADANOVICH. Sure.

Mr. OSANN. I can't speak for the entire environmental community here today. I can speak on behalf of NRDC, and I don't think the record will support a contention that NRDC is implacably opposed to any surface storage.

We have supported the CALFED ROD. The ROD calls for the study of additional storage in an orderly way, study of the economics and the environmental consequences associated with specific storage projects. I don't think we have done anything to obstruct or discourage those studies from going forward, and like I said in my opening remarks, we are enthusiastic about some portions of the ROD, we are skeptical about other portions, but we support the project, the CALFED program going forward in a balanced way.

Mr. Bishop pointed out that surface storage in the CALFED framework is not for new growth but is to firm up existing supplies and in that context the storage comes into the system, if it does, comes into the system as an insurance policy. And the beneficiary pay principle is embodied in the CALFED ROD. That is another element of it that we strongly support. So at some point there are going to be some decision points a few years out as to whether the potential beneficiaries—whether the premium, if you will, for this insurance policy is commensurate with the hazard that is being insured against, which is a shortfall of supply.

We don't know how those decisions are going to come out. We don't know if the storage options that are developed under CALFED are really going to be seen as economical or practical by potential beneficiaries, to the point where someone is really willing to come forward and put their own dough into those projects. But we are certainly willing to see that process play itself out, environmental evaluation and the economic evaluation. We are not discouraging anybody from funding those studies.

Mr. RADANOVICH. Was it the intention—I am hearing from the previous speaker, too, that when CALFED began, although I understood it to be something to where no one stakeholder was going to be allowed to kind of get ahead of the others, so that you could bring everybody along together, that seems to be in conflict with what I have heard said, that there was some idea that the environmental restoration ought to occur first and therefore all the funding kind of went in that direction right away. It seemed to be in conflict with the idea that everybody would be brought forward, you know, kind of closely together, but instead put the environmental stakeholder much further out than the others.

Mr. OSANN. I think there are some ripeness issues here, as well. CALFED does envision a progression of investments, and some investments are small, easily understandable, and they are more or less ready to go. Others take more advance preparation and the lead time on them is necessarily going to be longer.

Mr. RADANOVICH. It still seems hard to get that principle, though, because in my appearance it looks like the stakeholders, the environmental stakeholders are way out ahead on a lot of this

stuff, and yet there is still resistance to move forward I think a little bit more aggressively on storage.

Mr. OSANN. I know, for instance, that in the area of water conservation and efficiency there are—in the ROD there were pretty ambitious plans to ramp up spending for both agricultural conservation projects and urban conservation projects. Now, a good number of those have gone forward, but we are not near the funding levels in the early years that were envisioned in the ROD.

Mr. RADANOVICH. Yes, and I equate more water availability to storage. I think the conservation measures are good, but they are not going to get us there for—

Mr. OSANN. There are significant chunks of water associated with both agricultural and urban conservation.

Mr. RADANOVICH. Right.

Mr. Bishop?

Mr. BISHOP. I don't want to repeat what is ahead of me, but I agree with Tim in that the balance is not perfect but it is not an F, and I would equate water quality delays as as critical as water supply. I know we are focused on supply, but we are not going to get supply if we don't improve the quality, and that is another area we are going to focus on.

I also agree with Mr. Stovall in that this is the testing period, and the only comfort I can give you as you share your frustrations is, I think I am the only one at the table that has built a reservoir in the last 10 years that got a 404 and a water right. The toughest process. Los Vaqueros. And I will tell you, I was about where you are, sir, in the first 3 years of that process, where we were spending $30 million on environmental restoration and net benefits, and no permits, no authorities, and significant opposition, even though today everybody says they were in favor of it, significant opposition at that time.

And I would just say we are in the wandering in the desert period, where the next year or two we can catch up pretty quickly on storage studies, and we are not going to get storage without ecosystem restoration and efficiency. You know that. So the money we are putting in right now may frustrate us because we are not making the kind of progress on quality and storage, but if we get the funding, we can move on that, and those two will be critical underpinnings for the critical permits.

Mr. RADANOVICH. Yes. OK, thank you.

Mr. Nelson?

Mr. NELSON. We are very apprehensive about CALFED and how at least what we have experienced over the last couple of years in the initial implementation of CALFED, we have actually realized some of the apprehensions that we did have going into it, when the ROD first came out or when we first analyzed the ROD. When the ROD came out, we first looked at the regulatory baseline and immediately recognized that it was excessive and without any science or any scientific support, and certainly that is proving to be true.

Secondarily, it appears to us as if a lot of the environmental provisions are sort of front-loaded, on the front end of being able to move forward with a lot of the environmental protections and provisions, while most of the water supply provisions are several years away and many studies away.

And then, last but not least by any means, especially from our area, we looked at the language in the ROD about the balance, trying to balance our water supply, and the water supply objectives as being ambiguous, and certainly we are realizing how it is, the difficulties as a result of that that the CALFED agencies are having in meeting those water supply objectives.

So we are still working with moving CALFED forward, but we are watching very carefully and it certainly is headed in a new direction that we couldn't support ultimately.

Mr. RADANOVICH. OK.

Patrick?

Mr. WRIGHT. We, among the CALFED agencies, continue to believe that the plan as a whole is a balanced plan. Having said that, I share your concern that if we cannot meet the commitments in the plan, and particularly those that Mr. Dooley and others have raised, that support for the plan is going to evaporate. Hopefully this hearing will be another wake-up call for us to put our heads together and come up with a plan that meets all the objectives that we have talked about, particularly with respect to 2002 operations.

I did not mean to imply earlier that our goals, the three goals of meeting the 65 to 70 commitment, the water supply reliability assurances for the other south-of-delta contractors, and meeting needs of fish, were in any particular order. We need to meet all of those goals and, as Wally Bishop emphasized, we also need to protect—

Mr. RADANOVICH. That was the order I was looking for originally.

Mr. WRIGHT. It is a challenge. It is a delicate balancing act, but with your help and leadership and hopefully a reauthorization bill, we will be able to get there.

Mr. RADANOVICH. Patrick, I am aware—I have got this study, which is a beautiful study, in front of me, the tracking report. Is this not being funded anymore? What is the deal with this?

Mr. WRIGHT. We are struggling to find money to continue our planning and tracking system. We are going to find it. If we have to cut other elements of the program, it is going to be painful, given our general fund cuts and the fact that we have only got now in the President's budget $15 million.

The first thing to go when we get funding cuts are organizational activities as opposed to projects, and so our concern with respect to the program is with less funding the program elements that are most at risk are things like science and planning and tracking and oversight and coordination. So we are going to need to work with you and others to make sure that those—that that is where the added value of the CALFED program is.

There is somewhat of a perception among even some of the stakeholders that now the plan is out, the agencies can just go and implement the plan. Well, as we have seen today, that is not as effective as having a strong CALFED staff that is keeping the agency's feet to the fire, doing the science, doing the planning and tracking, doing the public outreach that is necessary. So we continue to believe at the program that the CALFED entity and a governing structure that gives you more accountability than you have had on this issue for the last couple of years is vital to our continued success.

Mr. RADANOVICH. So you are committed to maintaining this?

Mr. WRIGHT. Yes, absolutely.

Mr. RADANOVICH. Good news, because this is a valuable document here. It is very good.

Well, I want to thank you all.

Cal, you have no other questions?

And I don't want to come across as being anti-environment. I think that I support the goals of the environmental restoration that is in the plan, in the ROD, and in CALFED, but I think that the time has come, as everybody knows, to start to concentrate on storage, and it needs to manifest itself in dollars, percent funding, overall increases, and time and attention. And I am fearful that that is not happening, and I hope that it does manifest itself in whatever bill this House and Senate passes and the President signs.

So thank you for being here. Continue to work, and hopefully we will continue to progress on this. Thank you very much.

[Whereupon, at 1:18 p.m., the Subcommittee was adjourned.]

[A letter submitted for the record by Mr. Barry Nelson, Senior Policy Analyst, Natural Resources Defense Council, follows:]

March 6, 2002

The Honorable Ken Calvert, Chairman
Subcommittee on Water and Power
U. S. House of Representatives
Washington, DC 20510

Dear Chairman Calvert:

At your February 14 hearing regarding Delta operations and the CALFED program, you asked for NRDC s position regarding a proposal for a National Academy of Sciences (NAS) review of CALFED decision-making. Ed Osann indicated that we would provide additional views on this subject. I am writing to provide these views.

NRDC has been involved in the CALFED process since its inception. We have consistently advocated the establishment of a strong science program to assure that CALFED decision-making has a firm scientific foundation. We are pleased that CALFED has taken this need seriously. CALFED has hired Sam Luoma, an experienced and well-respected scientist from USGS to serve as its head scientist. This science program has played a central role in assuring the strongest possible scientific basis for CALFED s ecosystem restoration decisions. In fact, CALFED has already involved key members of the scientific community who would be almost certain participants of any NAS review. In short, CALFED has already obtained extensive independent scientific review of ecosystem restoration actions.

However, other areas of the CALFED program have not received such careful external scientific evaluation. For example, there has been little outside scientific review of the following issues:

Cumulative Impacts from Existing and Proposed Increases in Delta Pumping: Despite the extensive work CALFED is undertaking regarding water diversions from the Delta, the program has not convened an outside panel of experts to evaluate the cumulative impacts from existing Delta pumping. Such an evaluation would be particularly valuable because CALFED is moving to relax existing pumping limits in the Delta. The impacts from increased Delta pumping could be significant. Ten years ago, the last major external review of the science regarding Delta diversions set the stage for the Bay–Delta Accord. However, that process, and the work of the CALFED program, have not resolved several key issues. For example, how would additional pumping affect tidal wetlands and wildlife in the Suisun Marsh the state s largest brackish marsh? An external review would reveal scientific progress made in the past ten years regarding Delta diversions.

The Impacts of Renewing Federal Water Service Contracts: The Department of Interior is currently negotiating the renewal of expiring Central Valley Project water service contracts that, collectively, will control the delivery of millions of acre-feet of water during the coming 25 years. There has not, however, been an independent scientific review of the environmental impacts of these proposed renewals. Likewise,

there has not been an independent review of the potential conservation benefits of moving away from historic water subsidies towards realistic pricing of CVP water.

The Economic Merits of Proposed New Surface Storage Facilities: CALFED is pursuing several proposed new and expanded surface storage facilities. CALFED s own analysis suggests that alternative water supply options would be less expensive. NRDC s additional analysis has raised serious concerns regarding the economic viability of these proposed projects. However, not all stakeholders have been convinced by this analysis. We would welcome an independent analysis of the economic merits of proposed new surface storage facilities and the willingness and ability of water users to pay the full cost of water from these proposed facilities.

While the ecosystem program has received extensive scientific review, the critical issues outlined above have received little outside scientific review through the CALFED program. If there is any NAS review of the scientific basis of CALFED decisions, we recommend that this review begin in these areas.

Thank you for keeping the hearing record open to allow us to provide these additional comments. We look forward to continuing to work with you to address critical California water issues.

Sincerely,

Barry Nelson
Senior Policy Analyst

cc: Senator Barbara Boxer
Senator Dianne Feinstein
Congressman George Miller
Assistant Secretary Bennett Raley
Resources Secretary Mary Nichols
Patrick Wright, CALFED

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