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S. HRG. 114–381

WESTERN AND ALASKA WATER LEGISLATION

HEARING

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

ON

H.R. 2898	**S. 1936**
S. 1583	**S. 2046**
S. 1894	**S. 2083**

OCTOBER 8, 2015

Printed for the use of the
Committee on Energy and Natural Resources

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WESTERN AND ALASKA WATER LEGISLATION

THURSDAY, OCTOBER 8, 2015

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

The Committee met, pursuant to notice, at 9:39 a.m. in Room SD–366, Dirksen Senate Office Building, Hon. Lisa Murkowski, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

The CHAIRMAN. Good morning. The committee will come to order.

We have a full house speaking about an issue this morning that I think is fair to say if you are from the West, you get up every morning thinking about what is happening with water, with our drought situation, and what can be done to address some of the issues that have been long-standing in California and the concern that it continues to grow and be an evolving threat.

Our focus this morning is on legislation, which is good to have this discussion before the Energy Committee. There has been much thought, there has been much oversight and many, many reviews.

I myself have been out to California a couple of times meeting with farmers, meeting with interests that are very, very concerned about how we move forward. But until you have some legislation in front of you that defines what some of the proposals are, it makes it more difficult for us as a committee.

Today we are focusing on legislation. We have a Senate bill that my colleague and friend, Senator Feinstein, has been working on for some time now, the California Emergency Drought Relief Act. We have the House bill that Congressman Valadao has been working on, the Western Water and American Food Security Act. Their sponsors are here, along with Senator Boxer who has been equally engaged on this issue on behalf of her constituents. So we will hear brief comments from them this morning before we go to our panel of witnesses.

Everyone, I think, in this room is aware that we have a serious, long-lasting, and consequential drought. California has imposed mandatory reductions on water use by its residents and its businesses. Many California farmers continue to face unprecedented reductions in water delivery, and some communities no longer have running water. Some of the stories we have heard just really make you heartsick. This is something that must be addressed.

But this is not just about what we are seeing in California. It is a Westwide drought. It is being felt across the Colorado River

Basin, up in the Pacific Northwest. Interior Alaska even was abnormally dry this summer. Dry conditions also contributed to a terrible wildfire season this year. So when we think about the impacts of drought, it is more than just the water itself. It is also the impacts.

The question we are here to discuss is what do we do about it? What do we do about the drought? Our choices largely boil down to the measures before us today.

The House and Senate bills both seek to maximize water delivery to where it is most needed in California. Both reflect some common approaches. For example, requiring agencies to use real-time monitoring to address environmental concerns associated with increased water flows through the Bay Delta. But I think it is important to note that the bills diverge in some important ways.

The Senate bill seeks to provide guidance to Federal agencies to increase flows through the delta, while also giving agencies flexibility to make decisions on flow levels. Its sponsors have proposed substantial increases in funding for a variety of activities, including greater storage. As we review that approach, we need to consider the criticisms of that Senate bill: that its guidance to the agencies is perhaps insufficient, that current flexibility is not being utilized, and that it lacks necessary funding offsets.

We also need to consider the approach that has been taken by our House colleagues. Their bill gives more direction, less flexibility to the agencies. It includes funding for storage and other activities but is fully paid for. These decisions have led some to claim that the House bill is overly prescriptive, is too rigid, and does not provide sufficient funding for some key programs.

We could talk about Goldilocks here and which one is too big, too small, and which one is just right, but I think it is important to acknowledge that these are very complicated, some very complex issues, and we need to reach a unified legislative response.

Also before us today is a bill from Senators Heinrich and Udall that includes some interesting provisions on water transfers and exchanges.

Finally, we are receiving written testimony on three hydropower bills, including my measure to authorize the expansion of an existing hydro project at Terror Lake in Alaska. Right now, the area around Terror Lake is powered solely, solely by clean, renewable hydropower and a small wind turbine. We are in kind of an interesting situation. If we cannot allow for the expansion, what we do then is we turn back to expensive diesel fuel instead.

The news across the country, and it was highlighted when President Obama was up in the state, was that we are making some remarkable headway with our microgrid systems. Kodiak is always pointed out as the second-largest island in the United States of America getting to the point where they can be 100 percent on renewables, but we are going to have to go back to diesel if we cannot get an expansion around Terror Lake.

It is a beautiful place out there surrounded by a lot of bears, and if anybody is not thinking kindly about it, maybe they should go take a trip out there and take a look. I will invite you to visit our bears.

But what I think we want to focus specifically on here this morning is the extent of the drought that we are facing in the West, and I appreciate a great, great deal the work the sponsors of these various bills have put into where we are today.

I have asked for indulgence of my colleagues that are here to testify. We are trying to get through, again, a pretty aggressive panel with hopefully lots of questions, but I am pleased that you have joined us this morning. We will look forward to your comments after Senator Cantwell has provided hers, and then we will move to this very important issue.

Senator Cantwell.

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

Senator CANTWELL. Well, thank you, Madam Chair, and thank you for holding this important hearing. And welcome to the Californians. That is something that my Washington doesn't always say. [Laughter.]

But I certainly appreciate Mr. Valadao. We just met this morning, but I just want everyone to know there are no more tenacious Members in the U.S. Senate than the two women sitting next to you. I know that they have worked very hard on this legislation over a long period of time, and they are certainly trying to have the best interests of everybody at hand. I look forward to hearing all of your comments this morning as we try to deal with this very tough issue.

As the Chair said, communities across the West are seeing the impacts of this, not just Californians. Towns and wells have run dry, farmers have seen billions of dollars of losses, and the ecosystem has suffered.

So we know this, there are no easy solutions. However, one thing is clear: we cannot address the long-term impacts of this issue by fostering short-term solutions that don't help us manage the ecosystem. The worst thing to do, obviously, is to pass legislation that ends up in the courts and allows us not to move forward on anything.

Drought will likely continue for the coming years, and short-term solutions that divide communities, threaten the environment, and create greater uncertainty only make the challenge harder because we know that this situation is not going away. There is no question that we are seeing some of the most severe droughts in history, and California is experiencing the worst drought in 500 years.

In the State of Washington, we have had record-breaking temperatures, low snowpack, catastrophic wildfires that I also know my colleagues here before us today care greatly about, farmers are facing $1.2 billion in crop losses this year alone, and nearly a quarter million sockeye salmon died in the Columbia River this summer trying to reach their spawning grounds.

Over the last several months, the committee has heard a lot of ideas about how to deal with drought, so today we are hearing about these pieces of legislation before us that you have sponsored.

The Yakima Basin hearing we had earlier this year, Madam Chairman, on drought was kind of eye-opening, I think, for a lot of people here because it included the innovation where projects

are balanced, integrated with a holistic response and where tribe, fishermen, farmers, and foresters all sat before us in an agreement about how to move forward. I like this approach. I like this approach because it allows you to solve problems, stay out of the courts, and keep moving forward.

I want to make sure that we are developing long-term, resilient plans and we are doing that as we continue to focus on water-sustainable communities. I also want to make sure that we are not pitting one community against another.

I should just say that I chaired the San Joaquin hearing several years ago and so sat through the 18 years of litigation on that case and, finally, solutions of people coming together. So I know well some of the challenges that California has tried to push through in the past. My point is just this: that lengthy court battles resolve nothing.

Instead, what we need are solutions that take an integrated, basin-scale approach, take into account all the needs in the watershed, and make sure that there are locally-driven solutions that are collaborative, yes, and consensus-based.

We need to make sure that we are doing everything we can to make sure we are protecting our environment—clean water, healthy ecosystems—and that we are not managing the water or the ecosystem to the brink of collapse. I say this because we are reminded every day about the iconic salmon population in our state and how trading one for the other does not work for us. It does not work for fishermen.

I want to make sure that we are not overriding considerations of the National Environmental Protection Act. Drought and management solutions should work with nature to seek and increase the best benefits for both humans and the environment.

Lastly, I want to make sure that we are responding to drought and how we manage water, not how we make it more complicated. So I do believe in modernizing our Federal approaches. I want to make sure that we are not creating uncertainty, but we are—utilizing locally-based solutions that incentivize people to work together and get the best science available, leveraging the power of innovation to help us solve this problem.

I know there are a lot of things that we are going to talk about today, Madam Chair, on this issue, but I hope that as we talk to the witnesses, we will keep these priorities in mind to make sure that we are improving our existing infrastructure and making sure that we have nature-based solutions and addressing all of those issues so that fish, farmers, forests—are all working together on these solutions.

Thank you.

The CHAIRMAN. Thank you, Senator Cantwell.

I am pleased to be able to welcome our colleagues to the committee. Congressman, we appreciate you taking time from your morning to join us with this very important issue, but further to the point, for all that you have been doing really for years in this arena. We look forward to working with you as we advance these measures.

With that, Senator Feinstein, if you would like to lead off this morning with your comments, welcome.

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

Senator FEINSTEIN. Thank you very much, Madam Chairman and Ranking Member Cantwell and members of both parties. I am very pleased to have this opportunity.

I make this statement on behalf of my colleague on the left, Senator Boxer. We are joined at the hip on this, and I hope after you hear our testimony you will join us in that.

I would also like to thank Jeff Kightlinger for testifying today. Jeff is the General Manager and CEO for the Metropolitan Water District in Southern California. This is the largest municipal water provider in the nation. It is a water district that supplies drinking water to 26 cities and water districts, and it serves nearly 19 million people. Jeff is a professional. He has been at this for a long time, and hopefully, his words will mean something to this committee.

Let me begin with a general statement. This drought is worse than anything I have seen in my lifetime, and I am very worried about what it means for the State of California. Reports say that the Sierra Nevada snowpack, which is our major source of water, hasn't been this low in 500 years. And there is a strong belief that droughts will become chronic and, therefore, real problems.

Rural and disadvantaged communities are especially hard hit. We have subsidence of huge areas, some as the ground is empty for as much as 60 feet, and this can become catastrophic in the event of an earthquake.

As of this month, 2,400 wells are dry or soon will be, and this puts 12,000 people in jeopardy of being without water. Just this month, in the Washington Post, I read about a family from Porterville reduced to bathing with donated supplies and living off bottled water. And this isn't the only one.

UC Davis reported that the California economy will lose an estimated $2.7 billion in 2015 along with 18,600 jobs. That is on top of the $2.2 billion last year and another 17,000 jobs we lost.

Over the past two years, Senator Boxer's staff and my staff have spent countless hours working out a drought bill in consultation with farmers and fishermen, cities and rural areas, and environmentalists and businesses up and down the state. There is a truism, "Whiskey is for drinking, and water is for fighting." I appreciate Senator Cantwell's comments, but there is a long history. It is very difficult in California to get a consensus on anything that is going to be meaningful.

We have a bill that we believe has widespread support. The Nature Conservancy and the California Farm Bureau support the bill, as do 29 water districts and cities. I put together a packet of those letters of support that I would like to provide this committee, if I may, Madam Chairman.

[The information referred to follows:]

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- Los Angeles Times - *Feinstein-Boxer water bill offers real drought relief* (8/14/15)
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THE METROPOLITAN WATER DISTRICT
OF SOUTHERN CALIFORNIA

Office of the General Manager

October 8, 2015

The Honorable Lisa Murkowski
Chair, Committee on Energy and Natural Resources
United States Senate
SD-304 Hart Senate Office Building
Washington, D.C. 20510

S. 1894 (Feinstein, D-CA) – Support

Dear Senator Murkowski,

On behalf of the Metropolitan Water District of Southern California, I am pleased to inform you that our Board of Directors has voted to support S.1894, the California Emergency Drought Relief Act of 2015, which will be heard in the Committee on Energy and Natural Resources on October 8, 2015.

Metropolitan adopted legislative priorities for federal drought legislation on August 18, 2015. S. 1894 represents significant legislative progress on nearly all of those priorities. Consistent with these priorities, the bill authorizes funding and provides regulatory assistance for regions affected by drought for both immediate and long term water projects. These projects will aid in the development, storage, treatment and delivery of water. The bill could also help protect reliability for the State Water Project (SWP), Colorado River Aqueduct, and local water supplies. Additionally, the bill works within the Endangered Species Act to increase operational flexibility of water systems, while not weakening protections for listed species. These are just a few out of many drought-related priorities Metropolitan supports that would be strengthened through passage of this comprehensive bill.

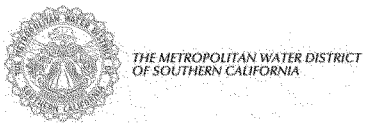
Metropolitan greatly appreciates the opportunity to work with you and your committee staff to respond to any questions you may have about S. 1894. We thank you for your continued leadership in addressing water needs of the West.

Sincerely,

Jeffrey Kightlinger
General Manager

cc: The Honorable Dianne Feinstein
The Honorable Barbara Boxer

700 N. Alameda Street, Los Angeles, California 90012 • Mailing Address: Box 54153, Los Angeles, California 90054-0153 • Telephone (213) 217-6000



Office of the General Manager

October 8, 2015

The Honorable Maria Cantwell
Ranking Member, Committee on Energy and Natural Resources
United States Senate
SD-304 Hart Senate Office Building
Washington, D.C. 20510

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Dear Senator Cantwell,

On behalf of the Metropolitan Water District of Southern California, I am pleased to inform you that our Board of Directors has voted to support S.1894, the California Emergency Drought Relief Act of 2015, which will be heard in the Committee on Energy and Natural Resources on October 8, 2015.

Metropolitan adopted legislative priorities for federal drought legislation on August 18, 2015. S. 1894 represents significant legislative progress on nearly all of those priorities. Consistent with these priorities, the bill authorizes funding and provides regulatory assistance for regions affected by drought for both immediate and long term water projects. These projects will aid in the development, storage, treatment and delivery of water. The bill could also help protect reliability for the State Water Project (SWP), Colorado River Aqueduct, and local water supplies. Additionally, the bill works within the Endangered Species Act to increase operational flexibility of water systems, while not weakening protections for listed species. These are just a few out of many drought-related priorities Metropolitan supports that would be strengthened through passage of this comprehensive bill.

Metropolitan greatly appreciates the opportunity to work with you and your committee staff to respond to any questions you may have about S. 1894. We thank you for your continued leadership in addressing water needs of the West.

Sincerely,

Jeffrey Kightlinger
General Manager

cc: The Honorable Dianne Feinstein
The Honorable Barbara Boxer

700 N. Alameda Street, Los Angeles, California 90012 • Mailing Address: Box 54153, Los Angeles, California 90054-0153 • Telephone (213) 217-6000

VIP James P.

JOHN GARAMENDI
3RD DISTRICT, CALIFORNIA

ARMED SERVICES COMMITTEE
STRATEGIC FORCES SUBCOMMITTEE
EMERGING THREATS AND CAPABILITIES SUBCOMMITTEE

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
RANKING MEMBER
COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE
WATER RESOURCES AND ENVIRONMENT SUBCOMMITTEE
AVIATION SUBCOMMITTEE

UNITED STATES CONGRESS

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795 PLUMAS STREET
YUBA CITY, CA 95991
PHONE: (530) 329-8965
FAX: (530) 763-4248

August 6, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Dear Senators Feinstein and Boxer,

As you know, the Sacramento Delta is one of the main suppliers of water to the entire state of California. As my district includes 199.8 miles of the Sacramento River and most of the Delta, any legislation that affects water policy in California is of vital interest to me and my constituents.

Consequently, I was very eager to review S.1894, the California Emergency Drought Relief Act. I truly appreciate the efforts made in this legislation to address our current water challenges while preparing our state for future droughts. Your bill appears to understand the need to invest in our water system and provide adequate delivery assurances while also protecting the environment and the economic output dependent on it. I would be proud to advocate for the passage of S.1894 in its current form.

However, I am concerned by reports that this good legislation may be folded into a broader bill that seeks to address water concerns throughout the entire Western United States. It is possible that the other parts of a theoretical broader bill may not be as positive on issues of mutual concern such as climate change or local environmental protections. I truly appreciate your efforts on this bill, and I will be closely watching its evolution if it is attached to a larger bill or modified in conference.

I further applaud your support of the principles outlined in the voter-backed Proposition 1, the California Water Action Plan, and my own Water Plan for All of California. I firmly believe that advancing the priorities and projects of the Water Bond will ensure a workable solution for all 58 counties in California.

I look forward to working with you to protect California's residents, environment, and economy.

Sincerely,

JOHN GARAMENDI
Member of Congress

PRINTED ON RECYCLED PAPER

JOHN GARAMENDI
3RD DISTRICT, CALIFORNIA

ARMED SERVICES COMMITTEE
STRATEGIC FORCES SUBCOMMITTEE
EMERGING THREATS AND CAPABILITIES SUBCOMMITTEE

TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
RANKING MEMBER
COAST GUARD AND MARITIME TRANSPORTATION SUBCOMMITTEE
WATER RESOURCES AND ENVIRONMENT SUBCOMMITTEE
AVIATION SUBCOMMITTEE

VIP-Kent
Jamie &
John W.

UNITED STATES CONGRESS

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15 OCT 5 PM 4:56
SENATOR FEINSTEIN
WASHINGTON, D.C.

October 2, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Dear Senators Feinstein and Boxer,

As you prepare for the upcoming drought hearing in the Senate Energy and Natural Resources Committee, I write once again to convey my support for the S.1894, the California Emergency Drought Relief Act. In drafting this legislation you recognized that California needs a water solution that benefits the entire state and that any federal drought response must take an "all of the above" approach.

California voters sent a clear message last year with the passage of Proposition 1, and you listened. The Water Bond, the Governor's California Water Action Plan, and my Water Plan for All of California include all of the principles needed to increase our water supply. I am pleased to see that your bill encompasses many of the principles found in these documents.

I worry, however, that the integrity of this bill could be compromised as part of a broader effort to roll back environmental regulations across the Western United States under the guise of increasing water supply. I urge you to ensure that the environmentally damaging provisions found in other pieces of drought legislation are not incorporated into S. 1894. I will be closely monitoring the evolution of your bill and sincerely hope that you will take my concerns into consideration.

I commend the work you have done thus far to provide all of California with future water supply reliability and I look forward to continuing your efforts.

Sincerely,

JOHN GARAMENDI
Member of Congress

cc: Energy and Natural Resources Committee

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nature.org
nature.org/california

September 15, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Dear Senator Feinstein and Senator Boxer,

The Nature Conservancy appreciates your leadership in responding to the drought in California by introducing legislation that provides both immediate emergency drought response measures as well as long-term investments in water supply reliability. The Nature Conservancy supports S.1894, the California Emergency Drought Relief Act of 2015 as a constructive response to the ongoing drought. To ensure that it achieves its goals of enhancing the reliability of our water supply, while protecting natural resources and maintaining environmental quality, we request consideration of the addition of clarifications and guidelines in certain provisions.

The Nature Conservancy (the Conservancy) is an international, non-profit conservation organization working around the world to protect important lands and waters for people and nature. The Conservancy puts great emphasis on enduring natural resource management solutions and partnerships, and we rely heavily on science to inform our direction, focus and priorities. We work in communities across the United States and partner with local leaders in conservation, business, and agriculture.

California is experiencing the worst drought in recorded history, and responding to this drought in ways that benefit both people and nature will require balanced, science-based approaches, such as several of those outlined in your legislation. Climate change is contributing to the severity of the current drought and will exacerbate future drought conditions—and the propensity for more extreme weather events at the same time—as climate science predicts. The response that you have outlined in S.1894 reflects an appropriately balanced approach that realizes the importance of making environmental protection work in tandem with better integrated water management, and more reliable water supplies for farms and cities. We believe that this legislation includes important provisions that will facilitate investments in more intensive monitoring of surface water flows – and their relationship to groundwater – resulting in an improved understanding of our water supply, thereby helping us prepare for future droughts.

The Conservancy supports efforts to enhance understanding of freshwater ecosystems and water movement through the system, retain important protections for water quality, and increase the drought-resilience of cities and agriculture. The Conservancy believes any legislation enacted should reflect the best available science and protect natural resources, including freshwater ecosystems and the native fish and wildlife that depend on them. In response to the California Emergency Drought Relief Act, the Conservancy provides the following comments:

- The Conservancy appreciates the inclusion of the Central Valley Project Improvement Act (CVPIA) obligations in the legislation and the language that prevents modifications to those obligations. The Conservancy also appreciates the acknowledgement of the need for funding to meet existing CVPIA obligations to expedite projects that support California wildlife refuges.

- The Conservancy supports linkages to the State of California Water Action Plan, integration with State Water Rights, and provisions to measure the environmental benefits of storage projects and reservoir reoperation.
- The Conservancy appreciates and supports provisions to advance and expedite restoration and recovery plans and actions for Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, and Central Valley steelhead and to increase protection of fish listed under the smelt and salmonid biological opinions.
- We support efforts to expedite water transfers and appreciate attention to address environmental impacts that may occur with such transfers and recommend including language to mitigate for potential impacts on water bird habitat values, in-stream flows for fish, and groundwater. Such efforts should include sufficient funding to more effectively monitor groundwater levels and stream flows (including deployment of additional gages) and provide assurances for water delivery to refuges under CVPIA 3406(d).
- With regard to Section 321 of the legislation, the Conservancy supports the preservation of water resources for future generations, but requirements should be included to demonstrate how water conserved under this program will not be redirected to other near-term uses or used to increase irrigated crop acreage or otherwise increase water demand.
- The Conservancy appreciates that 33% of conserved water will be marketed on an annual basis to promote groundwater recharge and conservation (Section 322); however, water should only be made available for this purpose "in priority basins" or in areas where groundwater-dependent ecosystems would also benefit from the recharge. Additionally, agricultural water conservation should be used to enhance instream flows.

The legislation recognizes that water is a limited resource and that action is needed to better understand and provide for the environmental uses of water and to increase the reliability of our water supply. It is critical that future water management decisions in California be based on an accurate understanding of how much water we have (including groundwater), how much water we need (for agriculture, cities, and the environment), and the gap between supply and demand in order to achieve sustainable water management. As California continues to manage the impacts of climate change and the on-going drought, assuring adequate water supplies for the environment is integral to protecting fish, wildlife and natural systems that are essential to the quality of life for all Californians.

The Nature Conservancy appreciates the opportunity to comment on the California Emergency Drought Relief Act and we look forward to working with you on this important legislation.

Sincerely,

Jay Ziegler
Director, External Affairs and Policy
The Nature Conservancy

CALIFORNIA FARM BUREAU FEDERATION
EXECUTIVE OFFICES
2300 RIVER PLAZA DRIVE, SACRAMENTO, CA 95833-3293 · PHONE (916) 561-5520 · FAX (916) 561-5690

September 11, 2015

The Honorable Dianne Feinstein
United States Senate
Washington, DC 20510

The Honorable Barbara Boxer
United States Senate
Washington, DC 20510

Dear Senators Feinstein and Boxer:

In a time of devastating drought throughout our state, the California Farm Bureau Federation welcomes and supports the California Emergency Drought Relief Act, S. 1894.

Many of California's family farmers and ranchers have fallowed land, sold off livestock and reduced their plantings in response to the drought. Additionally, many producers have minimized irrigation to levels that keep permanent crops alive but do not necessarily provide enough water to produce a crop. These cutbacks result in more than direct losses to the farmer. They also result in damages to rural communities who are dependent upon agriculture as a major economic and jobs generator, as well as the consumer. Public and private lands in California are also at an unprecedented high risk for wildfire.

The operations of the State Water Project and the Central Valley Project under the existing biological opinions and the Endangered Species Act, as currently administered, have resulted in severe constraints on the projects' ability to reliably meet water supply and beneficial use commitments to their contractors. These same operational constraints also appear to have done little to prevent or reverse declining trends in targeting protected species populations.

For these reasons, we wish to highlight our support of the following provisions:

- California's farmers and ranchers need water operation flexibility and efficiency in order to maximize the drought water supplies that are available. We are supportive of the emergency operations provision in Section 101.
- Farm Bureau is very supportive of the CALFED water storage project studies deadlines within the bill. Surface water storage is an important component of any water supply certainty and drought resiliency strategy for California.
- We support maximum alignment with water funding categories in California's voter approved water bond. There are several provisions within the bill that would allow for federal matching to priorities within Proposition 1. These include surface water storage, regional projects, desalination, water recycling and water use efficiency.

- Farm Bureau supports the application of improved science that will allow for better protection of threatened and endangered fish. Farm Bureau is also supportive of provisions that seek to reduce non-native predators that contribute to the decline of native listed pelagic and anadromous species.
- Farm Bureau is supportive of the area of origin and water rights protections in Section 112.
- We support streamlined processes for farmer-to-farmer voluntary water transfers and exchanges.
- Farm Bureau supports the proposed changes to existing law within Section 314 that would allow for incidental water supply benefits in connection with federal Dam Safety upgrades.
- Farm Bureau supports the intent and many specifics within Section 315 that focuses on improved operations of existing Army Corps reservoirs for enhanced water supply and flood control benefits.
- Farm Bureau is supportive of voluntary agreements between the federal government, public water agencies and other entities that promote agricultural water use efficiency.
- We are very supportive of eradicating illegal marijuana cultivation on public and private lands in California and addressing unlawful diversion of water for these purposes.

California needs a greater level of water supply certainty and reliability in the long-term. For this reason, we respectfully request that you consider the following recommendations as the bill advances toward passage:

- Emergency drought provisions should avoid short-term, crisis-to-crisis management and should therefore extend beyond the present drought with a permanent set of criteria. This would provide an assurance of similar relief in the future.
- Addressing the factors that place pressure on long-term water supply reliability including, but not limited to:
    - Past reallocation and lack of promised replacement water in relation to the Central Valley Project Improvement Act.
    - Current inflexible administration and application of the federal Endangered Species Act and biological opinions.
    - Water supply impacts of the San Joaquin River Restoration Agreement.
    - Redirected impacts on groundwater as a consequence of the current lack of long-term investment in adequate and reliable surface water supplies.
- Meaningfully addressing and accounting for non-project ecosystem and species stressors, including predator removal programs beyond what is currently proposed in the bill.
- Identifying and including, without sacrifice of meaningful action in California, comparable programs and priorities for the rest of the western United States.
- As outlined in our support above, expansion of efforts to combat illegal marijuana cultivation is needed. While eradication of illegal growing is at the center of the problem, unfair competition for scarce water resources, water quality and public health impacts,

and the destruction left on public and private lands is creating a real hardship for farmers, ranchers and foresters. Funds are needed to assist landowners with the high cost of cleanup.

Farm Bureau is keenly aware that solving California's water problems will require an "all-of-the-above approach" involving storage, recycling, desalination, regional projects, and continued improvements in water efficiency. Meaningful investments in California's water management and infrastructure must be made in order to achieve a reliable water supply.

We applaud many of the provisions in your bill and will encourage amendments that work toward long-term reform. We hope this legislation prompts continued discussion in Congress and elsewhere about what the federal government can and should do to make our water system work more efficiently for the benefit of farmers, consumers, and the environment.

Sincerely,

PAUL J. WENGER
President

September 23, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Support S 1894 (Feinstein), and amend

Dear Senator Feinstein,

On behalf of the Bay Area Council, I'd like to express our support for S 1894, the California Emergency Drought Relief Act. S 1894 would help expedite the desalination, storage, recycling, and groundwater infrastructure California needs to upgrade its aging water management infrastructure. S. 1894 also looks forward by authorizing low-interest RIFIA financing, financial incentives for water technology innovation, and greater supports for disadvantaged rural communities. In addition to these projects and programs, the Bay Area Council water policy committee would like to submit the following amendments for your consideration.

1. **National Environmental Policy Act (NEPA) Streamlining:** California recently created narrow California Environmental Quality Act (CEQA) exemptions for certain types of recycled water infrastructure while the state is in a declared drought emergency. Congress should provide a similar exemption from NEPA for projects receiving State Revolving Funds or WIFIA so that agencies that seek to take advantage of federal funding, or are required to follow the NEPA process, can still expedite projects in light of the drought.

2. **Facilitate Public-Private Partnerships**. Public-private partnerships are an increasingly effective way to finance, build, operate and maintain public infrastructure. Language should be included which would provide for a modification of the tax exempt bond provisions of the Internal Revenue Code to permit (but not require) the financing of recycled water facilities from the proceeds of tax exempt governmental activity bonds issued directly by a government agency or on behalf of a government agency approved public/private partnership which may own, operate and/or finance the facilities. Such modifications would also clarify that the tax exempt status of existing and future governmental bonds issued to finance wastewater systems providing the

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wastewater supply to the facilities would not be adversely affected by such public/private partnership.

Managing water in California ranks among the most difficult public policy challenges in the United States, making your leadership all the more invaluable. Thank you for your leadership, and for considering our views.

Sincerely,

Jim Wunderman
President & CEO
Bay Area Council

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President
Paul R. Bonderson, Jr.
Sunol, California

Chairman of the Board
George H. Dunklin, Jr.
Stuttgart, Arkansas

Chief Executive Officer
H. Dale Hall
Memphis, Tennessee

October 7, 2015

The Honorable Lisa Murkowski
709 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
511 Hart Senate Office Building
Washington, D.C. 20510

RE: Ducks Unlimited Support for CA Emergency Drought Relief Act – S.1894

Dear Chairwoman Murkowski and Ranking Member Cantwell,

Ducks Unlimited (DU), the world's leader in wetlands and waterfowl conservation, thanks you for your leadership and would like to express our support for the California Emergency Drought Relief Act (S.1894), and asks for your support and passage of this important measure. As you well know, the western United States, and California in particular, is in the midst of an historic drought. S.1894 is the product of exhaustive discussions about water operations in the face of this historic crisis and provides for the necessary infrastructure investments and updates to water reuse, recycling, storage, recharge and water deliveries while ensuring protections for conservation and the environment remain a fundamental policy priority.

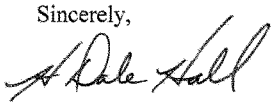
California annually supports one of the greatest concentrations of migratory birds in North America, serving as the wintering home to millions of waterfowl, shorebirds, and other wetland dependent species. The majority of migratory birds that frequent Alaska and Washington spend their winters in California. These migratory visitors provide millions of hours of enjoyment to hunters and birdwatchers throughout the Pacific Flyway and are an important economic driver all along the West Coast. For example, sportsmen, including waterfowlers, contribute $3.5 billion annually to California's economy. The migratory birds of the Pacific Flyway are a shared resource, requiring the stewardship of not only California, but of all western states, including your states of Alaska and Washington, as they migrate thousands of miles between their breeding grounds and winter homes.

As a stakeholder in the legislative process, Ducks Unlimited provided Members of Congress with a set of detailed principles intended to safeguard the birds of the Pacific Flyway. The focus of these principles was to protect current water rights priorities, preserve Central Valley Project Improvement Act (CVPIA) refuge water supplies, prevent the shift of oversight for refuge spending to non-refuge contractors and maintain CVPIA's core emphasis on mitigation and restoration. Senator Feinstein's office worked diligently with DU to understand and incorporate these waterfowl habitat priorities into S.1894.

On behalf of more than one million Ducks Unlimited supporters nationwide, we thank you for your thoughtful leadership in advancing a comprehensive, bipartisan western water package, and ask that the California Emergency Drought Relief Act be included in this timely drought relief legislation. We look forward to working with you, Senators Feinstein and Boxer, Members of the California Congressional Delegation, and other leaders from the House and Senate to ensure that DU's principles and the millions of migratory birds they serve will continue to be reflected in the drought relief package that ultimately reaches the President's desk.

Please feel free to contact me at 901-758-3700 if my staff or I may be of further assistance. Thank you for your critical support of our nation's waterfowl and wetland resources.

Sincerely,



H. Dale Hall
CEO

cc: Senator Dianne Feinstein
Senator Barbara Boxer
Members of the Senate Committee on Energy and Natural Resources

402 West Broadway, Suite 1000
San Diego, CA 92101-3585
p: 619.544.1300
www.sdchamber.org

August 4, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

RE: Support for the "California Emergency Drought Relief Act of 2015"

Dear Senator Feinstein,

On behalf of the San Diego Regional Chamber of Commerce (Chamber), I am writing to express the Chamber's support for the "California Emergency Drought Relief Act of 2015," which would deliver a range of provisions, adhering to the goals of moving and creating water, long-term, to California communities. With nearly 3,000 members representing 400,000 employees, the Chamber is the largest nonprofit advocate for regional businesses and is dedicated to supporting commerce in the San Diego region. We consider reliable access to water a top priority, and see tremendous potential in the ability of your bill to reduce the negative impacts of the drought on our business communities, while offering opportunities to promote research and development in the water industry.

Approximately 2,091 wells have dried up or are in danger of drying up during this drought, endangering thousands of Californian families. If enacted, this bill would support water recycling, water storage, well-monitoring, storm water capture, as well as desalination, which has shown success in San Diego County and will soon be generating enough water to supply 300,000 San Diego County residents. The Chamber is a strong advocate for the City of San Diego's Pure Water Program, and federal funds to build this drought-proof water supply is one of our top priorities. The continued engagement in these projects and research will reduce costs and environmental impacts in the future, while supporting the water industry in the San Diego region.

The Chamber takes the issues surrounding water conservation projects seriously, given their effects on the San Diego business environment. Thank you for your leadership on this issue. We look forward to working with you to formally support the California Emergency Drought Relief Act of 2015. If you have any questions, please do not hesitate to contact Chanelle Hawken, Vice President of Public Policy, at (619) 544-1365 or chawken@sdchamber.org.

Sincerely,

Jerry Sanders
President & CEO
San Diego Regional Chamber of Commerce

Santa Fe Irrigation District

August 5, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein and Senator Boxer,

The Santa Fe Irrigation District (Santa Fe ID) is encouraged by Senator Dianne Feinstein's introduction of the *California Emergency Drought Relief Act of 2015*. Given that California and a good majority of the western United States is facing unprecedented drought conditions, and this has had debilitating impacts to both our economic and personal way of life, we encourage all members of Congress to approve this much-needed legislation. The water supply shortages caused by four years of extraordinary dry conditions, exacerbated by environmental restrictions imposed on the operations of the federal Central Valley Project and the California State Water Project, lack of adequate surface storage reservoirs, and failed water management policies of the past make passing this legislation a priority action.

Santa Fe ID supports the proposed legislation that provides a good balance between new projects and sources of water, while protecting the environment and promoting continued conservation efforts. We are excited about the emphasis on desalinization and water recycling/reuse, as well as increased use and funding to the very successful Bureau of Reclamation Title XVI and WaterSMART programs. New sources of supply are a must if we are to solve California and other states' chronic water deficits stemming from failed management of an overtaxed system and continued drought conditions. In addition, these new sources of supply are sustainable, drought-proof, environmental friendly, and support continued economic health.

We further applaud the constructive approach of Senators' Feinstein and Boxer in crafting drought-response legislation that seeks to fairly balance the many needs of our diverse state, however, we recommend the legislation includes other western states facing the same drought conditions and worsening economic situations, as Santa Fe ID and other portions of California receives water supplies from the Colorado River basin.

We further encourage all policymakers to genuinely work together to approve this meaningful legislative solution to the chronic water supply shortages that have devastated California and other western States. Santa Fe ID looks forward to working with your office and all our Congressional representatives to make this legislation a success.

Santa Fe Irrigation District ~ PO Box 409 ~ 5920 Linea del Cielo ~ Rancho Santa Fe, CA 92067-0409
Phone 858.756.2424 Fax 858.756.0450
www.sfidwater.org

Sincerely,

Michael Bardin
General Manager

cc: Congressman Duncan Hunter
Congressman Darrell Issa
Congressman Scott Peters
Congressman Ken Calvert

Santa Fe Irrigation District ~ PO Box 409 ~ 5920 Linea del Cielo ~ Rancho Santa Fe, CA 92067-0409
Phone 858.756.2424 Fax 858.756.0450
www.sfidwater.org

VIP - James P.

Monterey Regional Water Pollution Control Agency

"Dedicated to meeting the wastewater and reclamation needs of our member agencies, while protecting the environment."

Administration Office:
5 Harris Court, Bldg. D, Monterey, CA 93940-5756
(831) 372-3367 or 422-1001, FAX: (831) 372-6178
Website: www.mrwpca.org

August 5, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

SUBJECT: SUPPORT FOR CALIFORNIA EMERGENCY DROUGHT RELIEF ACT OF 2015

Dear Senator Feinstein:

15 AUG 19 PM 1:52

On behalf of the Monterey Regional Water Pollution Control Agency, I wanted to thank you for including the Pure Water Monterey Project in the language for the California Emergency Drought Relief Act bill. Identifying and dedicating resources to assist local communities in their fight for developing short and long-term projects to combat the drought is much needed. The provisions listed in the bill such as water recycling, storage, groundwater recharge and desalination are important and necessary tools for communities in California to manage the ongoing and future droughts. I also want to recognize your Field Representative, Katie Gross, who visited our area and saw first-hand the need for future water supply projects.

The Central Coast of California could be considered ground zero for the record-breaking drought conditions facing California. Many communities in this area are in need of alternative water supplies. We believe the Pure Water Monterey Project (www.purewatermonterey.org) will allow advanced treated recycled water to be one of the new sources of water that provides a sustainable water supply for the residents on the Monterey Peninsula. The Pure Water Monterey Project will provide 3,500 acre-feet as a replacement water supply once constructed in 2017.

The Pure Water Monterey Projects also provides additional benefits such as reducing pollutant loading into sensitive aquatic habitat by diverting and treating impaired water sources, recycling urban storm water for beneficial reuse, reducing winter season groundwater pumping in the Salinas Valley, and maximizing existing infrastructure to convey and treat other water sources. The various components of the project need financial assistance to move forward. The resources being proposed in your bill will go a long way towards providing these benefits for multiple entities.

The MRWPCA and our partner in the Pure Water Monterey Project, Monterey Peninsula Water Management District, cordially invite you to visit our Advanced Water Purification Demonstration Facility. This facility demonstrates the technology needed to treat a variety of water sources to exceed drinking water standards. This facility will be operational by September 1st. Both partner agencies believe this is the Future of Water for California and could be an excellent model for other

western communities for utilizing under-utilized water resources in an effective and responsible manner.

We want to thank you for your leadership efforts in championing a bill that provides the necessary resources for developing sustainable water supplies in California. We look forward to continuing to work with you and your staff on implementing the Pure Water Monterey Project.

Sincerely,

Paul A. Sciuto
General Manager
MRWPCA

VIP - James P.

Carlsbad
Municipal Water District

15 AUG 19 PM 1:34

SENATOR FEINSTEIN
WASHINGTON, D.C.

August 5, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein and Senator Boxer,

Given the unprecedented drought conditions now faced by California and neighboring states, Carlsbad Municipal Water District (CMWD) strongly supports Senator Dianne Feinstein's introduction of the California Emergency Drought Relief Act of 2015. Severe droughts have debilitating impacts to both our economic and personal way of life, so we encourage all members of Congress to approve this much-needed legislation.

The proposed legislation balances new projects and sources of water, while protecting the environment and promoting continued conservation efforts. New, sustainable sources of supply must be established if we are to solve severe water deficits stemming from failed management and past policies in addition to dry weather conditions. We fully support the prioritization of desalinization and water recycling, as well as increased use and funding to the Bureau of Reclamation Title XVI and WaterSMART programs.

CMWD looks forward to working with your offices and all our Congressional representatives to make this legislation a success.

We encourage all officials, policymakers, and agencies to work together to move this meaningful legislative solution forward.

Sincerely,

Wendy Chambers

Wendy Chambers
General Manager

cc: Congressman Duncan Hunter
Congressman Darrell Issa
Congressman Scott Peters

Carlsbad Municipal Water District
5950 El Camino Real | Carlsbad, CA 92008 | 760-438-2722 | 760-431-1601 fax | www.carlsbadca.gov

VIP- James

15 AUG 19 PM 1:53
SENATOR FEINSTEIN
WASHINGTON, D.C.

August 5, 2015

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Subject: Support for California Emergency Drought Relief Act of 2015

Dear Senator Feinstein:

On behalf of the Board of Directors and ratepayers of the Rainbow Municipal Water District, I would like to express our support for the California Emergency Drought Relief Act of 2015 that you are working to get approved within the US Congress. We appreciate the efforts of you and your staff to tirelessly represent the needs of all California water users not only during this time of crisis but also during times of plenty.

The state of water supply in California is in immediate need of assistance to curtail the social and economic damages that water supply shortages are having on our region. The effort to deliver solutions to this issue must on one hand be swift to do what we can for immediate issues in areas that are particularly hard hit, but also with long term vision so that we can do the planning necessary to prevent shortages in the future.

San Diego County is a good example of how a region can prepare itself over the long term to manage the ever increasing frequency of water shortages in our State. Through proactive approaches to the development of reclaimed water systems and ocean desalination, the San Diego region uses less imported water now than we did 25 years ago. While these efforts have been successful, they are just the start, and the support of the Federal Government will be instrumental in developing a more resilient water supply infrastructure for the next century.

In the coastal communities of Southern California ocean desalination will play a critical role in reducing the dependence on imported water while at the same time freeing up water in northern watersheds for environmental purposes. The process of developing large scale ocean desalination is expensive, but cost is not the greatest hurdle – regulatory process caused delays of well over a decade in getting the San Diego plant built. We encourage both our State and Federal lawmakers to craft a regulatory system that provides meaningful protections to the environment while balancing the need to responsibly develop ocean desalination projects without decades of lawsuits and red tape.

Rainbow Municipal Water District is currently in design on both a recycled water plant and system as well as a brackish desalination system. The cost and uncertainty of imported water supplies have brought these projects into focus to serve our agricultural community. Rainbow is the second largest agricultural water agency in San Diego County, a county with more farms than any county in the United States. Providing a safe, local, and reliable water supply for agricultural use is a major focus of our community and the provisions within the California Emergency Drought Relief Act of 2015 will help us meet our goals

3707 Old Highway 395 • Fallbrook, CA 92028
(760) 728-1178 • Fax (760) 728-2575 • www.rainbowmwd.com

I would like to commend you and your staff on your efforts and look forward to doing whatever we can to help move this important bill through the process of becoming law. From there we can get down to the real work of serving our communities through the development of safe, reliable sources of water for domestic and agricultural use.

Sincerely,

RAINBOW MUNICIPAL WATER DISTRICT

Tom Kennedy
General Manager Rainbow MWD
Board Member San Diego County Water Authority

cc: Board of Directors

DIRECTORS
PHILIP L. ANTHONY
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SINCE 1933

ORANGE COUNTY WATER DISTRICT

ORANGE COUNTY'S GROUNDWATER AUTHORITY

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Second Vice President
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General Manager
MICHAEL R. MARKUS, P.E., D.WRE

August 6, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

RE: S. 1894 California Emergency Drought Relief Act of 2015--Support

Dear Senator Feinstein:

On behalf of the Orange County Water District (OCWD; the District) and the 19 cities and water districts it serves (which include City of Anaheim, City of Buena Park, East Orange County Water District, City of Fountain Valley, City of Fullerton, City of Garden Grove, Golden State Water Company, City of Huntington Beach, Irvine Ranch Water District, City of La Palma, Mesa Water District, City of Newport Beach, City of Orange, City of Santa Ana, City of Seal Beach, Serrano Water District, City of Tustin, City of Westminster, and Yorba Linda Water District) we are pleased to support congressional efforts to provide emergency drought relief assistance to California, and specifically S.1894.

The Orange County Water District manages the Orange County Groundwater Basin, which provides 70 percent of the water supply to 2.4 million people in north and central Orange County, California. OCWD is encouraged by S. 1894's focus on expediting federal permitting processes and facilitating the operational flexibility of the federal and state water projects and dams to allow for enhanced water supply while protecting our natural resources. We believe that the drought and our experiences over the past decade demonstrate the benefits of a multi-pronged approach to water reliability.

More than two decades ago, OCWD committed to finding sustainable water supplies for our region. This priority focused on ways to replace the groundwater that is pumped out of our water basin annually. OCWD implemented an internationally recognized sustainable water supply project known as the Groundwater Replenishment System (GWRS). The GWRS is the largest indirect potable reuse project in the world. Operational since January 2008, and with an initial expansion being completed in June 2015, this state-of-the-art water purification project can produce up to 100 million gallons of high-quality water every day. This is enough water to meet the needs of nearly 850,000 people. GWRS water is used to prevent seawater intrusion of the groundwater basin as well as to recharge the groundwater basin.

PO Box 8300
Fountain Valley, CA 92728-8300
18700 Ward Street
Fountain Valley, CA 92708
(714) 378-3200
(714) 378-3373 fax
www.ocwd.com

GWRS' benefits have been especially realized during the persistent drought and the impacts that our region has experienced. This project was accomplished, in part, through a partnership with the Federal Government, specifically the U.S. Bureau of Reclamation.

OCWD supports the provisions in S. 1894 that create well-funded federal water recycling and desalination programs to assist local agencies in developing and operating sustainable water supply projects that can return multiple benefits to municipal, agriculture and environmental needs by offsetting demands on scarce potable supplies.

In addition, OCWD supports the provisions in S. 1894 that provide flexibility to capture water at federal dams during storm events. OCWD, in collaboration with the U.S. Army Corps of Engineers (Corps), now has the opportunity to provide an additional 30,000 acre-feet of water annually (enough water for about 250,000 people) by temporarily capturing additional stormwater at Prado Dam. Prado Dam, located on the Santa Ana River, while primarily used for flood prevention, has captured temporary stormwater for subsequent recharge of the groundwater basin for the past 25 years.

Finally, OCWD supports S. 1894's provisions for local water districts, such as OCWD, to work with the Corps and the National Oceanic and Atmospheric Administration to improve the capture of stormwater at local dams. The capture of stormwater could be maximized through modernizing weather and runoff forecasting, and by the Corps modifying its manuals to account for the latest weather and runoff forecasting capabilities.

Again, we appreciate your leadership to advance a comprehensive response to the drought emergency. Please do not hesitate to contact Alicia Dunkin, Legislative Affairs Liaison, at adunkin@ocwd.com or (714) 378-8232 if you have any questions or if we may be of assistance to you or your staff.

Sincerely,

Cathy Green
President

CC: Congressman Dana Rohrabacher
Congressman Darrell Issa
Congressman Ed Royce
Congresswoman Mimi Walters
Congresswoman Loretta Sanchez
Congressman Alan Lowenthal

Board of Directors

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General Manager
Greg Thomas

General Counsel
Redwine and Sherrill

August 6, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein and Senator Boxer:

On behalf of the Rincon del Diablo Municipal Water District (Rincon Water) I am writing to let you know how encouraged we are by recently introduced legislation known as the *California Emergency Drought Relief Act of 2015*. Given the fact that California and a good majority of the other western states are experiencing one of the worst droughts on record, without some Congressional action this persistent weather phenomenon is projected to have an even more debilitating impact on our economies and way of life. We encourage all Members of Congress to support this legislation. After four years of extraordinary dry conditions in our state that has been exacerbated by environmental restrictions on the federal Central Valley Project and State Water Project, California is facing a significant water supply shortage. This legislation, once enacted, will help improve our water supply and storage options and address previously failed water management policies. This is our priority; we hope it is Congress's too.

Rincon Water supports the provision to revitalize Title XVI by converting it to a competitive grant program with Congressional oversight. Title XVI can play a significant role in helping to alleviate drought conditions throughout the West, and accordingly, an earmark free Title XVI program should be the path forward to encourage additional water recycling and reuse.

Rincon Water believes this legislation provides a good balance between new projects and water supply sources while protecting our environment and promoting continued conservation efforts. We are very excited about the emphasis on desalinization and water recycling/reuse, as new sources of supply are a must if we want to solve California and the other impacted western states' chronic water deficits from an over appropriated water system that's being crippled by the continuing drought. Additionally, these new sources of supply are sustainable, drought-proof, environmentally friendly, and support continued economic health.

We applaud the constructive approach in crafting this drought-response legislation as it fairly balances the many needs of our diverse state, however, we highly recommend the legislation also include the other western states that are facing the same drought conditions and worsening

1920 North Iris Lane, Escondido, CA 92026 **www.rinconwater.org** 760-745-5522 phone • 760-745-4235 fax

economic situations, as Rincon Water and other portions of California receives surface water supply from the Colorado River basin.

In closing, we encourage all policymakers to genuinely work together to approve this legislative solution to this chronic and growing water supply shortage that has devastated both California and the other western states. Rincon Water looks forward to working with you, your staff and all the other Congressional interests to help make this legislation a success.

Sincerely,

Greg Thomas
General Manager

VIP - James P.

200 W. Willmott Avenue
Los Banos, CA 93635-5501

(209) 826-5188
Fax (209) 826-4984
Email: veronica@gwdwater.org

AUG 19 PM 1:42
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Adams Broadwell Joseph Cardozo PC
General Counsel

August 6, 2015

The Honorable Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Senator Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Re: *Comments on the California Emergency Drought Relief Act of 2015*

Dear Senators Feinstein and Boxer,

Grassland Water District provides water to the 160,000-acre Grasslands Ecological Area, the most important wetland habitat in California's Central Valley. Recognized under international treaties and federal law for its role in sustaining the birds of the Pacific Flyway, the refuges that make up the Grasslands play a crucial role in feeding and sheltering millions of migratory birds on their annual journey to and from Alaska and Canada, the Pacific Northwest, and beyond. The refuges depend on federal law and federal water deliveries to sustain the flyway and protect against ecological collapse. Refuges require only a fraction of California's water supply, and they mitigate for the extreme loss of over 90% of wetland habitat statewide.

Grassland Water District thanks you for your effort to craft a bill that addresses California's water crisis and acknowledges the needs of Central Valley wildlife refuges. Our key principles for federal drought legislation include protecting refuge water rights under federal law and keeping refuge spending authority within the Department of Interior. We are encouraged by the leadership behind the California Emergency Drought Relief Act, and recognize that it reflects input from a broad range of stakeholders. We look forward to continuing to work with you when the Senate returns in the fall.

Sincerely,

Ricardo Ortega
General Manager

cc: Senators Lisa Murkowski and Maria Cantwell

1124-824i

CITY OF OCEANSIDE
WATER UTILITIES DEPARTMENT

August 7, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein,

The City of Oceanside Water Utilities Department is encouraged by Senator Dianne Feinstein's introduction of the *California Emergency Drought Relief Act of 2015*. Given the unprecedented drought conditions in California, we encourage all members of Congress to approve this much-needed legislation. The water supply shortages caused by four years of extraordinary dry conditions in combination with environmental restrictions and lack of adequate surface storage reservoirs make passing this legislation a priority.

The City of Oceanside supports the proposed legislation and believe it provides a good balance between new projects and sources of water, while at the same time protecting the environment and promoting continued conservation efforts. We are excited about the emphasis on desalinization and water recycling/reuse, as well as increased use and funding to the very successful Bureau of Reclamation Title XVI and WaterSMART programs. New sources of supply are a must if we are to solve California's water deficits stemming from continued drought conditions. In addition, these new sources of supply are sustainable, drought-proof, environmental friendly, and support continued economic health.

We further applaud the constructive approach of Senator Feinstein in crafting drought-response legislation that seeks to fairly balance the many needs of our diverse state. The City of Oceanside further recommends the legislation include other western states facing the same drought conditions and worsening economic situations, as the City and other portions of California receives water supplies from the Colorado River basin.

We further encourage all policymakers to genuinely work together to approve this meaningful legislative solution to the chronic water supply shortages that have devastated California and other western States. The City of Oceanside looks forward to working with your office and all our Congressional representatives to make this legislation a success.

Sincerely,

Jason Dafforn
Interim Water Utilities Director

300 NORTH COAST HIGHWAY • OCEANSIDE, CA 92054 • TELEPHONE 760-435-5800 • FAX 760-435-5821

VIP- James P.

201 Vallecitos de Oro · San Marcos, California · 92069-1453 (760) 744-0460

15 AUG 19 PM 1:41
SENATOR FEINSTEIN
WASHINGTON, D.C.

August 10, 2015

The Honorable Dianne Feinstein
331 Hart Senate Office Building
Washington, DC 20510

The Honorable Barbara Boxer
112 Hart Senate Office Building
Washington, DC 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein and Senator Boxer,

On behalf of the Vallecitos Water District, I am writing to let you know how encouraged we are by recently introduced legislation known as the *California Emergency Drought Relief Act of 2015.* Given the fact that California and a good majority of the other western states are experiencing one of the worst droughts on record, without some Congressional action this persistent weather phenomenon is projected to have an even more debilitating impact on our economies and way of life. We encourage all Members of Congress to support this legislation. After four years of extraordinary dry conditions in our state that has been exacerbated by environmental restrictions on the federal Central Valley Project and State Water Project, California is facing a significant water supply shortage. This legislation, once enacted, will help improve our water supply and storage options and address previously failed water management policies.

Vallecitos Water District supports the provision to revitalize Title XVI by converting it to a competitive grant program with Congressional oversight. Title XVI can play a significant role in helping to alleviate drought conditions throughout the West, and accordingly, an earmark free Title XVI program should be the path forward to encourage additional water recycling and reuse.

Vallecitos Water District believes this legislation provides a good balance between new projects and water supply sources while protecting our environment and promoting continued conservation efforts. We are very excited about the emphasis on desalinization and water recycling/reuse, as new sources of supply are a must if we want to solve California's and the other impacted western states' chronic water deficits from an over appropriated water system that's being crippled by the continuing drought. Additionally, these new sources of supply are sustainable, drought-proof, environmentally friendly, and support continued economic health.

e-mail: vwd@vwd.org · http://www.vwd.org

We applaud the constructive approach in crafting this drought-response legislation as it fairly balances the many needs of our diverse state, however, we highly recommend the legislation also include the other western states that are facing the same drought conditions and worsening economic situations, as Vallecitos Water District and other portions of California receives surface water supply from the Colorado River basin.

In closing, we encourage all policymakers to genuinely work together to approve this legislative solution to this chronic and growing water supply shortage that has devastated both California and the other western states. Vallecitos Water District looks forward to working with you, your staff and all the other Congressional interests to help make this legislation a success.

Sincerely,

Tom Scaglione, MBA, CPA
Assistant General Manager and CFO

cc: Congressman Duncan Hunter
Congressman Darrell Issa
Congressman Scott Peters
Congressman Ken Calvert

AUG. 13. 2015 4:53PM NO. 4909 P. 1

VALLEY CENTER MUNICIPAL WATER DISTRICT

A Public Agency Organized July 12, 1954

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Charles W. Stone, Jr.
Director
Randy D. Haskell
Director

August 14, 2015

The Honorable Dianne Feinstein
Senate Hart 331
Washington, D.C. 20510

Dear Senator Feinstein,

I am writing you on behalf of Valley Center Municipal Water District (VCMWD) located in San Diego County to thank you for your introduction of the California Emergency Drought Relief Act of 2015.

VCMWD's federal advocate has been working with your office, other Members of the California delegation, jurisdictional Committees and other key Members of Congress to address the issue of Title XVI projects such as ours being allowed to compete for Bureau of Reclamation funding. We are delighted you have included language in your bill which is crucial to allowing VCMWD to compete for future Title XVI funding. The specific language we are referencing follows:

> ***"Eligibility for Water Recycling Federal Support - Upon the submission of a completed feasibility report compliant with the Bureau of Reclamation standards, the Secretary of the Interior shall review requests for water recycling project funding assistance and, subject to the availability of appropriations, award funding, on a competitive basis, for projects that meet the eligibility requirements of title IV..."***

It is critical to VCMWD and several other Western Water Districts that this language be included in *any* final legislation which ultimately goes to conference. This will create a fair playing field for all water districts. It is a "win-win" for the Congress and for the nation as a whole in that it will direct limited federal funds to the best possible Title XVI projects, not simply to those projects which were able to secure authorizations prior to the earmark ban, which went into effect in 2011. With this language, finite federal funds will be put to their best possible use.

Additionally, we are encouraged by the language calling for increased authorizations for the WaterSMART program and robust SRF funding to the EPA. Having just secured SRF funding for a water recycling project, we understand the critical importance of this program.

Finally, we much appreciate your specifically including VCMWD's Title XVI project in those projects which should receive consideration.

Should you or your staff have any questions, please do not hesitate to contact our General Manager, Gary Arant at 760-735-4515, garant@valleycenterwater.org or our federal advocate, Jacqueline Howells, at 951-461-9074, jacqueline@howellsgov.com.

Thank you again for your support of these critical issues to VCMWD.

RECEIVED
AUG 14 2015
By SD-DL

Sincerely,

Gary A. Broomell

Gary A. Broomell
Board President

29300 Valley Center Road • P.O. Box 67 • Valley Center, CA 92082
(760) 735-4500 • FAX (760) 749-6478 • TDD (760) 749-2665 • www.valleycenterwater.org • e-mail vcwater@valleycenterwater.org

(Incorporated January 20, 1948)

Office of the Mayor
Victor P. Lopez
633 6th Street, Orange Cove, California 93646
(559)626-4488

August 13, 2015

United States Senator Dianne Feinstein
2500 Tulare Street, #4290
Fresno, CA 93721

RE: The California Emergency Drought Relief Act, S. 1894

Dear Honorable United States Senator Dianne Feinstein:

As Mayor of the City of Orange Cove, I am pleased to support your introduction of the California Emergency Drought Relief Act, a bill with both short and long term provisions designed to help communities such as the City of Orange Cove with the ongoing drought and future droughts.

I continually support your efforts in assisting the rural and disadvantage communities throughout the State of California especially the City of Orange Cove with your continued Federal Programs past, present and future.

Since the City of Orange Cove is based on agriculture, this bill will help our farmers throughout the valley, and our local packinghouses will remain in business and sustain job opportunities.

Again I strongly support your bill and should you need my assistance, please do not hesitate to call me. Please feel free to contact me at (559)287-7239 or (559)626-4488.

Respectfully,

Victor P. Lopez,
Mayor City of Orange Cove

COUNTY SANITATION DISTRICTS
OF LOS ANGELES COUNTY

1955 Workman Mill Road, Whittier, CA 90601-1400
Mailing Address: P.O. Box 4998, Whittier, CA 90607-4998
Telephone: (562) 699-7411, FAX: (562) 699-5422
www.lacsd.org

GRACE ROBINSON HYDE
Chief Engineer and General Manager

August 11, 2015

The Honorable Dianne Feinstein
SH-331 Hart Senate Office Building
Washington, D.C. 20510-0504

The Honorable Barbara Boxer
SH-112 Hart Senate office Building
Washington, D.C. 20510-0505

Dear Senators Feinstein and Boxer:

S. 1894 -- California Emergency Drought Relief Act of 2015 – Support Position

On behalf of the Santa Clarita Valley Sanitation District, I am pleased to write in support of S. 1894, the California Emergency Drought Relief Act of 2015. By way of background, the Santa Clarita Valley Sanitation District treats wastewater and supplies recycled water in the City of Santa Clarita and unincorporated areas in the Santa Clarita Valley. The Sanitation District currently is pursuing a multibenefit project that includes 3 main components: advanced treatment (microfiltration/reverse osmosis), ultraviolet disinfection, and brine management. This project will provide water quality benefits that include reduction of chloride (salt) at the Valencia Water Reclamation Plant for compliance with the Upper Santa Clara River Chloride Total Maximum Daily Load, as well as reduce other water quality parameters such as disinfection byproducts at both the Valencia and Saugus Water Reclamation Plants, and will produce water resource benefits by making surplus advanced treated recycled water available for potable reuse.

S. 1894 lists the Santa Clarita Valley Sanitation District as a potentially eligible project sponsor in Section 301(b), which, as we understand it, would allow the district to compete for federal funding in a new $200 million competitive grant program for water recycling and reuse projects that meet specified eligibility and feasibility criteria, which is included in Section 431. This new program is critically important to leverage state and local investments in water recycling and water quality infrastructure that will create more sustainable and "drought-proof" water supplies in California. For this reason, we strongly support the inclusion of this new water recycling and reuse program and the list of eligible project sponsors in S. 1894, and we look forward to working with you and the Senate Committee on Energy and Natural Resources on this important legislation.

Thank you for your leadership in introducing S. 1894. Please contact me at ghyde@lacsd.org or Sharon Green of my staff at sgreen@lacsd.org if you have any questions.

Very truly yours,

Grace R. Hyde

Grace Robinson Hyde

GRH:SNG:djm

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OLIVENHAIN
Municipal Water District

General Manager
Kimberly A. Thorner, Esq.
General Counsel
Alfred Smith, Esq.

August 13, 2015

Senator Dianne Feinstein
331 Hart Senate Office Building
Washington, D.C. 20510

Senator Barbara Boxer
112 Hart Senate Office Building
Washington, D.C. 20510

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein and Senator Boxer:

It is with great pleasure that Olivenhain Municipal Water District received news of the introduction of the *California Emergency Drought Relief Act of 2015*. We graciously recognize the efforts through which our agency was specifically named as an organization able to sponsor water reuse projects.

California is experiencing a 100-year drought, now severely into its fourth year. We strongly support passage of this bill as economic impacts from the water shortage are now influencing ways of doing business and conduct of daily lives, sometimes in devastating manners, such as loss of crops, trades, and employment. This, coupled with the environmental restrictions imposed on the operations of the federal Central Valley Project and the California State Water Project, lack of adequate surface storage reservoirs, and failed water management policies of the past, make passing this legislation a priority action.

OMWD supports the provision to revitalize Title XVI by converting it to a competitive grant program with congressional oversight. Title XVI can play a significant role in helping to alleviate drought conditions throughout the West, and accordingly, an earmark-free Title XVI program should be the path forward to encourage additional water recycling and reuse.

The proposed legislation will ensure a good balance between creating new water supplies via desalination and water reuse while protecting the environment and promoting continued conservation efforts. We agree that it is imperative to seek out new sources of supply in order to solve chronic water deficits derived from unsuccessful management of an overtaxed water system and continued drought conditions. These new sources of supply are sustainable, drought-proof, environmental friendly, and provide for continued economic health.

We applaud your constructive approach in crafting drought-response legislation that seeks to fairly balance the many needs of our diverse state. We do recommend, however, that it include other western states facing the same drought conditions and worsening economic situations given that the Colorado

1966 Olivenhain Road • Encinitas, CA 92024
Phone (760) 753-6466 • Fax (760) 753-1578 • www.olivenhain.com

Pure Excellence

River basin, on which Southern California relies for water supply, is not contained within our state lines.

Additionally, we might suggest making funding available to any qualified projects that meet certain minimum criteria for purposes of mitigating and alleviating the drought conditions, rather that specifying a list of specific projects. We have found that developing a comprehensive list of viable water supply projects is a formidable task.

Likewise, there are water and wastewater agencies in our region that cooperatively partner with us that were not specifically mentioned in the bill. Therefore, we encourage efforts to open up the drought relief application process to all agencies that meet, or whose projects meet, certain minimum criteria.

We encourage all policymakers to work together to approve this meaningful legislative solution to the chronic water supply shortages that have devastated California and other western states. OMWD looks forward to working with your office and all our congressional representatives to make this legislation a success. Again, thank you for naming our district specifically and for consideration of our recommendations.

Sincerely,

Kimberly Thorner
General Manager

cc: Congressman Duncan Hunter
Congressman Darrell Issa
Congressman Scott Peters

SOUTH COAST **WATER DISTRICT**

Board of Directors

Wayne Rayfield
President

Rick Erkeneff
Vice President

Dick Dietmeier
Director

Dennis Erdman
Director

William Green
Director

August 24, 2015

The Honorable Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein,

We are writing to express South Coast Water District's strong support for the California Emergency Drought Relief Act of 2015. This critical legislation will provide public entities the much needed financial assistance required to develop water supply projects vital to the long-term reliability of the State's water supply.

South Coast Water District is currently developing the Doheny Ocean Desalination Project, which is one of 26 desalination projects identified in the bill. This environmentally friendly desalination project will provide the residents and businesses of South Orange County with a local and sustainable drought-proof water supply that will enhance the region's overall water security and result in numerous social and economic benefits.

Reauthorizing the *Desalination Act* and authorizing $50 million over five years for feasibility studies and design work for seawater desalination projects strengthens South Coast Water District's ability to carry forth our plans for completing the necessary studies and design work to have our 5 million gallon per day Desalination Plant (Phase 1) delivering potable water to our community in 2019.

Thank you for your ongoing leadership regarding California's critical and complex water supply issues. We look forward to working with you to help develop solutions.

Sincerely,

Wayne Rayfield
President
Board of Directors

Andrew Brunhart, Ph.D., P.E.
General Manager

Mailing Address: *P.O. Box 30205, Laguna Niguel, CA 92607-0205*
Street Address: *31592 West Street, Laguna Beach, CA 92651*
Fax: *(949) 499-4256* ***Phone:*** *(949) 499-4555*

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Jack Bebee
Assistant General Manager

Marcie Eilers
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Robert H. James
Legal Counsel

Mary Lou Boultinghouse
Board Secretary

August 25, 2015

Senator Dianne Feinstein
United States Senate
San Diego Field Office
880 Front Street, Suite 4236
San Diego, California 92101

Subject: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein:

The Fallbrook Public Utility District is pleased to support the California Emergency Drought Relief Act of 2015 introduced by Senators Dianne Feinstein and Barbara Boxer. This proposal would seek to increase funding for specific desalination plants, groundwater-recharge and water recycling projects, and expands habitats for protected species of fish.

We are located in a rural area of North San Diego County where a significant portion of the economy is supported by groves, nurseries, and farms. Specifically, this proposed legislation would potentially provide funding to the District for expansion of its water recycling program to serve its agricultural-based customers. The expansion of the District's recycled water program would benefit our local agricultural customers by providing less expensive, reliable water for irrigation purposes while reserving potable water for more appropriate uses and thereby supporting conservation efforts.

Fallbrook Public Utility District supports the California Emergency Drought Relief Act of 2015 that provides a balance between new water projects, while protecting the environment and promoting conservation efforts. We are encouraged by the increase in funding for desalination plants, groundwater-recharge and water recycling projects, as well as for Bureau of Reclamation Title XVI and WaterSMART programs.

Sincerely,

Don McDougal
President, Board of Directors

RESOLUTON NO. 60-15

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, SUPPORTING THE CALIFORNIA EMERGENCY DROUGHT RELIEF ACT OF 2015 (SENATE BILL 1894)

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the City of Morro Bay constructed its desalinization facility in 1992 as an emergency water supply due to depletion of its groundwater sources; and

WHEREAS, the desalinization facility was permitted to supply 645 Acre-Feet per year for emergency water supply purposes; and

WHEREAS, the City of Morro Bay contracted with San Luis Obispo County for State Water in 1992 to supply 100% of the City's water supply or an annual allocation of 1313 Acre-Feet; and

WHEREAS, the City of Morro Bay also contracted with San Luis Obispo County for State Water in 2003 provide a drought buffer to protect its water supply allocation during time of water supply shortage water supply in the amount of 2290 Acre-Feet per year; and

WHEREAS, in the last five years the City has not received its full allocation of State Water due to drought; and

WHEREAS, the City operated the desalinization facility in 1993 and intermittently since then to supply the city's water needs during times of State water shutdown and high water demand; and

WHEREAS, on January 17, 2014, Governor Brown first declared a State of Emergency throughout the State of California due to severe drought conditions; and

WHEREAS, on January 28, 2014, the City of Morro Bay increased its level of water conservation from moderately restricted to severely restricted water supply conditions; and

WHEREAS, on March 11, 2014, San Luis Obispo County declared a local emergency due to the drought; and

WHEREAS, on March 11,2014, the City of Morro Bay declared a local emergency due to the drought and State Water Project deliveries of 35% or less; and

WHEREAS, on April 1, 2015, Governor Brown issued another executive order mandating statewide urban water conservation of 25-percent compared to the 2013 usage; and

WHEREAS, the City of Morro Bay is meeting its community specific goal of a 12-percent reduction in water usage as compared to the 2013 usage; and

WHEREAS, the City of Morro Bay has set a goal to diversify its water supply portfolio; and

WHEREAS, The City of Morro Bay is undertaking the construction of an estimated $100-million state of art Water Reclamation Facility replacing its 62-year-old beachside wastewater treatment plant and will provide up to one million gallons of reclaimed water per day; and

WHEREAS, with both a water reclamation facility and desalinization plant, the City could become self-reliant in its water supply portfolio.

NOW THEREFORE BE IT RESOLVED, by the City Council of the City of Morro Bay, supports and endorses the California Emergency Drought Relief Act of 2015 (S.1894) which, when signed by the President, would allow the City to compete for Federal funding in a new competitive grant program for water recycling and reuse projects that meet specified eligibility and feasibility criteria. This new program is critically important to leverage state and local investments in water recycling and water quality infrastructure that will create more sustainable and "drought-proof' water supplies in California..

PASSED AND ADOPTED, by the City Council of the City of Morro Bay, at a regular meeting thereof held on the 25th day of August, 2015, by the following vote:

AYES:	Irons, Headding, Johnson, Smukler
NOES:	None
ABSENT:	Makowetski
ABSTAIN:	None

Jamie L. Irons

JAMIE L. IRONS, Mayor

ATTEST:

Dana Swanson

DANA SWANSON, City Clerk

FRIANT
WATER AUTHORITY

Eric Borba
Chairman of the Board

Kent H. Stephens
Vice Chairman

Lucille Demetriff
Secretary/Treasurer

Bill Luce
Interim General Manager

Jennifer T. Buckman
General Counsel

Member Agencies
Arvin-Edison W.S.D.
Chowchilla W.D.
City of Fresno
Kaweah Delta W.C.D.
Kern-Tulare W.D.
Lindmore I.D.
Lindsay-Strathmore I.D.
Orange Cove I.D.
Porterville I.D.
Saucelito I.D.
Terra Bella I.D.
Tulare I.D.

Main Office
854 N. Harvard Avenue
Lindsay, CA 93247
559.562.6305
559.562.3496 Fax
Sacramento Office
1107 9th Street, Ste. 640
Sacramento, CA 95814
916.346.5165
916.346.4165 Fax

www.friantwater.org

August 31, 2015

The Honorable Dianne Feinstein
United State Senate
Washington, D.C. 20510

Dear Senator Feinstein:

As you know, for the second consecutive year the communities and 15,000 family farms of the Friant Division have been allocated no surface water supplies from the Central Valley Project (CVP). Moreover, regulatory decisions by Federal and State officials have ensured that Friant will receive little or no water again next year even if drought conditions end this winter with rain and snowfall levels that are significantly above normal.

The CVP was designed to mitigate the effects of drought by storing and conveying at least some water to Central Valley farms and communities even under the driest conditions. Friant's two years without CVP water, and the expectation of a third zero-allocation next year, are proof that the CVP is no longer operated to serve the purpose for which it was designed. The devastated family farms and empty domestic and municipal wells of the eastern San Joaquin Valley demonstrate that the regulatory regime controlling operation of the CVP does not serve the public interest.

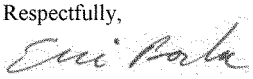
Only Congress can restore flexibility and common sense to the operation of the CVP. But time is running out for many of our farms and communities. Our people are desperate. We need help now. It is imperative that the California Congressional Delegation develop drought legislation that can be passed by the House and Senate and signed into law by the President this year.

For that reason, the Friant Water Authority Board of Directors applauds your introduction of S. 1894, the California Emergency Drought Relief Act of 2015. Your bill together with the House-passed Western Water and American Food Security Act of 2015 (H.R. 2898) form the basis for compromise legislation that could provide real relief for the 2016 water year and beyond. The Authority is eager to work with you and your colleagues in the House and Senate to develop and quickly enact legislation to mitigate the current crisis, protect existing water rights and priorities, enhance operational flexibility and

expand water supplies for the future to ensure that we are never again in this situation.

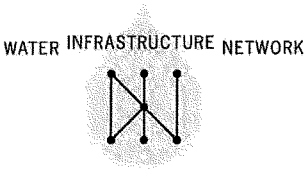
We appreciate your leadership in drafting S. 1894, and we are grateful for the efforts made by you and Members of the Central Valley Congressional Delegation to address the immediate water-supply crisis and create water-supply reliability for the long term.

Respectfully,



Eric Borba
Chairman

cc: Senator Barbara Boxer
Representative David Valadao
Representative Kevin McCarthy
Representative Jim Costa
Representative Jeff Denham
Representative John Garamendi
Representative Jared Huffman
Representative Doug LaMalfa
Representative Tom McClintock
Representative Devin Nunes



August 31, 2015

The Honorable Lisa Murkowski
Chairman
Senate Committee on Energy and
Natural Resources
Dirksen Senate Office Building, SD-304
Washington, DC 20510-6150

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Energy and
Natural Resources
Dirksen Senate Office Building, SD-304
Washington, DC 20510-6150

Re: WIN's Strong Support for CA Emergency Drought Relief Act – S.1894

Dear Chairman Murkowski and Ranking Member Cantwell,

The Water Infrastructure Network (WIN), a coalition of the nation's leading construction, engineering, municipal, conservation, public works, labor and manufacturing organizations, strongly supports the CA Emergency Drought Relief Act (S.1894) and urges the prompt consideration and passage of this legislation. The drought crisis now gripping much of the Western United States cannot be solved by changes to existing water allocation policies. Significant new local, state and federal investments in water reuse, water recycling, water storage, desalination and groundwater recharge are critical to providing secure, sustainable sources of water for communities and farmers across the West.

The critical water infrastructure investments authorized in S. 1894 are consistent with ongoing efforts to increase available water supplies in California. Recent examples include:

- Orange County Water District -- which has constructed a water reuse facility that now provides more than 100 million gallons a day of potable water
- Poseidon Desalination Plant – which will provide water for 300,000 San Diego County Residents
- Sites Reservoir – significantly increasing off stream water storage

The water infrastructure investments outlined in S. 1894 will benefit both rural and urban communities and are deserving of broad bipartisan support. Recycled wastewater will someday irrigate millions of acres of agricultural land in the United States. New water storage projects will increase water supplies for cities and farmers while decreasing the impacts of flooding from future wet weather events. Investments today in water reuse, recycling, and storage will

ultimately save the Federal Government billions of dollars in future Emergency Drought, Flood and Fire expenditures.

The Water Infrastructure Network appreciates your thoughtful leadership in advancing comprehensive, bipartisan, drought relief legislation and looks forward to working with you to ensure that critical investments in water reuse, water recycling, water storage and desalination are included in the drought package that ultimately reaches the President's desk.

Sincerely,

The WIN Executive Committee

American Council of Engineering Companies (ACEC), American Public Works Association (APWA), American Society of Civil Engineers (ASCE), Associated General Contractors of America (AGC), International Union of Operating Engineers (IUOE), National Association Clean Water Agencies (NACWA), National Rural Water Association (NRWA), United Association of Plumbers and Pipefitters (The United), and the Vinyl Institute (VI)

cc: Senator Feinstein
Senator Boxer
Members of the Senate Committee on Energy and Natural Resources

BOARD OF SUPERVISORS

1055 MONTEREY, ROOM D430 • SAN LUIS OBISPO, CALIFORNIA 93408-1003 • 805.781.5450

BRUCE GIBSON
SUPERVISOR DISTRICT TWO

September 14, 2015

The Honorable Senator Diane Feinstein
331 Hart Senate Office Building
United State Senate
Washington, DC 20510

RE: Support for The California Emergency Drought Relief Act, S. 1894

Dear Senator Feinstein:

I write in support of The California Emergency Drought Relief Act, S. 1894.

As a San Luis Obispo County Supervisor, I have seen firsthand the significant impacts that 4 years of serious drought have brought to our county, and my district in particular. I'm grateful for your leadership in efforts to secure much-needed resources to protect out our communities, our environment and our economy.

In my district alone, we are faced with the full variety of challenges – from extreme fire hazard to dwindling drinking water supplies. I especially appreciate that your legislation has called out specific projects and initiatives that will benefit several communities in our county. Such focused attention will be crucial in providing solutions to these pressing problems.

I would also note that passage of S. 1894 is important no matter what the coming rain season might bring us. It will take more than one good winter to recover from this drought. Moreover, extreme drought impacts – such as the huge number of dead and dying trees in our forests – will take years to mitigate, no matter how much rain comes in the future.

Again, I greatly appreciate your efforts to craft a balanced approach to the significant problems that have developed in these exceptionally dry years. Please let me know if can be assistance in promoting the passage of S. 1894. Thank you.

Sincerely,

Bruce Gibson

BRUCE GIBSON
Supervisor, District Two
San Luis Obispo County

City of Pismo Beach
Department of Public Works
760 Mattie Road, Pismo Beach, CA 93449
p|805.773.4656 f|805.773.4684
www.pismobeach.org

Engineering ~ Pier/Parks ~ Water ~ Wastewater ~ Stormwater ~ Public Facilities ~ Fleet Services

September 16, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington D.C. 20510

Re: California Emergency Drought Relief Act of 2015

Dear Senator Feinstein:

As the City of Pismo Beach's Director of Public Works, I am charged with ensuring we have adequate water supplies for our community. I am very excited by your introduction of the California Emergency Drought Relief Act of 2015. Drought is nothing new to California and this historic drought is reminding our generation about the environmental conditions that exist in our State.

Recycled water projects are one of the few drought tolerant sustainable new sources of water and the City of Pismo Beach supports your proposed legislation. The balance it provides between supporting new projects that deliver a new source of water and protecting the environment and promoting continued conservation efforts is unprecedented.

The City of Pismo Beach encourages all policymakers to work together to approve this legislative solution to the devastating water shortages that have been seen throughout the State of California and other western States.

If there is anything that we can do at a local level to help make this legislation a success please do not hesitate to contact us.

Thank you,

Benjamin A. Fine, P.E.
Director of Public Works/City Engineer

From the Office of the City Manager
James R. Lewis, City Manager
760 Mattie Road
Pismo Beach, CA 93449
(805) 773-7007
jlewis@pismobeach.org

September 16, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington D.C. 20510

RE: The California Emergency Drought Relief Act of 2015

Dear Honorable United States Senator Dianne Feinstein:

On behalf of the City of Pismo Beach I would like to offer our support of your introduction of the California Emergency Drought Relief Act. Although the City of Pismo Beach has only 7,700 full time residents, our population grows tenfold during the many special events we host each year. Attaining a new sustainable, drought-proof supply of water is one of our City Councils top priorities. To that end we are aggressively working to realize recycled water in a cooperative effort with our neighboring Cities and other water purveyors.

We realize that this bill will provide short and long term provisions that will help our State overcome the current drought as well as to help provide long term sustainable supplies of water.

If there is anything our City can do to help with the passage of this legislation, please do not hesitate to call or email me.

Thank you,

James R. Lewis
City Manager

From the Office of the Mayor
Shelly Higginbotham, Mayor
760 Mattie Road
Pismo Beach, CA 93449
(805) 773-7007
shigginbotham@pismobeach.org

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington D.C. 20510

RE: The California Emergency Drought Relief Act of 2015

Honorable Senator Feinstein:

As Mayor of the City of Pismo Beach, I am pleased to support your introduction of the California Emergency Drought Relief Act. The City of Pismo Beach believes that this bill provides both short and long term provisions designed to help communities throughout the State to not only deal with the ongoing drought, but to also help to provide long term sustainable supplies of water.

I applaud your efforts to help the citizens of our State achieve new sustainable and highly drought-resistant supplies of water. As you are aware the City of Pismo Beach is currently performing the environmental work necessary to permit our proposed Pismo Beach Regional Groundwater Sustainability Program, which when complete will provide approximately 900 acre-feet of highly purified recycled water to be injected into the Santa Maria Ground Water Basin.

Again I strongly support your bill and should you need my assistance, please do not hesitate to call me.

Sincerely yours,

Shelly Higginbotham
Mayor

Fresno Council of Governments

2035 Tulare St., Ste. 201 tel 559-233-4148
Fresno, California 93721 fax 559-233-9645

www.fresnocog.org

September 24, 2015

VIA ELECTRONIC MAIL

The Honorable Dianne Feinstein
United States Senate
Washington, D.C.

The Honorable Barbara Boxer
United States Senate
Washington D.C.

The Honorable David Valadao
United States House of Representatives
Washington, D.C.

Dear Senators Feinstein and Boxer, and Representative Valadao:

The Fresno Council of Governments encourages you and your colleagues to do everything possible to achieve successful passage of the drought relief legislation and proceed into the Congressional Conference process. We are extremely pleased with the passage of H.R. 2898, the Western Water and American Food Security Act of 2015 and hope for the passage of S. 2198, the Emergency Drought Relief Act very soon; however, we expect you to successfully meld the differences in the differing Senate and House bills into what has the potential, for water users throughout the San Joaquin Valley, to perhaps be the most important federal legislation of 2015.

City of Clovis
City of Coalinga
City of Firebaugh
City of Fowler
City of Fresno
City of Huron
City of Kerman
City of Kingsburg
City of Mendota
City of Orange Cove
City of Parlier
City of Reedley
City of San Joaquin
City of Sanger
City of Selma
County of Fresno

The Fresno COG's membership includes the County of Fresno and all 15 cities located within Fresno County. Our organization's role is that of a consensus builder as our board members – all of whom are elected officials – seek to frame acceptable programs and find solutions to issues that do not respect political boundaries such as water resources.

The current water shortages now being experienced and the growing water crisis enveloping all parts of Fresno County and California are adversely affecting every one of our constituents. There may be little that can be done to relieve the immediate water-related problems we are facing but you certainly have the opportunity to ease or even resolve future problems by re-crafting federal law.

We are not seeking federal handouts or other temporary short-term aid. We are asking that the fundamental flaws in federal water management, including administration of the Endangered Species Act, be addressed and settled in a common-sense manner that protects the needs of the people we serve.

You are well aware of Fresno County's long-standing state and national leadership in agricultural production as well as its growing population and business communities in cities and towns, of which all are dependent upon safe, reliable supplies and quantities of water. That is simply not occurring as a result of the near record drought but, more importantly, because of resource management by federal agencies that has relied upon questionable regulatory mandates. In many cases, these mandates have curtailed and even eliminated allocations of water supplies in large portions of Fresno County. Fresno County residents and those in agriculture have had to over-use groundwater to survive, resulting in a

separate crisis involving plunging water tables. Scores of wells have failed. Groundwater supplies have been drawn down faster than they have been replenished; and today's infrastructures are insufficient to address water storage and conveyance needs anticipated under current and future demand patters.

In the past fifteen years the competing uses for water have resulted in redirection of surface water supplies away from the San Joaquin Valley and have intensified the use of groundwater. The San Joaquin Valley's challenge is to become much more creative in dealing with the natural cycles of drought and excess as well as the permanent and temporary losses. The importance of water will require a more thorough evaluation of our assets and needs, and our stewardship of local supplies.

The effects of the multiple years of drought conditions are evident today and are having dramatic and catastrophic impacts in our communities, California, and the nation which is resulting in the loss of thousands of jobs, fallowing of thousands of acres of prime agricultural farmland, rising local and national food costs, increases in major wildfires similar to the Rim and Rough Fires, and increases in land subsidence as a result of continued depletion of groundwater basins.

The situation we face is devastating. Many of the dry-year woes we are facing are, of course, related to the drought but many more can be blamed directly on policy decisions of the state and federal water project operators that have impacted the ability to provide water to the San Joaquin Valley at crucial times this year. The domino effect of this drought is impacting employment and business activity, as well as social and economic harm to the people of Fresno County.

Please act now in the best interest of all water users. Act in good faith and continue to set aside political differences in order to bridge and resolve differences in this important legislation to protect the health and welfare of the citizens of our cities, Fresno County and the San Joaquin Valley. The San Joaquin Valley is in dire need of a reliable, adequate, quality water supply to sustain a high quality of life and a world-class agricultural sector, while protecting and enhancing the environment.

Lastly, we also call on the administration to work with their respective legislative bodies to develop and implement comprehensive plans to address water supply, reliability, and affordability for 2015 and into the future. A successful water plan must include additional storage. Failure to increase water supplies in California will jeopardize America's breadbasket and our state's trillion-dollar economy.

Sincerely,

Amarpreet Dhaliwal
Chair, Fresno Council of Governments
Mayor, City of San Joaquin

MUNICIPAL WATER DISTRICT OF ORANGE COUNTY

VIP - James P.

15 AUG 31 PM 1:42

Street Address:
18700 Ward Street
Fountain Valley, California 92708

Mailing Address:
P.O. Box 20895
Fountain Valley, CA 92728-0895

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El Toro Water District
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Santa Margarita Water District
City of Seal Beach
Serrano Water District
South Coast Water District
Trabuco Canyon Water District
City of Tustin
City of Westminster
Yorba Linda Water District

August 20, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20515

Dear Senator Feinstein:

Re: S. 1894: California Emergency Drought Relief Act of 2015 – Support

The Municipal Water District of Orange County (MWDOC), a water agency serving the needs of more than two million residents and 28 water agencies, is pleased to support your measure, S. 1894, the California Drought Relief Act of 2015.

S. 1894 covers a wide range of solutions to California's worsening drought and we applaud your efforts working towards a resolution to address this problem. It is critical that we all work together to balance the needs of urban, rural, agriculture and the environment with short and long term solutions. We are grateful for the focus on obtaining federal funds that would help move expensive water projects off the ground, particularly desalination plants, storage projects and funds to expand and improve water recycling programs. As you are aware, Orange County has been a leader in these areas and we hope to continue to set an example for the rest of California as well as the nation.

We understand that this measure is likely to be conferenced with a House measure, and possibly folded into a broader, Western drought bill. We appreciate your efforts to ensure California's urgent needs are addressed.

If you have any questions or if there is anything we can do to assist you on this matter, please feel free to contact either Jim Barker at (202) 413-2986 in Washington, or MWDOC General Manager, Rob Hunter at (714) 593-5026.

Sincerely,

Larry D. Dick

Larry D. Dick
President

EAST BAY
MUNICIPAL UTILITY DISTRICT

ALEXANDER R. COATE
GENERAL MANAGER

September 15, 2015

The Honorable Dianne Feinstein
U.S. Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Subject: Support for S. 1894

Dear Senator Feinstein:

The East Bay Municipal Utility District (EBMUD) is pleased to support S. 1894, the California Emergency Drought Relief Act (Drought Relief Act), which would address the drought in California by providing both short- and long-term solutions to stretch water supplies and would provide funding for both existing and new infrastructure programs to build new clean water infrastructure without undermining environmental protections, preempting state laws, or redirecting impacts from one drought-stricken area to another.

S. 1894 would provide critical federal funding support for water infrastructure projects, particularly water recycling projects such as those that may be undertaken by EBMUD, to address emergency and long-term water supply needs. We greatly appreciate the approach you have taken with S. 1894 to assist water agencies, such as EBMUD, in mitigating drought impacts and preparing for the future, while appropriately preserving environmental protections that are crucial to our future.

EBMUD is grateful for your continued leadership to help communities meet water challenges both now and in the future. We look forward to continuing to work with you on this important legislation. If you or your staff have any questions or would like additional information, please contact our federal legislative representative, Eric Sapirstein. Mr. Sapirstein can be reached at (202) 466-3755.

Sincerely,

Alexander R. Coate

ARC:MD:JF

375 ELEVENTH STREET . OAKLAND . CA 94607-4240 . (510) 287-0101
BOARD OF DIRECTORS JOHN A. COLEMAN . ANDY KATZ . DOUG LINNEY
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Division 1
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Division 4
Jim Abercrombie
General Manager
Thomas D. Campion
General Counsel

In reply refer to: LBP2015-31

September 24, 2015

The Honorable Tom McClintock
United States Congress
2331 Rayburn House Office Building
Washington, D.C. 20515

Re: H.R. 2898 and H.R. 3353

Dear Congressman McClintock:

El Dorado Irrigation District ("District") writes to express our support of your effort to address the persistent California drought through introduction of the Western Water and American Food Security Act of 2015 (H.R. 2898) and request that you consider certain amendments that will help maintain certainty for California water agencies like the District. The District also wishes to express its support of H.R. 3353, a bill that will amend the Federal Clean Water Act.

H.R. 2898 contains numerous provisions that enable water agencies throughout the state to develop meaningful responses to the historic drought, while protecting the California water rights priority system which has provided certainty to California water agencies for more than one hundred years.

The District also believes that authorizing federal funding to assist local water agencies will significantly assist such agencies respond to the drought emergency, especially in realizing recycled water infrastructure projects, which are often not locally cost effective. In this regard, the District also supports the California Emergency Drought Relief Act of 2015 (S. 1894 Feinstein). Though S. 1894 differs in some regards to H.R. 2898, the District would like to encourage your staff to work with the authors of S. 1894, to adopt a compromise that includes the water rights protections of H.R. 2898 and some of the funding opportunities, especially those related to recycled water, in S. 1894.

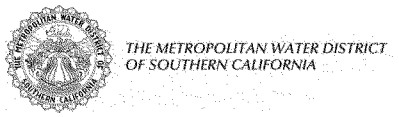
Finally, the District strongly supports your efforts to reform the Clean Water Act by limiting attorney's fees and penalties in citizen suits, as proposed by H.R. 3353. The District appreciates your ongoing effort to address California's ongoing water management challenges.

Sincerely,

Jim Abercrombie
General Manager

JA:BP:pj

cc: The Honorable David Valadao, United States Congress
The Honorable Dianne Feinstein, United States Senate
The Honorable Lisa Mirkowski, United States Senate, Chairman – Committee On Energy and Natural Resources



BOARD ACTION

- **Board of Directors**
  Communications and Legislation Committee

9/22/2015 Board Meeting

8-5

Subject

Express support and seek amendments to S. 1894 (Feinstein, D-CA) – California Emergency Drought Relief Act of 2015

Executive Summary

S. 1894, the "California Emergency Drought Relief Act of 2015" was introduced on July 29, 2015 (Attachment 1) by Senator Feinstein and cosponsored by Senator Boxer. S. 1894 seeks to alleviate the impacts of the drought in California by: (1) directing federal agencies to use their authority and discretion under existing laws and regulations to improve water supply conditions through operational flexibility measures; (2) providing direction and funding for actions to benefit fish and refuges; (3) providing financial assistance for water supply, water conservation, and drought-alleviation projects; and (4) authorizing new programs and creating new financing and funding programs. Altogether, S. 1894 authorizes over $1.2 billion in appropriations over the next 10 years and directs spending of three times that amount between 2026 and 2050.

Details

Background

S. 1894 utilizes language from legislation introduced by Senator Feinstein in 2014 (S. 2016 and S. 2198), but has an expanded scope with provisions similar to other legislation introduced by other members of the California delegation in 2015. The author states that the goals of the legislation are "moving and creating water long-term to help those communities suffering the worst effects of the drought, while remaining completely compliant with environmental laws such as the *Endangered Species Act* and *Clean Water Act* as well as all biological opinions." Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski has announced that S. 1894 and other drought-related legislation will be heard at an October meeting of that committee.

Measures to Take Advantage of Operational Flexibility under Existing Law

Title 1 contains a number of actions that the Secretaries of Interior and Commerce are directed to take during the drought emergency or until September 30, 2017, whichever is later. Many provisions are similar to S. 2198 introduced by Senator Feinstein last year. For example, the Secretaries of Interior and Commerce are directed to "provide the maximum quantity of water supplies possible" to the water projects and "any other locality or municipality in the state." Title 1 contains provisions directing the Secretaries to act, including that the Secretaries ensure the Delta Cross Channel Gates remain open to the greatest extent possible; that they manage reverse flow in Old and Middle Rivers (OMR) to minimize water supply reductions to the projects (but as prescribed by the biological opinions); adopt a 1:1 inflow to export ratio for new transfer water during the spring; issue permits within the shortest practicable time period for temporary barriers or operable gates and for decisions on water transfers; have the National Academy of Sciences conduct a study on the effectiveness of saltcedar biological control efforts; and "use all available scientific tools to identify any changes to real-time operations" of water projects that could result in the availability of additional water supplies.

Actions to Benefit Fish and Refuges

S. 1894 authorizes nearly $60 million over five years to benefit listed fish species. The bill contains direction and authorizes appropriations for various actions to benefit listed fish species. In general, the authorizations are through 2020. It begins by authorizing funding for projects to recover listed salmonids, along with direction for federal agencies to expedite federal reviews and approvals of individual projects. Other projects include reports on the use of non-physical barriers; reports on adding gravel and other ways to restore additional salmonid rearing areas along with direction to implement restoration if it is feasible; a pilot program to test alternative hatchery release strategies; a pilot program to identify habitat that favors predatory fish to the detriment of sensitive native species and make recommendations (without implementation) of how to modify that habitat to reduce predation; and an assessment of whether reduced lighting at artificial structures would reduce predation and direction to implement recommendations. Other projects include evaluating and improving delta pump salvage systems; creating a pilot program to increase salmonid survival through the Delta using a trap and barge program for San Joaquin origin fish; and improved temperature modeling.

Financial Assistance for Water Supply and Demand-Management Projects

The bill also authorizes substantial financial assistance through a variety of federal programs for water supply, water conservation and water use efficiency projects, including desalination, storage, and recycling projects; emergency projects to provide drinking water to areas where water shortages pose a risk to public health and safety; on-farm water conservation actions; combating water theft for illegal marijuana cultivation; innovative water supply and conservation technologies; and establishing an open water data system within the United States Geological Survey to improve access to and exchange of water data and information for water management, education, research, assessment, and monitoring purposes.

New Programs and Authorizations

S. 1894 provides direction to existing programs to expedite drought relief and authorizes a number of new programs. Most notably, the bill authorizes the U.S. Bureau of Reclamation (Reclamation), without further Congressional approval, to partner in both federally owned and non-federal storage projects. This sea-change in federal policy would allow Reclamation's expertise to be shared more widely and could give more local control for projects, such as Sites Reservoir. The bill also calls for feasibility studies authorized under CalFed to be completed. In addition S. 1894 makes amendments to the Safety of Dams Act to allow increased reservoir capacity as part of a dam safety project. The bill also directs the Army Corps to identify and carry out five pilot projects to update operation manuals at federal and non-federal dams in states with a drought declaration.

Also of note, S. 1894 creates the Reclamation Infrastructure Finance and Innovation (RIFIA) Act. Similar to Transportation Infrastructure Financing and Innovation Act for transportation projects and Water Infrastructure Financing and Innovation Act (WIFIA) (authorized by WRDA) for certain water projects, RIFIA is a program to provide secured loans or loan guarantees for various infrastructure projects, but would be limited to water-related projects in the Reclamation states. Other provisions include authorizing the Secretary to designate, subject to certain conditions, the state as lead agency for the purposes of National Environmental Policy Act (NEPA), which could expedite environmental review for state drought projects that also trigger NEPA review. Similar to WIFIA, projects that use tax-free municipal financing may not be eligible for RIFIA funding.

Among other changes, S. 1894 would also amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 USC 390h), known as Title XVI, by adding a competitive grant program and authorizing $200 million through 2020.

Impacts of the Legislation upon Metropolitan

Assuming that federal regulatory officials diligently exercise their discretion under existing law to use the flexibility inherent in the biological opinions, the operational flexibility measures in the bill, particularly the 1:1 San Joaquin River Inflow to Export ratio for water transfers and exchanges, the use of turbidity triggers, application of the OMR criteria to minimize water supply impacts, revised Delta Cross Channel operations, and use of temporary barriers and operable gates in the Delta could provide both water supply and water quality benefits to Metropolitan. The actions to benefit species in the bill are unlikely to create short-term water supply

relief, but in the long run will improve information about listed species. Substantial funding for water supply and demand-management projects will facilitate Southern California's ability to respond to the next drought and may provide some short-term relief to areas of the state at risk of facing an inadequate supply of water. Moreover, S. 1894 could assist or accelerate additional new storage, which could make Central Valley Project-State Water Project (SWP) coordinated operations more flexible in the future, increasing water yields of both projects relative to the current system and regulatory constraints.

Suggested Metropolitan Position and Response

Metropolitan adopted priorities for federal drought legislation in August 2015. S. 1894 represents legislative progress on many of those priorities. S. 1894 is an expansive bill that provides funding and regulatory assistance for regions affected by drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water. The bill provides funding and regulatory incentives for conservation and water use efficiency measures. S. 1894 could help protect reliability for the SWP, Colorado River and local water supplies. The bill also works within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species. The bill additionally provides direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, while also encouraging the most current scientific data and analysis to provide enhanced flexibility for water project operations. It is unclear the degree the bill will secure broad, bipartisan support, but it has been set for a hearing by the Republican Chair of the Senate Energy and Natural Resources Committee, and could potentially win broad support there.

Staff recommends that the Board authorize the General Manager to express a support and seek amendment position for S. 1894. If the Board approves, the General Manager would send a letter stating the Board's positon on S. 1894, listing the Board's federal drought legislative priorities as adopted August 18, 2015 and urging that the final drought bill be amended to represent those priorities

Suggested Amendments

In addition to technical amendments, staff would seek a number of amendments to S. 1894 that relate to four important Metropolitan interests.

- First, the bill contains protections for SWP contractors against redirected impacts of federal actions, but also contains a loophole from those protections. Staff recommends providing language to close that loophole.
- Second, S. 1894 amends the Reclamation Safety of Dams Act of 1978 to allow additional project benefits (such as increasing storage) to be approved concurrent with Safety of Dams projects. While this language is much better at protecting SWP water supplies than other language we have seen in House of Representative bills, staff recommends that to protect SWP interests in San Luis Reservoir provisions be added to retain cost allocations under existing law.
- Third, S. 1894 amends the Water Desalination Act of 1996 to prioritize projects that "reduce reliance on imported water supplies that have an impact" on listed species. The term "reduced reliance," is not defined in federal or state law, and is the source of diametrically opposed state law interpretations that are the basis of claims in the *Delta Stewardship Council Cases*. Staff recommends the term and associated language addressing limitations on imports be removed to reduce litigation risks.
- Finally, the Collaborative Science and Adaptive Management Program (CSAMP) was started in 2013 by the federal, state, local, and Non-Governmental Organization parties to the biological opinions litigation as a means to seek improved scientific understanding of species in a way that would reduce the chance of litigation in the future. This program is working well with the exception that funding has been difficult to obtain and Reclamation has experienced serious difficulties and delays in contracting. Staff recommends that a provision be added to Title II to fix contracting issues, authorize Reclamation to contribute directly to CSAMP, and authorize $5 million in appropriations.

Policy

Minute Item 46637, dated April 11, 2006, adopting a set of Delta policy principles ensuring a foundation for development of future positions and provide guidance to staff

Minute Item 47135, dated June 12, 2007, adopting Metropolitan's Delta Action Plan

Draft Minute Item 50217, dated August 18, 2015, adopting additional Metropolitan 2015/2016 Legislative Priorities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves organizational and administrative activities that will not result in physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(5) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Authorize the General Manager to express a support position for, and seek amendments to S. 1894.

Fiscal Impact: Unknown
Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Option #2

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Take no position on S. 1894.

Fiscal Impact: Unknown
Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Staff Recommendation

Option #1

9/16/2015
Dee Zinke *Date*
Deputy General Manager, External Affairs

9/16/2015
Jeffrey Kightlinger *Date*
General Manager

Attachment 1 – S. 1894 introduced July 29, 2015

Ref# ea2639178

5750 Almaden Expressway, San Jose, CA 95118-3614 | (408) 265-2600 | www.valleywater.org

Santa Clara Valley Water District

September 8, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Subject: Notice of Support and Amend—S 1894 (Feinstein) California Emergency Drought Relief Act of 2015

Dear Senator Feinstein:

I am writing to inform you that the Santa Clara Valley Water District (District) Board of Directors took a position of "Support and Amend" on S 1894—California Emergency Drought Relief Act of 2015.

The District greatly appreciates your leadership and dedication by introducing S 1894, which includes a range of provisions with the goals of moving and creating water long term to help those communities suffering the worst effects of the drought, while remaining completely compliant with environmental laws, such as the Endangered Species Act and Clean Water Act, as well as all biological opinions.

The District is requesting the following amendments to the legislation:

- That recycled projects eligible for future or current authorizations require that the project be sponsored by a public agency. This is would ensure consistency throughout the legislation, where this is already included.

- That recycled water, National Environmental Protection Act (NEPA), streamlining language, which closely mirrors the California Environmental Quality Act streamlining language be included so that agencies, which seek to take advantage of federal funding or are required to follow the NEPA process, can still expedite projects in light of the drought.

- Change Section 407 (b) (5) to read: "INTEREST RATE—The interest rate on a secured loan under this section shall be not **~~less~~ more** than the yield on United States Treasury securities of a similar maturity to the maturity of the secured loan of the date of execution of the loan agreement." Changing the "not less than" to "not more than" would allow the District and other municipalities with favorable bond ratings to obtain a lower interest rate, if available.

- Include language which will provide for a modification of the tax exempt bond provisions of the Internal Revenue Code to permit (but not require) the financing of recycled water facilities from the proceeds of tax exempt governmental activity bonds issued directly by a government agency or on behalf of a government agency approved public/private partnership, which may own, operate, and/or finance the facilities. Such modification would also clarify that the tax exempt status of existing and future governmental bonds issued to finance wastewater systems providing the wastewater supply to the facilities would not be adversely affected by such public/private partnership.

Attached to this letter is the specific language we are requesting to be added to the bill.

The District is the primary water agency for Silicon Valley. Our duties include: Providing flood protection and environmental stewardship for the county's more than 800 miles of creeks and streams, and ensuring a clean, healthy, and reliable water supply for approximately 2 million residents of Santa Clara County.

Your bill is very important to the District, and we thank you for introducing it. If there is any way the District may be of assistance in the passage of this bill, please do not hesitate to contact me at (408) 630-2017, or by e-mail at rcallender@valleywater.org.

Sincerely,

Rick L. Callender
Deputy Administrative Officer
Office of Government Relations

Attachment
cc: The Honorable Dianne Feinstein, Unite States Senate (San Francisco Office)
The Honorable Barbara Boxer, United States Senate
The Honorable Anna Eshoo, U.S. House of Representatives
The Honorable Zoe Lofgren, U.S. House of Representatives
The Honorable Mike Honda, U.S. House of Representatives
The Honorable Sam Farr, U.S. House of Representatives

sw:ll
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San Diego County Water Authority
4677 Overland Avenue • San Diego, California 92123-1233
(858) 522-6600 FAX (858) 522-6568 www.sdcwa.org

September 14, 2015

Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

MEMBER AGENCIES

Carlsbad Municipal Water District
City of Del Mar
City of Escondido
City of National City
City of Oceanside
City of Poway
City of San Diego
Fallbrook Public Utility District
Helix Water District
Lakeside Water District
Olivenhain Municipal Water District
Otay Water District
Padre Dam Municipal Water District
Camp Pendleton Marine Corps Base
Rainbow Municipal Water District
Ramona Municipal Water District
Rincon del Diablo Municipal Water District
San Dieguito Water District
Santa Fe Irrigation District
South Bay Irrigation District
Vallecitos Water District
Valley Center Municipal Water District
Vista Irrigation District
Yuima Municipal Water District

OTHER REPRESENTATIVE

County of San Diego

SUBJECT: S. 1894 (Feinstein) – SUPPORT AND SEEK AMENDMENTS

Dear Senator Feinstein:

On behalf of the San Diego County Water Authority (Water Authority), I am pleased to inform you that we support your S. 1894, which would advance provisions to help California communities affected by drought, and propose programs and funding to support long-term water investment projects such as desalination, water recycling, and water storage. In addition, we would **respectfully request your consideration of minor and technical amendments** to your measure, as identified below, that we believe would improve the scope of parties eligible to compete for funding, that are involved in development of recycled water projects in San Diego County.

The Water Authority is a public agency serving the San Diego region as a wholesale supplier of water from the Colorado River, Northern California, and through locally-developed sources. The Water Authority works through its 24 member agencies to provide a safe, reliable water supply to support the region's $206 billion economy and the quality of life of 3.2 million residents.

As drought conditions have worsened on a statewide basis in California over the past four years, the Water Authority's strategic investments in local water supply development and water use efficiency has paid dividends for the San Diego region in terms of creating resiliency to the effects of a prolonged and sustained drought. In just recent years, the Water Authority completed the nation's tallest dam raise at San Vicente Dam, advanced potable water reuse by sponsoring successful state legislation, and we are preparing to bring on-line the largest seawater desalination plant in the Western Hemisphere. Your S. 1894 would provide important federal resources to continue assisting and supporting the Water Authority's and its member agencies' investments in a diversified portfolio of water resources.

We are very appreciative that your S. 1894 would provide competitive funding eligibility for water recycling projects sponsored by a number of agencies that are specifically identified in the text of S. 1894. To ensure broad eligibility for the Water Authority's member agencies within San Diego County, we would request your consideration of an amendment to S. 1894 to add the San Dieguito Water District and the San Elijo Joint Powers Authority to the list of those entities eligible for federal funding assistance for water recycling projects.

We greatly appreciate your leadership on this important issue this year, and for many years prior, and we look forward to working closely with you and your staff as the measure advances through Congress.

Please don't hesitate to contact me at (916) 492-6074 or Ken Carpi of Carpi and Clay at (202) 822-8300, if you have any questions regarding the Water Authority's position on S. 1894.

Sincerely,

Glenn A. Farrel
Government Relations Manager

Water Quality Association
International Headquarters & Laboratory
4151 Naperville Road
Lisle, Illinois 60532-3696 USA
Phone 630 505 0160
Fax 630 505 9637
www.wqa.org
A not-for-profit organization

October 6, 2015

The Honorable Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Feinstein:

The Water Quality Association (WQA) is pleased to support the efforts of Congress as they seek drought relief legislation. Any legislation that can assist States during periods of drought will benefit the public health of the American people. Specifically, we strongly support the provisions in Section 323 of the California Emergency Drought Relief Act. This sections would provide relief to small disadvantaged communities in need of water treatment and filtration technology.

The United States Drought Monitoring has reported that drought conditions are affecting more than 50 million people in the country. With drought conditions resulting in higher concentrations of contaminants in the water, such as arsenic and nitrate, water quality is a major concern. Of course, California has been hardest hit. Small disadvantaged communities in the Central Valley and elsewhere have contaminated water supplies which are treatable with point-of-use and point-of-entry (POU/POE) technologies that would be made available under Section 323 provisions.

WQA is a not-for-profit international trade association representing the residential, commercial and industrial water treatment industry. WQA's Gold Seal program is an ANSI accredited third party certification body to test and certify water treatment technologies. Current technology demonstrates that several techniques may be used for removing contaminants from drinking water. WQA prides itself on supporting solid science, and believes that the solution can be found in technology, based on independent product certification to industry standards. With the prolonged drought in the Western States, there are available approaches that can go far in making sure everyone has access to safer and healthier water. The use of POU/POE systems – whole house or at the tap water treatment – can ensure everyone has water that is up to standard.

By helping everyone receive the treatment they need exactly where they need it, the United States can realize its goals of public health in a cost-effective and reliable way. These treatment devices provide a feasible option for small systems and disadvantaged communities where repairing deteriorating infrastructure is too burdensome.

We appreciate the opportunity to collaborate on drought legislation that addresses water quality and educating consumers on methods for removing contaminants from their drinking water. We will be happy to work with you and others to answer questions surrounding home water treatment. Please do not hesitate to call us anytime to discuss further.

Thank you for your time and consideration.

Sincerely,

David A. Westman
Executive Director
Water Quality Association
4151 Naperville Road
Lisle, IL 60532

Bret P. Tangley
President
Water Quality Association
4151 Naperville Road
Lisle, IL 60532

KEVIN L. FAULCONER
MAYOR

October 7, 2015

The Honorable Dianne Feinstein
United States Senator
331 Hart Senate Office Building
Washington, DC 20510

Fax: 202-228-3954

The Honorable Barbara Boxer
United States Senator
112 Hart Senate Office Building
Washington, DC 20510

Fax: 202-224-0454

Dear Senators Feinstein and Boxer:

On behalf of the citizens of San Diego, I would like to express my appreciation for your leadership and legislative efforts to address California's historic drought through S. 1894, the California Emergency Drought Relief Act.

San Diego is at the end of California's water system, which amplifies the costs and challenges we face in providing residents with high quality, reliable water supplies. We have used these challenges as an opportunity to be innovative, trying to find new local sources and develop ways of using the water that we currently have more wisely. We are addressing the problem on both sides of the equation, reducing demand by emphasizing efficient use through conservation, and increasing supply by creating "new water" through our groundbreaking potable reuse project, Pure Water San Diego.

The Pure Water program will provide a clean, safe and reliable source of drinking water that by 2035 will generate one-third of San Diego's water supply and reduce treated effluent discharges into the ocean via the Point Loma Wastewater Treatment Plant. This project is a top priority, and various provisions of S. 1894 will help bring this facility online as quickly and cost-effectively as possible. In particular, I strongly support the following provisions included in S. 1894:

Federal Funding to Support Water Recycling Projects
S. 1894 lists the City of San Diego as an eligible agency to apply for funding. By authorizing the Secretary of the Interior, upon the submission of a completed feasibility report, to award funding on a competitive basis for water recycling projects, the City will be well-positioned to compete for funding when appropriations are made.

202 C STREET, 11TH FLOOR • SAN DIEGO, CA 92101

Reclamation Infrastructure Finance and Innovation Act (RIFIA) Funding
S. 1894 authorizes $200 million through fiscal year 2020 in federal loan guarantees for municipalities and water districts to use for water projects. This will promote increased development of critical water resources infrastructure; attract new investment capital to infrastructure projects that are capable of generating revenue streams through user fees or other dedicated funding sources; complement existing federal funding sources; address budgetary constraints on Bureau of Reclamation (BOR) programs; and leverage private investment in water resources infrastructure.

New Water Recycling and Reuse Projects
Even more financing opportunities would exist through S. 1894's competitive grant funding for multiple benefit recycling and reuse projects. The additional $100 million authorized for the BOR's WaterSMART program and the increased authorization of $200 million to BOR's water recycling and reuse program (Title XVI), combined with the increased project cap to
$20 million, will provide significant opportunities for the City of San Diego to partner with the federal government to construct the Pure Water recycling facility and bring this remarkable new source of water supply online as quickly as possible.

I would like to respectfully offer additional suggestions that would increase stakeholder investment and facilitate the development of new water supply for the City, the region and the state:

Expedite Project Environmental Review
Streamlining the regulatory process and time spent carrying out environmental reviews will speed the delivery of much needed new water supply projects. While S. 1894 requires the head of each applicable federal agency to consult with the Council on Environmental Quality to develop alternative arrangements to comply with the National Environmental Policy Act (NEPA), it does so in a limited capacity that does not appear to apply to all of the programs highlighted in the bill, particularly long-term water supply projects such as Pure Water. The City's Pure Water San Diego program is currently in the environmental review phase, so increased coordination and expedited review of the environmental documents by federal agencies would keep our critical project on time to deliver new water supply.

Re-establish Title XVI as a Competitive Grant Program
BOR's Title XVI water reclamation and reuse program is the only federal program specifically designed to fund water recycling, brackish, desalination and groundwater impaired projects. It has been remarkably successful, helping to bring online hundreds of thousands of acre feet of new water supply since the program's establishment in 1992. However, the Congressional earmark ban precludes the authorization and funding of new projects through Title XVI. We urge you to revive this critical federal support of new water development by revamping the program as a competitive grant program with Congressional oversight.

Remove the Funding Restraints of the Water Infrastructure Finance and Innovation Act
The Water Infrastructure Finance and Innovation Act (WIFIA) was enacted in 2014 to provide a source of funding for large scale water projects through loans at U.S. Treasury rates. However, language was inserted into the bill shortly before its enactment that has crippled WIFIA's ability to provide funding assistance to agencies that Congress originally intended. The amount of funding provided to a project through WIFIA was reduced from 100% to 49%, and agencies were precluded from using tax-exempt municipal bonds to fund the other 51%. Additionally, the 49% WIFIA share could not be subordinated to the 51% of other money. Together, these three limitations have completely stalled the program. We request that you consider addressing these three limitations in your drought legislation to open up the funding opportunities created by WIFIA and spur the development of sizable, innovative projects such as Pure Water.

Allowing states to assume responsibility for the permitting and environmental review process under WIFIA (as you provide for in the development of the RIFIA program) would minimize the time it takes to complete the environmental assessment and, therefore, expedite water delivery.

I appreciate your leadership in addressing California's historic drought with this important legislation and look forward to working with you toward its favorable consideration.

Sincerely,

Kevin L. Faulconer
Mayor

KLF:ag

cc: The Hon. Susan Davis
The Hon. Scott Peters
The Hon. Juan Vargas
The Hon. Duncan Hunter
The Hon. Darrell Issa

VIP- James

City Of Camarillo

601 Carmen Drive • P.O. Box 248 • Camarillo, CA 93011-0248

Office of the City Manager
(805) 388-5307
Fax (805) 388-5318

September 29, 2015

The Honorable Lisa Murkowski
United States Senate
Senate Committee on Energy & Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

Via Fax (202) 224-6163

Re: Support for S. 1894 (Feinstein) – The California Emergency Drought Relief Act of 2015

Dear Senator Murkowski:

On behalf of the City of Camarillo, I respectfully request your support for S. 1894. This bill would provide emergency assistance to the State of California amidst its historic drought.

In response to the drought the State is facing, Senators Dianne Feinstein and Barbara Boxer have introduced S. 1894. The legislative initiative includes several provisions with the goals of providing a range of short- and long-term options to help communities maintain access to water supplies. Additionally, it includes significant funding opportunities for desalination projects, storage projects, water recycling, conservation and groundwater recharge, additional funding programs, and research and innovation.

Prior to Governor Brown proclaiming a drought state of emergency and subsequent executive order, the City of Camarillo was proactively instituting measures to conserve and recycle water. The City implemented programs to encourage residents and business owners to replace lawns with drought tolerant landscapes, and has heavily promoted the statewide consumer rebate program to replace outdated appliances with water and energy efficient models. Through these efforts, the City of Camarillo has met the Governor's order of reducing its water usage by 25%.

In 2014, the City used 8,800 acre-feet/year of potable water (60% imported and 40% groundwater). Due to high salt concentrations in existing wells, the City currently has limited pumping to about 2,250 acre-feet/year, but is allowed to pump up to 4,500 acre-feet/year. Therefore, the City is working with other public agencies on a desalter project envisioned to produce 7,500 acre-feet/year of potable water. The project would reduce dependence of the City on imported water, allow the City to beneficially use groundwater that would otherwise go unused, and would remove salts from the watershed by treating brackish groundwater and discharging the brine directly to the ocean.

For these reasons, the City of Camarillo **supports** S. 1894 – California Emergency Drought Relief Act of 2015 and we respectfully urge your support. Thank you for your leadership on this important matter.

Sincerely,

Bruce Feng
City Manager

cc: Camarillo City Council
Senator Dianne Feinstein
Senator Barbara Boxer
Congresswoman Julia Brownley

Westlands Water District
3130 N. Fresno Street, P.O. Box 6056, Fresno, California 93703-6056, (559) 224-1523, FAX (559) 241-6277

PRESS RELEASE
July 29, 2015

For Immediate Release
Contact: Gayle Holman
(559) 241-6233

Statement of Westlands Water District on the Introduction of the *California Emergency Drought Relief Act of 2015*

FRESNO, CA - Westlands Water District is encouraged by the introduction by Senator Dianne Feinstein of the *California Emergency Drought Relief Act of 2015.* The State is facing unprecedented drought conditions, and the water supply shortages caused by four years of extraordinary dry conditions have been exacerbated by the restrictions imposed on the operations of the federal Central Valley Project and the California State Water Project under federal law.

The introduction of the *California Emergency Drought Relief Act of 2015* is an important step in the enactment of legislation to provide much-needed relief for the public water agencies that receive water from these projects and for the people, farms, and businesses they serve. There are great similarities between this bill and H.R. 2898, the *Western Water and American Food Security Act of 2015*, which passed in the House of Representatives on July 16, 2015. However, there are also great differences.

Westlands looks forward to quick passage of the *California Emergency Drought Relief Act of 2015* by the Senate and to subsequent discussions in conference to reconcile the two bills. Through its work with Senator Feinstein and Members of the House of Representatives, Westlands knows that these policymakers are genuinely interested in working together, with the District and other interested entities, to find a meaningful legislative solution to the chronic water supply shortages that have devastated the San Joaquin Valley and other regions of the State and to provide effective means of protecting at-risk species. The District looks forward to working with them to find common-sense solutions that serve the interests of all Californians.

###

Member Alert
July 30, 2015

United Fresh Applauds Introduction of Senate Water Legislation

United Fresh Produce Association strongly supports the introduction of the California Emergency Drought Relief Act, S. 1894, by Senators Feinstein and Boxer of California, which falls on the heels of recently passed legislation by the U.S. House of Representatives, The Western Water and American Food Security Act of 2015. With the introduction of this important legislation United Fresh offers the following statement:

"United Fresh welcomes the leadership of Senators Feinstein and Boxer with their introduction of the California Emergency Drought Relief Act. With $2 billion in lost income and over 17,000 lost jobs in California alone, it's time for Congress to find a solution to this historic drought situation. And, while California has been the focal point of this concern, many other states and communities across the Western United States are suffering similar conditions. Couple this important legislation with the recently passed House bill, and we implore Congress to roll up its sleeves and work together to find a compromise which modernizes our outdated federal water laws and regulations and realizes critical balance between rural, urban and environmental needs. In September, more than 500 produce industry leaders will be in Washington, D.C., and we look forward to Congress conveying demonstrated progress on this important issue to our industry."

The United Fresh Washington Conference takes place September 28-30 and will be focusing on passing drought legislation as one of their major issues during their visits to Capitol Hill that week. To learn more about the conference and register, visit the conference page.

###

About United Fresh Produce Association

Founded in 1904, the United Fresh Produce Association brings together companies across every segment of the fresh produce supply chain, including growers, shippers, fresh cut processors, wholesalers, distributors, retailers, foodservice operators, industry suppliers and allied associations.

We empower industry leaders to shape sound government policy. We deliver the resources and expertise companies need to succeed in managing complex business and technical issues. We provide the training and development individuals need to advance their careers in produce. Through these endeavors, we unite out industry with a common purpose – to build long-term value for our members and grow produce consumption. For more information, visit www.unitedfresh.org.

FOR IMMEDIATE RELEASE ACWA News Release 15-22
July 30, 2015

Contact: Lisa Lien-Mager, Director of Communications, 916/441-4545 or 530/902-3815 (cell)

ACWA Comments on Newly Introduced Federal Drought Bill

Legislation by Sens. Feinstein, Boxer Seen as Positive Step Forward

SACRAMENTO – Association of California Water Agencies (ACWA) President John Coleman and Executive Director Timothy Quinn issued the following statements on drought relief legislation introduced July 29 by U.S. Sens. Dianne Feinstein and Barbara Boxer.

> **ACWA President John Coleman:** "This historic drought continues to pose severe impacts on California. We are pleased to see California's two senators moving forward with legislation designed to provide both short- and long-term relief and solutions. We look forward to working with Senators Feinstein and Boxer and others to provide the perspective of California's public water agencies. This new legislation is a significant step in the right direction."

> **ACWA Executive Director Timothy Quinn:** "This legislation by Senators Feinstein and Boxer builds upon earlier proposals from both sides of the aisle. It offers a wide range of management tools to help cope with the unrelenting drought affecting California and the West. ACWA believes that this proposal provides a sound base for moving forward. The federal government has a critical role to play in addressing the drought, and we would like to see a strong, bipartisan bill that reflects that role and can provide water managers in California and throughout the Western states with tools they need to carry out their jobs more effectively. ACWA is reviewing the new legislation and looks forward to offering our perspective as we work toward a bill that can garner bipartisan support in the Congress and be signed by the President."

ACWA is a statewide association of public agencies whose 430 members are responsible for about 90% of the water delivered in California. For more information, visit www.acwa.com. To help Californians reduce water use, ACWA manages the Save Our Water program—the state's largest water conservation education program – in partnership with the California Department of Water Resources. Visit www.saveourwater.com for details.

###

Western Growers Press Release

Western Growers Praises Introduction of Senate Water Bill

July 30, 2015
Press Release

IRVINE, Calif. (July 29, 2015) -- Statement by Western Growers President and CEO Tom Nassif praising Senators Dianne Feinstein and Barbara Boxer for introducing the California Emergency Drought Relief Act of 2015 today:

"We want to express our thanks to Senators Feinstein and Boxer for re-introducing much needed legislation aimed at alleviating the short and long-term impacts of the historic drought in California. The bill that has been submitted today provides a basis to reconcile their bill with the recently passed House legislation. There is no time to waste as the impacts of the drought -- exacerbated by an unbalanced regulatory scheme -- are deepening in California and throughout the West. It's time to advance reasonable legislation before more family farms and communities are forced into economic disaster.

Our attention must also turn to passage of a western water bill to address the needs of other states being affected by the drought. Any effort aimed at helping California must be combined with efforts to devise solutions to problems faced throughout the West as a result of long-term drought. For example, the Colorado River Basin is currently experiencing its driest period in 50 years. While recent atypical summer rain storms have provided some relief, it is clear that members of the Senate must come together to address common concerns throughout the West. Western Growers urges the Senate to act quickly."

###

Media Contact:
Nancy Vogel, (916) 653-9402
Nancy.Vogel@resources.ca.gov

Secretary Laird on Introduction of Drought Legislation by U.S. Senators Dianne Feinstein and Barbara Boxer

SACRAMENTO, Calif. – Natural Resources Agency Secretary John Laird issued the following statement on the California Emergency Drought Relief Act introduced by Senators Dianne Feinstein and Barbara Boxer:

"We applaud the constructive approach of Senator Feinstein and Boxer in crafting drought-response legislation that seeks to fairly balance the many needs of our diverse state. This approach recognizes the importance of water rights, environmental protection, and the need for flexibility in responding to this historic drought—and future droughts. The legislation aligns with the voters' overwhelming approval of Prop 1, the Governor's Water Action Plan to help move California toward water sustainability, and would help accelerate the ongoing state and local drought response and preparations for a future with even more frequent and severe droughts."

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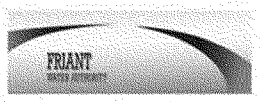
DU CEO Dale Hall Comments on California Drought Legislation

Last week, California Senators Feinstein and Boxer introduced the California Emergency Drought Relief Act as a way to mitigate the devastating effects of the drought crippling California. Ducks Unlimited CEO Dale Hall released the following statement regarding the legislation:

"On behalf of Ducks Unlimited, I would like to thank Senators Feinstein and Boxer for advancing a drought bill that recognizes the tremendous value of California to waterfowl populations in the Pacific Flyway. California serves as the winter home to millions of waterfowl, shorebirds and other wetland-dependent species, and sportsmen and women – including waterfowl hunters – contribute $3.5 billion annually to California's economy.

"We look forward to working with Senator Feinstein, Senator Boxer, California's Congressional Representatives and leaders from the House and Senate to ensure that conservation priorities will be reflected in the California drought bill that reaches the president's desk."

Ducks Unlimited is hopeful this bill will be brought to the floor when the Senate returns in September. The House of Representatives passed its own version of drought legislation last month.



SOUTH VALLEY WATER ASSOCIATION

PRESS RELEASE
August 6, 2015

For Immediate Release
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SENATE WATER BILL INTRODUCTION IS WELCOMED NEWS FOR MULTIPLE WATER AGENCIES

FRESNO, CA – Last week's introduction of Senator Dianne Feinstein's legislation, the *California Emergency Drought Relief Act of 2015,* is welcomed news for the people of the State of California and the Central Valley enduring another devastating dry year. Once again, multiple Central Valley water agencies joined together to express their unified voice in support of an expeditious passage by the Senate. This bill comes on the heels of the introduction and passage by the House of Representatives of H.R. 2898, the *Western Water and American Food Security Act of 2015.*

"We are encouraged by Senator Feinstein's actions with the introduction of this legislation. There is no time to lose as the damaging effects of the drought continue to wreak havoc on local communities, businesses, farms and farmworkers in the San Joaquin Valley and other regions of the State. Immediate solutions are needed, and the District looks forward to working with Members of both the House and Senate to find a reasonable solution that will benefit our great State."

--Don Peracchi, Chairman of the Board, Westlands Water District

"The South Valley Water Association thanks Senator Feinstein for introducing the California Emergency Drought Relief Act of 2015 and encourages the balance of the Senate to make quick work in passing the bill immediately upon return from the August recess. This is a further important step to get legislation that will help those many farms and communities in California who are going without water. We look forward to the members of Congress resolving key differences between the California Emergency Drought Relief Act and H.R. 2898, the Western Water and American Food Security Act of 2015, and finding real water supply solutions. The members of the South Valley Water Association stand ready to assist in any way we can."

--Dan Vink, Executive Director, South Valley Water Association

"The San Joaquin River Exchange Contractors Water Authority thanks Senator Feinstein for the introduction of the California Emergency Drought Relief Act of 2015. We realize this is another important step to passing a bill out of the Senate later this year that provides a meaningful legislative solution to the long-standing water supply shortages that is crippling the state. We are optimistic that members of Congress and the Senate can resolve the key differences in this bill, and the previously passed House Bill H.R. 2898, the Western Water and American Food Security Act of 2015. The Authority looks forward to working with our legislative leaders to pass legislation that benefits all of California."

--Steve Chedester, Executive Director, San Joaquin River Exchange Contractors Water Authority

"There is no more important issue facing the Valley than the drought. It is a statewide crisis with the most direct and severe impacts in the Valley. The Kern County Water Agency appreciates Senator Feinstein's and Senator Boxer's efforts to help reduce the drought's terrible impacts by introducing a bill in the Senate that can improve water supplies for farms and cities. We are anxious for the House and Senate to start working on a compromise between Congressman Valadao's bill and the bill in the Senate, and we encourage the Senate to take swift action on the Feinstein/Boxer bill so that process can begin."

--Ted R. Page, Board President, Kern County Water Agency

"No area of the State, and perhaps the nation, has suffered more disproportionately the harmful stress of chronic water supply shortages. The San Luis & Delta-Mendota Water Authority is appreciative of the effort of Senators Feinstein and Boxer on the recently introduced California Emergency Drought Relief Act of 2015 bill in the Senate. This bill is not only important to the San Joaquin Valley, but it is also vital for the entire state of California. We encourage the Senate to act swiftly, and encourage both the House and Senate legislators to begin work immediately on a meaningful compromise bill to ensure that long-awaited and much-needed relief is realized."

--Dan Nelson, Executive Director, San Luis & Delta-Mendota Water Authority

"Friant Water Authority welcomes the introduction of Senate Bill 1894, the California Emergency Drought Relief Act of 2015, and we thank Senator Feinstein and her staff for all their efforts in bringing this bill forward. The immediate task is to pass Senate legislation so that work can begin to craft a compromise with the House-passed legislation. Our farms and communities have suffered more under these water cutbacks than any other area in the nation. Our people are desperate for solutions that will provide real water for our area. This bill is a critically important step in the process of developing compromise legislation that can be signed into law by the President this year. As the bill advances, Friant looks forward to working with our representatives on both sides of the aisle to achieve drought legislation that will provide real relief for the 2016 water year and beyond."

--Eric Borba, Chair, Friant Water Authority

# # #

August 12, 2015

The Honorable Senator Dianne Feinstein
331 Hart Senate Office Bldg.
Washington, D.C., 20510

The Honorable Senator Barbara Boxer
112 Hart Senate Office Bldg.
Washington, D.C., 20510

Re: California Emergency Drought Relief Act of 2015 – SUPPORT

Dear Senators Feinstein and Boxer:

The California Waterfowl Association is pleased to support the California Emergency Drought Relief Act of 2015. The bill addresses and acknowledges the needs of Central Valley wildlife refuges that are essential to the welfare of millions of migrating waterfowl on the Pacific Flyway. Unlike the House bill, HR 2898 (Valadao), the bill protects refuge water rights under federal law and keeps refuge spending authority under the Department of Interior. The bill also provides needed funding for critical infrastructure to convey water to wildlife refuges that currently cannot utilize water that is available to them.

California Waterfowl would like to see the language in Section 204 of the Act maintained intact in the course of negotiations and reconciliation with HR 2898 and/or a west-wide water bill in the Senate. HR 2898 contains provisions that would threaten water supplies for wildlife refuges and other managed wetlands in California that the state cannot afford to lose. California has already lost 95 percent of its natural wetlands and the remaining wetlands need to maintain all available water supplies to support the millions of migrating waterfowl, shorebirds, and other wetland-dependent species.

Another aspect of the Act that California Waterfowl supports is the federal support for investments in water storage. Additional storage in the Central Valley could be highly beneficial to both the environment and to agriculture, by increasing the reliability of water supplies.

One area of concern that California Waterfowl has been engaged in has been the water situation in the Klamath Basin. For the fourth year in a row, the Lower Klamath National Wildlife Refuge is facing an almost complete lack of water deliveries for its managed wetlands. The Klamath Basin is a critical stopover on the Pacific Flyway during both the fall and spring migrations. The Klamath Basin also provides important molting and breeding habitat for mallards, a key waterfowl harvest species in California.

There is a current bill, S.133 (Wyden) regarding the Klamath Basin Restoration Agreement that California Waterfowl supports. We would hope that this solution to water issues in the Klamath Basin which is

1346 Blue Oaks Boulevard, Roseville, CA 95678
916.648.1406 • www.calwaterfowl.org

supported by the vast majority of stakeholders can either pass on its own or be incorporated into a comprehensive federal package of bills on western water.

Thank you for your leadership with respect to the California Emergency Drought Relief Act of 2015. The Act is a significant improvement over the drought relief legislation that has passed the House or that was being considered last year. If you or your staff would like to contact California Waterfowl regarding its support of the California Emergency Drought Relief Act of 2015, please call (916) 217-5117, or email jvolberg@calwaterfowl.org.

Sincerely,

Jeffrey A. Volberg
Director of Water Law & Policy
California Waterfowl Association

CC:
Senator Lisa Murkowski
Senator Maria Cantwell

The Fresno Bee

August 8, 2015

Editorial: Feinstein-Boxer water bill offers hope for Valley and California

For all the pain this miserable drought has caused, perhaps some good could come of it.

Sens. Dianne Feinstein and Barbara Boxer have introduced the Democrats' most refined legislation yet to help shape California's water future.

Rep. Jim Costa, D-Fresno, is a strong supporter of the Feinstein-Boxer water proposal.

Rep. David Valadao, a Hanford Republican, is critical of the Feinstein-Boxer drought relief bill. House Republicans are pushing legislation aimed at helping agricultural interests.

Rep. Jim Costa, D-Fresno, is a strong supporter of the Feinstein-Boxer water proposal.

After failing to move a previous California water bill, Sen. Diane Feinstein has crafted new legislation that reflects consultations with water districts, environmentalists and Gov. Jerry Brown's water experts.

Although Republicans who control Congress will have their say, the FeinsteinBoxer 147-page opus includes plenty to embrace, not the least of which is that it offers $1.3 billion for California's water system, an important though modest sum in this large and thirsty state.

Environmentalists and others chastised Feinstein last year when she worked with Republicans on legislation that would have skewed toward southern San Joaquin Valley farm interests at the expense of Northern California.

This time, California's senior senator deserves praise, as does Boxer. Feinstein consulted with Gov. Jerry Brown's water experts, water districts and some

environmentalists, less so with House Republicans who are pursuing their own flawed legislation.

The senators' measure takes no position on Brown's $15 billion twin tunnel concept to move water around the Sacramento-San Joaquin River Delta. But their legislation seeks to track with the governor's water plan, and the $7.5 billion bond approved voters last November.

The bill, called the California Emergency Drought Relief Act, would provide money to encourage desalination plants, water recycling and groundwater storage.

It also would provide some money for reservoirs, perhaps including raising Shasta Dam, expanding Los Vaqueros Reservoir in Contra Costa County, and building the proposed Sites Reservoir in Colusa County or Temperance Flat above Friant.

The bill would earmark money to help restore fisheries by increasing spawning habitat and water flows in the Sacramento and San Joaquin river basins.

Rep. Jim Costa, D-Fresno, is an enthusiastic supporter of the bill. Rep. Doris Matsui, D-Sacramento, said the measure contains provisions that "could provide real drought relief." And Rep. John Garamendi, a Democrat who represents much of the delta and opposes the twin tunnels, says that Feinstein-Boxer bill "sets the right tone."

The bill faces many obstacles. It could get wrapped up into broader water legislation covering the Western states. That could be perilous. Or it could broaden the bill's appeal. It's too soon to know.

House Republicans including Reps. David Valadao, R-Hanford, and Devin Nunes, R-Tulare, propose to ensure that agricultural interests receive water, but would weaken the Endangered Species Act. That's unacceptable.

Farmers should get their fair allocation of water. So should the environment. The notion that the delta must suffer further assault is unacceptable. To the contrary, it must be saved.

Farm interests issued statements generally praising the effort, while Valadao slapped at the Democrats' measure, saying in a news release that it will do "little to actually deliver more water to California farmers and families."

Valadao and other Republicans surely see that President Barack Obama won't sign legislation that weakens of one of the signature environmental laws of the 20th

century. If Valley Republicans hope to help their districts, they must work with Feinstein, Boxer and other Democrats.

The Feinstein-Boxer bill runs roughly 25,000 words, with some nuances that need to be cleared up.

There is, for example, a line that could be read as siding with East San Joaquin Valley growers who sued the state last October, claiming the state illegally denied water to landowners who have senior water rights. Feinstein's aides say it won't. There's also a concern that a part of the bill could undermine California's version of the endangered species act.

Though each issue could become significant, the bigger takeaway is that California's Democratic senators have jumped into the deep end. Republicans should join into the discussion, for the betterment of the entire state.

The Modesto Bee

August 12, 2015

Our View: Feinstein-Boxer water bill offers some hope

By the Editorial Board

It's a little frightening when politicians start trying to divvy up anything, especially water. It's not that we don't trust their motives, but sometimes we don't trust their friends' motives – especially when we don't know who their friends are.

That was our main concern last year when Sen. Dianne Feinstein tried to negotiate a drought-relief bill in secret. That hasn't happened this year. Instead, Feinstein and Sen. Barbara Boxer have come up with a plan that could provide real benefits for California – assuming their plan survives negotiations with the House of Representatives, where Reps. Devin Nunes of Tulare and David Valadao of Hanford have introduced their own drought-relief plan.

Of the two, we much prefer the Senate's plan – at least as a starting point.

First, the Feinstein-Boxer bill could provide up to $1.3 billion for California's water system. Added to the $7.5 billion water bond passed last year, and the matching money the bond requires from local jurisdictions, and we're beginning to talk about real numbers.

Second, it will encourage desalination plants like the one soon to open near San Diego that will produce up to 50 million gallons (150 acre-feet) per day. That's more than a drop in the bucket. If replicated elsewhere, it could relieve some of the pressure on Sierra reservoirs. The bill recognizes there are 126 desal projects being considered and provides reasons to proceed.

Third, it encourages the state to fast-track consideration of new reservoirs, including sites northwest of Sacramento and Temperance Flat, northeast of Fresno. It's about time; we've been waiting. The legislation would also push for a closer look at expanding Los Vaqueros in Contra Costa County and perhaps even raising Shasta Dam's height.

Fourth, it would alter the way water transfers are conducted at least for the next two years (or until the drought ends). Currently, transfers leave up to half the water

involved in the Delta. Under the Senate's rules, a district would get all the water it buys.

Fifth, it would require federal agencies to make certain the endangered delta smelt is actually in harm's way before shutting off the pumps to protect it. This makes sense, too. We know all too well that well-meaning bureaucrats can become wedded to rules, and if the rules say no pumping during certain times because the smelt *might* be nearby, then no pumping occurs. The Feinstein-Boxer bill would require continuous monitoring, and if no protected species are threatened, pumping could continue. Similarly, migrating salmon would only be "protected" when actually present.

There are a host of other provisions in this bill, and more in the House version. The Senate side would provide more money for fisheries and habitat; the House bill would move more water to south Valley farmers. There must be a balance, and we believe the Senate version finds it. Still, we worry that as more water is sucked from the Delta, more will be required from our reservoirs to replace it – or the Delta will suffer from saltwater incursion.

One thing unlikely to happen is the transfer of New Melones Reservoir to Oakdale and South San Joaquin irrigation districts, as proposed in the House version. But what might happen is the U.S. Bureau of Reclamation could be ordered to operate the reservoir to allow more storage. As is, the reservoir never is allowed to approach its full capacity – which seems like a waste of assets. This bill is far removed from the one Feinstein negotiated in secret last year. This time, House Democrats and many others have had input, including Gov. Jerry Brown. It's a bill we can live with – assuming the provisions and protections survive negotiations. As he looks out for our interests, we hope Rep. Jeff Denham can help make that happen.

Read more here:
http://www.modbee.com/opinion/editorials/article30915483.html#storylink=cpy

The San Diego
Union-Tribune.

July 30, 2015

Feinstein bill stirs hope for federal drought-relief bill

By San Diego Union-Tribune Editorial Board

Since the California drought began four years ago, the political chasm between the state's congressional Democrats and Republicans has largely stymied federal action for significant relief. Legislation introduced Wednesday by the state's senior senator, Dianne Feinstein, holds promise to break the logjam.

The Feinstein bill, co-sponsored by fellow Democratic Sen. Barbara Boxer, would provide $1.3 billion in various forms of short-term and long-term drought relief over the next decade. In its key provisions, it would provide direct assistance to rural and small communities hit hardest by the drought, where many wells are drying up and thousands of families are said to be at risk; provide money for feasibility studies and design of desalination projects throughout the state; speed studies for new or expanded reservoirs to increase water storage; promote water recycling, conservation and groundwater recharge; and provide loan guarantees for water reclamation and reuse projects. Republicans should be pleased by the bill's attempt to provide more water for agriculture and to increase storage capacity. Democrats should be pleased by provisions to maintain environmental protections.

Big differences remain between the Feinstein legislation and the drought-relief bill passed by the House earlier this month. But there are enough similarities that, if members of both parties work in urgent, bipartisan fashion, a successful compromise can be reached before the year is out.

CBS San Francisco

[Editorial] Drought: Rationing Is Rough In Central California Town Without Water

By Editorial Staff
SEPTEMBER 29, 2015

TULARE COUNTY (CBS) — California's four year drought has the whole state in a water crisis, but no area has been harder hit than the state's Central Valley, where the wells have run dry.

In the small town of Okieville, in Tulare County, residents are struggling to stay in their homes. At Myra Marquez's house, she checks the gauge on her 2500 gallon water tank before she touches a faucet. The tank gets filled every Monday.

Rationing 2000 gallons over five or six days is tough.

"It's hard," she said.

It's become the way of life in Okieville, which has about 90 residents. The town was named after the people who migrated there in the 1930s during the Dust Bowl.

Homes like Marquez's are stacked with boxes of drinking water, and trucks haul in more to fill tanks, funded by the state's Emergency Drought Relief Program.

"So without this (tank), you know, we can't take a shower. We can't wash clothes. We can't do anything without it," says Marquez.

In Tulare County, nearly 1700 household wells are dry. That's more than all other counties combined.

Gilbert Arrendondo ran a pipe three blocks to tap into a neighbor's well when his dried up last year.

"I've never seen this happen before because they would drill down and find a way to help us out," said Arrendondo.

He says drilling a new well would cost $30,000, so he may be forced to leave his home of 30 years.

"I've got no choice but move cause we need water," he says.

"I mean this is where we grew up," says Marquez. "How are we going to just leave it and leave everything behind you know?"

CBS San Francisco

The people who live here know these tanks are only a temporary solution. They're pushing the government to build a community well.

It takes $38 million dollars from the state's Emergency Drought Relief Program to pay for the town's drinking water and fill residents' water tanks.

Only homeowners can lease water tanks, though. Others have to rig hoses to a neighbor's home and share from their water ration.

More federal help may be on the way.

The California Emergency Drought Relief Act is making its way through Congress. The bill was introduced by Senators Dianne Feinstein and Barbara Boxer. If passed, it would provide federal money to help communities like Okieville deal with the drought, and give the state the means to combat future droughts by funding desalination projects, new reservoirs and programs for fish and wildlife protection.

Los Angeles Times

Editorial Feinstein-Boxer water bill offers real drought relief

AUGUST 14, 2015 BY THE TIMES EDITORIAL BOARD

It's in many ways a pleasant surprise: The latest water bill introduced by California's two U.S. senators, Democrats Dianne Feinstein and Barbara Boxer, offers the state some serious help as the Sierra snowpack becomes a less reliable source of fresh water. If the bill were to advance on its own, it would be a good base from which to work.

Unfortunately for California, the ultimate shape of legislation will likely be determined by Alaska Republican Lisa Murkowski, who chairs the Senate's Energy and Natural Resources Committee. Murkowski is seeking a broader package with presumably much less of the environmental sensitivity that makes the current Feinstein-Boxer proposal an improvement over a Republican House bill, and even over Feinstein's own effort last year. The test will come with committee hearings next month.

The problem with most so-called drought relief bills is that they can't fill the wells or make the snow fall. Too often their real purpose is to reallocate water so that the powerful agriculture industry can get more. And in California, more for agriculture usually means less for the complex hydrologic system that sustains native species and supplies urban areas from Silicon Valley to Los Angeles and farther south.

By contrast, the Feinstein-Boxer proposal offers actual help in producing more usable water. It wisely follows the direction set last year by voters, who passed a bond to make state money available for new desalination, efficiency and recycling projects while leaving ratepayers — properly — to shoulder the cost of operating such facilities. Complementary federal money could move more of those projects toward completion sooner — if that provision survives in the Republican-controlled Senate.

Importantly, the bill offers honest-to-goodness relief to those communities that have actually run out of water by liberalizing rules that currently constrain federal agencies from supplying storage tanks and other emergency equipment to all but the smallest towns, and by helping them transition from wells to more reliable supplies for the long term.

The most controversial parts of the Feinstein-Boxer bill would alter some of the rules that protect endangered species in the Sacramento-San Joaquin River Delta. The senators' proposals are far more friendly to the environment than those in the House version, and Californians might well be able to live with them, but they are based on the troubling premise that the delta is best managed by Congress rather than science. It's anyone's guess as to what form that assumption will take when a bill emerges from Murkowski's committee.

San Francisco Chronicle

July 30, 2015

Feinstein offers sensible drought bill

There is much to like in Sen. Dianne Feinstein's long-anticipated drought relief bill: It would allocate far more money — $1.3 billion over 10 years — than the feds have spent on California water concerns in recent years. Its spending priorities largely match those in the water bond California voters passed last year. And it offers nothing to further the governor's misguided delta tunnels plan.
The challenge, if the bill passes the Senate, is whether its good intentions will survive in negotiations with House Republicans to advance the bill to the president's desk.

The House-passed bill dealing with drought that will be part of the negotiations is a straight up water grab by San Joaquin Valley agricultural and Southern California municipal water interests. Everyone liked California's 20th century water system, where water was inexpensively stored and snowmelt rolled down the Sierra in time for spring planting. A changing climate will require the state to rethink its water system in the 21st century. Feinstein's bill incorporates some of that new thinking by allocating money for water recycling, groundwater storage and desalination plants.

In an attempt to win needed Republican support, however, the bill creates a $600 million pot for old-think projects — new dams and reservoirs. All the potential dam sites listed have been previously studied and rejected. Practically speaking, lawsuits would block any new dam project for years if not decades. A wiser and less wasteful (but not as politically viable) course, would be to apply that $600 million to the recycling, aquifer restoration and groundwater recharge projects.
The most worrisome concern is over water transfers, which allow willing sellers to offer water allocations to willing buyers. Within the 147 pages of Feinstein's bill, there are attempts to apply science and precision to the transfer rules while respecting Endangered Species Act protections. The concept of adding "flexibility" to water transfers is part of the governor's California Water Plan, but do we really want Congress to set the rules for operating California's water system?
On balance, Feinstein's bill is a world away from her last attempt at drought relief and, if it can remain true to its intent, will help our state adapt to the new water realities.

San Jose Mercury News

Mercury News editorial: Feinstein water bill better than the last, but...

MERCURY NEWS EDITORIAL
08/03/2015

The most reassuring thing about Sen. Dianne Feinstein's drought-relief bill released last week is that her fellow Californian, Sen. Barbara Boxer, has signed on as a co-sponsor.

Environmentalists were appalled at Feinstein's 2014 bill that appeared to eviscerate the Endangered Species Act and Clean Water Act. Boxer did not join her that time, and the bill fortunately failed.

This new bill is better, although there's plenty to worry about -- even before compromise to get it through Congress begins. As bad as the drought may be, no federal action would be better than a compromise that guts environmental protections and has devastating long-term effects on California.

House Republicans passed a dreadful water bill last month with the clear goal of doing away with the Endangered Species Act and building as many dams as possible to satisfy agriculture interests in the Central Valley.

Feinstein is sympathetic to Big Ag's water demands. Boxer will need to stand up for fundamental environmental protections when Congress holds hearings on the legislation in September.

Feinstein's bill has some good elements. It provides disaster relief for disadvantaged communities running out of water. It includes $200 million to help fund more than 100 recycled water projects throughout the state, like the one San Jose and Santa Clara are proposing, and another $100 million for desalination research. It also steers clear of the debate over Gov. Jerry Brown's $15 billion Delta twin-tunnels boondoggle.

The legislation's weaknesses come to light with a careful reading of the 147-page document, however.

Feinstein proposes allocating $600 million for additional storage in the form of new dams and reservoirs -- most of which would be less efficient and more damaging to the environment than alternative storage proposals.

Doug Obegi, an attorney with the Natural Resources Defense Council, says Section 312 of the bill would eliminate the requirement that Congress approve any new dams. Instead the U.S. Secretary of Interior would be able to approve a project if it is technically and financially feasible and -- here's the catch -- has what can be described as acceptable environmental impacts.

The language isn't as strong as Gov. Jerry Brown's $7.5 billion water bond, Proposition 1, that voters overwhelmingly approved last November. The measure required that any new dam projects must have environmental benefits, not just costs "acceptable" to whoever is sitting in the Secretary of Interior's office.

Feinstein says coming up with this bill, balancing all the vocal and conflicting interests, is one of the most difficult she's done in her 23 years in the U.S. Senate. We don't doubt it.

But it should pass only if it sufficiently protects California's environment for future generations -- and leaving it up to one political appointee, the Interior secretary, with no direct responsibility to voters looks dubious to us.

THE SACRAMENTO BEE

August 9, 2015

Feinstein-Boxer water bill offers some hope

By The Editorial Board

For all the pain this miserable drought has caused, perhaps some good could come of it.

Sens. Dianne Feinstein and Barbara Boxer have introduced the Democrats' most refined legislation yet to help shape California's water future.

Although Republicans who control Congress will have their say, the Feinstein-Boxer 147-page opus includes plenty to embrace, not the least of which is that it offers $1.3 billion for California's water system, an important though modest sum in this large and thirsty state.

Environmentalists and others, including The Sacramento Bee's editorial board, chastised Feinstein last year when she worked with Republicans on legislation that would have skewed toward southern San Joaquin Valley farm interests at the expense of this end of the Valley.

This time, California's senior senator deserves praise, as does Boxer. Feinstein consulted with Gov. Jerry Brown's water experts and some environmentalists, less so with House Republicans who are pursuing their own flawed legislation.

The senators' measure takes no position on Brown's $15 billion twin tunnel concept to move water around the Sacramento-San Joaquin Delta. But their legislation seeks to track with the governor's water plan, and the $7.5 billion bond approved by voters last November.

The bill, called the California Emergency Drought Relief Act, would provide money to encourage desalination plants, water recycling and groundwater storage.

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Rep. Doris Matsui, D-Sacramento, said the measure contains provisions that "could provide real drought relief." Rep. John Garamendi, a Democrat who represents much of the Delta and opposes the twin tunnels, told an editorial board member that the Feinstein-Boxer bill "sets the right tone."

The bill faces many obstacles. It could get wrapped up into broader water legislation covering the Western states. That could be perilous.

House Republicans, including Reps. David Valadao, R-Hanford, and Devin Nunes, R-Tulare, propose to ensure that agricultural interests receive water, but that would weaken the Endangered Species Act. That's unacceptable.

Farmers should get their fair allocation of water. But the notion that the Delta must suffer further assault is unacceptable.

Farmers should get their fair allocation of water. So should the environment. The notion that the Delta must suffer further assault is unacceptable. To the contrary, it must be saved.

Farm interests issued statements generally praising the effort, while Valadao slapped at the Democrats' measure, saying in a press release that it will do "little to actually deliver more water to California farmers and families."

Valadao and other Republicans surely see that President Barack Obama won't sign legislation that weakens one of the signature environmental laws of the 20th century. If Central Valley Republicans hope to help their districts, they must work with Feinstein, Boxer and other Democrats.

The Feinstein-Boxer bill runs roughly 25,000 words, with some nuances that need to be cleared up.

There is, for example, a line that could be read as siding with East San Joaquin Valley growers who sued the state last October, claiming the state illegally denied water to landowners who have senior water rights. Feinstein's aides say it won't. There's also a concern that a part of the bill could undermine California's version of the Endangered Species Act.

Though each issue could become significant, the bigger takeaway is that California's Democratic senators have jumped into the deep end. Republicans should join into the discussion, for the betterment of the state.

Senator FEINSTEIN. Senator Boxer's and my bill has two goals, short-term emergency relief and long-term investments. In the short-term, this means being able to move water consistent with environmental laws to help California for the duration of the Governor's drought declaration of emergency. It does this in a number of ways.

It maximizes water supplies, consistent with environmental law. The bill requires daily monitoring when fish are near pumps so more water can be pumped when fish are not nearby. It promotes water transfers between willing sellers and buyers so we can move water to drought-stricken communities that have been the hardest hit. It allows the Delta Cross Channel gates to open to the maximum extent feasible, and it manages delta turbidity to maximize water supplies while protecting fish.

We also have long-term solutions. We believe droughts in the West are likely to be chronic and more severe with population growth and climate change. California voters already provided a roadmap for how to fund these projects when they overwhelmingly approved a $7.5 billion water bond last year. That bond includes $2.7 billion for storage and another $725 million for recycling and advanced treatment.

Recognizing the limits of the Federal budget, this bill reduces the Federal role in water supply projects to one for support for state and local projects. The bill provides authorizations for the following: $600 million for storage projects to capture water during the wet years to put to good use during the dry years and another $50 million in support of research to lower the cost of desalination and reduce its environmental impacts. The bill also identifies 105 local water recycling projects capable of producing 850,000 acre-feet of water and another 26 desalination projects capable of producing almost 330,000 acre-feet.

To get these projects off the ground, the bill authorizes $500 million in grants, loans, and loan guarantees, and the bill creates a program to shift rural and disadvantaged families from wells to more resilient systems like recycling.

This bill is not going to please everybody. There is no way to do it. But not to do anything is to run the risk of really losing the entire economic engine of California. We cannot function without water. People cannot live without water. So we are now in a different climate, in a different set of circumstances, and we need to take action.

I want to thank you, Madam Chairman, for working with us on our emergency bill before, and I hope you will see the projects of desalination and recycling as worthy of some Federal support.

I want you to know that we are searching for offsets. We understand the financial situation, and we very much hope to come up with some.

So thank you very much, everybody, for your attention and concern.

The CHAIRMAN. Thank you, Senator Feinstein. Know that we certainly will be working with you and the members of the——

Senator FEINSTEIN. Thank you.

[The prepared statement of Senator Feinstein follows:]

Senator Dianne Feinstein
Senate Energy and Natural Resources Hearing
California Emergency Drought Relief Act
October 8, 2015

Chairman Murkowski and Ranking Member Cantwell, thank you for this opportunity to testify today.

I would also like to thank Jeff Kightlinger for testifying today. Jeff is the General Manager and CEO for the Metropolitan Water District of Southern California, the largest municipal water provider in the nation. As the head of a water district that supplies drinking water to 26 cities and water districts, serving nearly 19 million people, Jeff provides an important perspective on California's drought.

And this drought is worse than anything we've seen before. Some reports say the Sierra snowpack hasn't been this low in 500 years.

Rural and disadvantaged communities are especially hard hit.

As of this month, 2,400 wells are dry or soon will be. This puts almost 12,000 people in jeopardy.

Just this month, the Washington Post wrote about a family from Porterville reduced to bathing with donated supplies and living off bottled water.

And Porterville isn't alone.

Residents of nearby St. Anthony's mobile home park can't turn on their faucets because the drought has led to increased levels of arsenic. They're now bathing in makeshift showers and drawing water from portable water tanks donated by the county.

There's no relief in sight.

UC Davis reported that California's economy will lose an estimated $2.7 billion in 2015, along with 18,600 jobs.

That's on top of $2.2 billion last year and another 17,100 jobs we lost.

In the face of this unrelenting drought, doing nothing is no longer an option.

Over the past two years, my staff and I have spent countless hours working out a drought bill in consultation with farmers and fishermen, cities and rural areas, environmentalists and businesses, up and down the state.

The result is a bill with widespread support. The Nature Conservancy and California Farm Bureau support the bill. As do 29 water districts and cities. I have put together a packet of those letters of support that I would like to provide this committee.

Short-term solutions

Senator Boxer's and my bill has two goals: Short-term emergency relief and long-term investments.

In the short-term, this means being able to move water consistent with environmental laws to help California for the duration of the Governor's drought declaration. This bill does that in a number of ways.

- It maximizes water supplies consistent with environmental laws.
- The bill requires daily monitoring when fish are near pumps so more water can be pumped when fish aren't nearby.
- It promotes water transfers between willing sellers and buyers so we can move water to drought-stricken communities that have been hardest hit.
- It allows the Delta Cross-Channel Gates to open to the maximum extent feasible.
- And it manages Delta turbidity to maximize water supplies while protecting fish.

Long-term projects

We must also invest in long-term solutions. Droughts in the West are likely to be chronic and more severe with population growth and climate change.

California voters already provided a roadmap for how to fund these projects when they overwhelmingly approved a $7.5 billion water bond last year. That bond includes $2.7 billion for storage, and another $725 million for recycling and advanced treatment.

Recognizing the limits of the federal budget, this bill reduces the federal role in water supply projects to one of support for state and local projects.

My bill provides authorizations for the following:

- $600 million for storage projects to capture water during the wet years to put to good use during the dry ones.

- Another $50 million in support of research to lower the cost of desalination and reduce its environmental impacts.
- The bill also identifies 105 local water recycling projects capable of producing 850,000 acre-feet of water and another 26 desalination projects capable of producing almost 330,000 acre-feet. To get those projects off the ground, my bill authorizes $500 million in grants, loans, and loan guarantees.
- And the bill creates a program to shift rural and disadvantaged families from wells to more resilient systems like recycling.

I am committed to doing all that I can to offset this bill's costs.

And I look forward to working with both of you, Madam Chairman and Madam Ranking Member, to get a bill signed into law. Thank you.

The CHAIRMAN.—California delegation.

Senator Boxer, welcome to the Committee.

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

Senator BOXER. Madam Chairman, Ranking Member Cantwell, I am so glad you two are sitting up there because I honestly—I really do trust your judgment on a lot of these issues, and I hope you will work with us very closely because when you talk about water, you are talking about the third rail of politics in our state. It is really true.

Now I served in the House for ten years and I absolutely love the House, ten years, a great experience. But in the House, I fought for my district, 500,000. Now it is probably about 600,000 or so, and I understand that.

I want to point out to you that Senator Feinstein and I represent almost 40 million people, and we hear from all of them. They are all the stakeholders that care about every word that we say about this subject. So it is the farmers, yes. It is the fishing industry, yes. It is the tourist industry, yes. It is the urban users, the suburban users, the rural users. They all want to have a seat at the table.

What we have tried to do in our bill is just that. We do not want to reignite the water wars because, Senator Cantwell, you are right. They lead to the courthouse door. They have led to the courthouse door, and what that means is nothing gets done and people suffer on all sides.

So we have to do something courageous here. We have to say to all the stakeholders let us hear you out and let us have a bill that is fair to everyone.

And my guiding light on all these water bills has been that. I will not reignite the water wars. I will not turn one stakeholder against the other, environmentalists against the farmers. That is not what I want to do. Farmers against fishermen, that is what has happened. We have to get past it. That is why I am so proud of our bill, because I think we really did make huge progress.

We are in a fifth year of a devastating drought. My colleague has laid it out. I won't go over it again because we know how horrible it is out there. It is hurting everyone. All the stakeholders are bleeding. They are hurting—the farmers, the fishermen, the urban, suburban users. And yes, some people are actually cutoff from water supplies.

The wildfires, it is extraordinary. It is frightening. Our first responders just put their life on the line because the conditions on the ground are such.

Now we can't get into an argument here about climate change. It is a loser. But all we want to say is we are dealing with climate change now, and if people choose not to address it, it is your option. But today, we are trying to look at water. So I hope we can do this in the face of this unprecedented drought.

I want to give a shout-out to our Governor. He has really led the way by building bipartisan support. He passed a landmark water bond. Everyone came together. It promotes recycling, conservation, storage, desal.

Communities are leading the way, and I am proud to tell you Californians have risen to this occasion. They have reduced their water use by nearly 27 percent in August, exceeding the state's mandate for the third straight month.

So now it is time for Congress to act, and that is why I am so proud that you are having this hearing today. And I am very encouraged by your opening statements because we need to move forward.

I want to echo what my colleague said. I have never really seen such a broad array of support for a bill. And I think, Madam Chairman and Ranking Member Cantwell, you ought to look at that. I mean, to have support from the California Farm Bureau Federation and local water districts and the Bay Area Council and the Nature Conservancy, and in that book you will see the very strong support that we have.

That doesn't mean it is a perfect bill. There is no such thing. It is an imperfect bill, but it is a good bill. What we have done is taken the best of bills that passed the House and Senate, of some of Senator Feinstein's former bills, my bills, as other House Members have the best of their bills in this bill, and it does complement the water bond that we passed. So, yes, we will need to have some funding, but there is funding back home as well.

This bill benefits all the stakeholders. It helps farmers without undermining fundamental environmental protections. It helps hard-hit communities. It takes an all-of-the-above approach, which we always say we love. We always say we love an all-of-the-above approach. That is what we do here. We invest in conservation, water storage, recycling, desal, all the things that we know we can do. The bill is a compromise.

Madam Chair, if I could just let you know this. I have compromised on this bill. You know, if I could write it all on my own and not talk to anyone else, it would look different. We did compromise on this.

It has the elements, as I said, of a number of proposals that I have put forward in the past, Senator Feinstein, and Members of the House. It is critical that we pass legislation that doesn't undermine Federal and State environmental protections because, as Senator Cantwell noted, that would only threaten fragile ecosystems. It would also put thousands of jobs at risk in our home state in recreation, in tourism, in fishing.

We need a bipartisan, comprehensive drought bill. We have a chance to do this right. We can pass a bill that has broad support, that unites all of our water users, that has the support of the Administration and the State of California that will move our water policy into the 21st Century. That is what I am urging you to do from the bottom of my heart because this is serious.

Bring us all together. This bill does it. This is a unique moment in history where we have found a bill that has this kind of broad support.

So we will work with you. We want to alleviate the pain not only in our state, but across much of the West. The solutions in here are for the whole country, and I thank you so much for this opportunity.

The CHAIRMAN. Thank you, Senator Boxer. I appreciate your leadership in these issues, long-standing.

Senator FEINSTEIN. Madam Chairman, may we be excused?

The CHAIRMAN. Yes. Thank you for being here this morning and again for your good work.

We will now turn to Congressman Valadao. Welcome to the Senate side.

STATEMENT OF HON. DAVID VALADAO, U.S. REPRESENATIVE FROM CALIFORNIA

Mr. VALADAO. Thank you.

The CHAIRMAN. Good morning, and thank you for your leadership on this issue.

Mr. VALADAO. Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and members of the committee.

I appreciate the invitation to testify before you today on my legislation, H.R. 2898, the Western Water and American Food Security Act of 2015, which passed the House of Representatives this past June.

Before we get into the details of the bill, I wanted to share a little bit about the area I represent. California's 21st congressional District is unique. Located in the southern half of the Central Valley, my district spans about 160 miles from the Fresno County line to just south of Bakersfield, an agriculture powerhouse. The Central Valley produces the majority of the fruits, vegetables, and nuts for the entire nation.

Minority populations make up over 80 percent of my constituency, and our communities face many unique challenges due to our rural setting, such as a lack of healthcare and education. With another manmade drought evolving, the San Joaquin Valley is in danger of becoming a dustbowl unless immediate action is taken to change the policies that puts the needs of fish above the livelihood of people.

As a lifelong resident of the Central Valley and as a dairy farmer in Hanford, I have witnessed firsthand the challenges faced by many residents when the water resources become scarce. Today, parts of my district are suffering from unemployment rates as high as 50 percent.

As farmers are forced to fallow thousands of acres, the ripple effects are felt throughout the community. Workers are laid off, families are unable to provide for their children, and while food lines continue to grow, we must import food from other countries just to meet the demand. I have seen families out of options, living in shacks along the road.

It is difficult to watch my friends and neighbors, people I grew up with, suffer because of the laws passed by Congress and the method in which the Federal agencies have chosen to implement these laws. The San Joaquin Valley is facing a dire situation, and the simple fact of the matter is that we, as Members of Congress, need to add a little bit of common sense into the law.

In an effort to throw a lifeline to California and all of the Western States enduring years of drought, I worked with my colleagues to act decisively. My legislation, H.R. 2898, the Western Water and American Food Security Act, would streamline the regulatory proc-

ess, provide flexibility, and improve scientific efforts to restore some water supplies, in turn providing more economic certainty to farmers and communities in the Central Valley.

Although a lack of precipitation contributes to the valley's water supply situation, problems are exacerbated by Federal regulations and decisions of the Federal and State water managers. The dedication of vast quantities of water for the protection of endangered fish is done at a great cost to the communities in central and southern California.

Despite this, there is no scientific indication that the condition of the very fish they are trying to protect has actually improved. Furthermore, there may be alternative methods to protect fish from predatory species that could allow for additional water supplies to be made available to those areas most in need.

My legislation would ensure that the Federal Government's decisions to protect listed species are effective and based on up-to-date science. H.R. 2898 also requires agencies to use the most accurate survey methods and to determine how water projects can operate to maximize water utilization and deliveries.

We all know that the Government cannot make it rain; however, Congress does have the ability to expand water storage in wet times so that we can get through the inevitable dry years. With more reservoirs, we can expand our water infrastructure and storage to ensure reliable water supply for the future.

Dam feasibility studies that began over a decade ago are still incomplete today costing taxpayers millions of dollars. H.R. 2898 improves the process to build storage on a West-wide basis through provisions modeled after the Water Resources Reform and Development Act. It makes common sense changes to the Safety and Dams Act, reducing such red tape that could prevent additional years of inaction.

This legislation is extremely measured, given the carnage caused by the Federal Government. The language regarding California that passed the House of Representatives is very similar to the language negotiated with the Senate just last year. I believe it is reasonable to continue our dialog from where our conversation ended rather than where it began.

I have experienced the challenges the West faces because of this epic drought. I have seen the harm it has done to the people and jobs and its ever-growing impact on the environment. I remain hopeful that Congress can find a solution to provide relief to all those suffering not just in California, but for the entire West, as well as those Americans who rely on us to put food on their table.

On behalf of the House of Representatives, we stand ready to work with the committee to achieve this goal.

Thank you again for your time, Senator.

The CHAIRMAN. Thank you, Congressman. I appreciate you being here and really on the House side continuing to work these issues that have been so key.

I have visited with many Members over there. I think it is testimony to where we are here today discussing this particular bill that has moved through. We need to be working with our counterparts on the other side, so thank you for your leadership with this.

Mr. VALADAO. Well, and thank you. I appreciate you taking so much time to especially come out to the valley. And I would like to actually invite any one of the members of the committee and even the two Senators that spoke here alongside of me to come visit the valley.

Come see some of these areas that you hear about in the news when you hear about people having water bottles delivered to their house so they can take care of their families or bathe their children or the shacks that they have been putting up along some of these roads. This is having a real human impact here, and it is something that I think people need to see for themselves to truly understand.

So I appreciate the time that you have taken out personally for this and look forward to continuing to work with you.

The CHAIRMAN. Thank you.

With that, we will now turn to our panel of witnesses. We have a full slate this morning. So I would ask that Mr. Connor, Mr. Kightlinger, Ms. Woolf, Mr. Keppen, Mr. Frank, and Mr. Oglesby, please come forward, and we will do introductions and move to your testimony.

Good morning, and welcome to all of you. Thank you for agreeing to join us here this morning to speak to the pending legislation before us and to receive further testimony on the Western-wide drought issues and the legislation that we have.

We will begin this morning's panel with the Honorable Michael Connor, who is the Deputy Secretary for the U.S. Department of Interior.

After his comments, he will be followed by Mr. Jeff Kightlinger. Jeff is the General Manager for the Metropolitan Water District of Southern California. Welcome to the committee again.

We have Ms. Sarah Woolf, who is the president of Water Wise and a partner in Clark Brothers Farming.

Mr. Dan Keppen is the Executive Director of the Family Farm Alliance. Thank you for joining us.

We have Mr. Richard Frank, who is the Director of the California Environmental Law and Policy Center at the University of California, Davis. Thank you.

Wrapping up the panel is Mr. Adrian Oglesby, who is the Executive Director of the Utton Transboundary Resources Center at the University of New Mexico. He is also Vice-Chair of the Middle Rio Grande Conservancy District.

Again, thank you all for the testimony that you will provide for us. We would ask that you limit your comments this morning to about five minutes. Your full testimony will be included as part of the record. Once each of you have concluded your remarks, we will have opportunities for members of the committee to ask questions to you.

With that, Mr. Connor, if you would begin the panel this morning. Welcome.

STATEMENT OF HON. MICHAEL CONNOR, DEPUTY SECRETARY, U.S. DEPARTMENT OF THE INTERIOR

Mr. CONNOR. Thank you, Chairman Murkowski, Ranking Member Cantwell, Senator Franken. I appreciate the opportunity to ap-

pear again before the committee to continue our discussion on drought response measures.

As I expressed in June, the Administration is acutely aware of the drought-related challenges confronting families, farmers, tribes, businesses, cities, rural communities, and the environment throughout the West. And we are committed to doing all we can to meet those challenges.

As detailed in my written testimony, we are taking a multi-faceted approach in marshaling every resource at our disposal to assist Western communities impacted by the drought. These actions include maximizing water supplies for health and safety purposes, as well as farming and other economic activities, maintaining critical environmental protections for fish and wildlife, and conserving stored water in the event of continued drought. It is with this backdrop that I have submitted testimony on the three drought bills before the committee that, by and large, take vastly different approaches to this problem.

Two of these bills in particular, H.R. 2898 and S. 1894, stand in vivid contrast to each other. They are not just illustrative of diverse and competing concerns that have historically driven water conflicts throughout the West, they are representative of the challenges we face today and our common goal to maximize water supplies, build long-term resiliency, and promote collaborative efforts that avoid pitting water users against each other.

To quickly summarize, as set forth in a July statement of Administration policy in my written testimony, the Administration strongly opposes H.R. 2898. There are many specific provisions which are objectionable, but in general, the bill would impede drought response efforts through measures that slow decision-making, increase the likelihood of divisive litigation, mandate infeasible outcomes, and limit the real-time operational flexibility that is critical to maximizing water delivery.

With respect to S. 1894, there are numerous provisions in the bill that we do support, while others cause concern or need additional clarification or technical edits. We are grateful for the many months of dedicated work on the part of Senator Feinstein and her staff to craft and refine S. 1894. In general, we do remain concerned about provisions that could be the basis for new litigation regarding operational decisions intended to maximize water supply.

At the same time, we appreciate the comprehensive approach in S. 1894 that is intended to address the need for conservation, habitat improvements, new water supplies, and create financing mechanisms to support all those approaches. S. 1894 most closely tracks with the Administration's ongoing efforts to address the short-term crisis of drought, as well as developing the broad array of tools needed to build resiliency in the face of climate change.

With respect to the third water bill, I would note that until this year, drought has been affecting New Mexico almost to the extent similar to California. This year has provided some relief, but water supplies, particularly in the Rio Grande basin, are still well below normal. The Department supports the goals in many provisions of the New Mexico Drought Preparedness Act. We do, however, have some concerns about some of the introduced language in the bill that are detailed in my written statement.

In closing, I want to stress that the ongoing drought, particularly in California, has greatly limited water supply. By some metrics like snowpack, soil moisture, groundwater depth in some areas, this may be the worst drought in at least 500 years. No legislation is going to greatly increase water supply in the short term, and to the extent it could provide some modest increase, the additional supply to one user is likely to come at the expense of some other water user or an already overstressed environment.

Nonetheless, the Administration's extensive administrative and operational actions are proving that significant progress on drought can be made within the law. This is true if those actions are carried out in close collaboration with the state, affected water users, and other interested parties. We have been impressed with the level of cooperation and agreements that have been reached this year, even in the stress of the worst drought in recent times.

Looking ahead, it is imperative that the Federal Government, State, tribes, and local communities think beyond the scope and scale of the current drought and plan for the needs of the future in a changing climate.

Several of the provisions of the bill before the committee today will help us do just that. We are ready to work with the committee to find common ground on legislation that can complement the Administration's efforts to assist communities affected by drought both now and in the future.

I stand ready to answer questions at the appropriate time.

Thank you.

[The prepared statement of Mr. Connor follows:]

Statement of Michael L. Connor, Deputy Secretary
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
United States Senate
on
HR 2898 – Western Water and American Food Security Act of 2015
October 8, 2015

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary of the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on HR 2898, the Western Water and American Food Security Act of 2015, and describe actions being taken to help water users in California through this fourth year of drought.

While the Department and its bureaus recognize the severity of drought in California and the West, for the reasons summarized below, the Department strongly opposes HR 2898. As the Committee is aware, the Department and the Bureau of Reclamation (Reclamation), working in concert with fisheries agencies and the State of California, have taken extraordinary measures in recent years to adapt to dry hydrology and provide as much water as possible amidst severe drought. Innovative arrangements allowing for transfers and exchanges of finite water supplies have been developed in concert with water contractors; Reclamation and the state have secured agreements with the State Water Resources Control Board allowing for relaxation of flow and water quality requirements, conserving hundreds of thousands of acre-feet of water that would otherwise have been unrecoverable; the operations staff for the state and federal water projects are interacting daily and sometimes hourly to monitor real-time conditions to determine any necessary adjustments to Delta pumping needed to protect the environment while optimizing water supply; and tens of millions of dollars have been awarded by Reclamation and other agencies for water conservation projects across the state, continuing through this summer.

Nevertheless, we understand the desire of this Committee for legislative action to address the severity of California's drought. This year, the Administration has conveyed its concerns about HR 2898 through a July 14, 2015, Statement of Administration Policy (SAP), as well as a July 7, 2015, letter to the leadership of the House Natural Resources Committee. Since the time those statements were transmitted, the House of Representatives passed HR 2898 with amendments on July 16, 2015. While some changes were made to the bill during debate on the House Floor, the Department continues to be of the strongly held view that, rather than increasing water supplies, HR 2898 dictates operational decisions, prescribes infeasible outcomes, and creates new conflicts among existing laws that will hinder, rather than help, an effective drought response. While HR 2898 holds out the hope of swift and easy relief to drought-weary families, it is a false hope. We believe HR 2898 will slow decision-making, generate significant new litigation, and limit the real-time operational flexibility that has proven critical to maximizing water delivery during the current drought. H.R. 2898 also represents an unprecedented congressional amendment to existing biological opinions that have been upheld as scientifically and legally sound. The Department does not support such an approach.

To provide additional detail on those concerns, my statement will cover the major provisions in each of the bill's first six titles that bear on specific project operations in California and the West. Titles VII through XI are a compilation of separate West-wide legislative proposals on which the Department has previously testified in 2014 or 2015. For that reason, the latter portion of my statement will summarize the Department's previously expressed views on the proposals in those five titles.

Beginning with Title I, I draw your attention to language in Sections 102(a)(1) and 103(b)(2)(A) that would require the selective use of data sets and survey methods aimed at creating specific outcomes for exports from the Sacramento-San Joaquin Bay Delta (Delta). The date ranges and monitoring locations specified in those subsections do not represent the best available science and prescribe the use of information that is skewed to de-emphasize threats to listed species like Delta Smelt, and authorize more permissive export pumping regimes without consideration of more comprehensive data or the language's potential effects on listed species. In Section 103(e)(2), the Secretary of the Interior is instructed to take steps to manage reverse flows in the Old and Middle Rivers to a specific flow rate. But since the State of California operates its own export facilities, Federal law mandating specific federal operations, by itself, cannot achieve the results the bill intends. It will be impossible to meet such a rate without close coordination and cooperation with the state. Recognition of the division between state and federal operations and the magnitude of collaboration on both sides is a significant gap in this legislation.

For these provisions as well as all other provisions identified as problematic in my statement today, the Department would be glad to work with the Committee to propose alternate language.

The Department supports the discretionary approach to authorities found in Section 203 of HR 2898 for the benefit of fish and wildlife. Provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies can greatly benefit operations with respect to water supply and species protection. In particular, the Department strongly supports well-designed collaborative scientific research into predation. The language at Section 203(d) of HR 2898 (and Section 202(a)(3)(B)(i) of S. 1894) authorizing federal participation in a 100 percent locally funded pilot program to protect native anadromous fish in the Stanislaus River, Delta and other tributaries, if based upon well shaped research strategies and developed through a collaborative, scientific, and technically disciplined process (akin to our work in the Collaborative Adaptive Management Team), could help create a strengthened predation research program that was able to provide near- and long-term benefits for the environment and for state and federal water users across California. We would welcome a discussion with Members, staff, and the water districts on how to shape the proposal to achieve our desired outcome.

Moving ahead to Title III, several provisions that seek to dictate operations of the state and federal water export facilities in the Delta either contain problematic requirements or ignore the legal division between the projects. Section 302(a) dictates that the Secretary "shall provide the maximum quantity of water supplies practicable to all individuals or districts who receive Central Valley Project (CVP) water" based on a Sacramento Valley Water Year Index of 6.5 or lower (Dry or Critically Dry).

Putting aside the potential legal uncertainties associated with writing "maximum quantity of water supplies practicable" into law, operational history shows that this trigger – an index of 6.5 or lower – occurred in nearly 75% of the 109 years from 1906 to 2014. To apply a "maximum quantity" standard to operations and water deliveries without regard to the many other factors that influence final deliveries is to guarantee a misalignment between the mandates of the bill and the realities of CVP operations.

In addition to dictating operational decisions, HR 2898 imposes a new legal standard, which could actually limit water supplies by creating confusing conflicts with existing laws, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility. Specifically, the newly defined term "negative impact on the long-term survival" is used throughout the bill—often in combination with the undefined terms "imminent" and "significant"—in provisions that would require operators to maintain certain operations unless doing so would cause such an impact. This new standard could conflict with the Endangered Species Act's jeopardy standard, thereby creating two different standards for operations of the Central Valley Project and State Water Project. These potentially conflicting standards would invite litigation.

Similarly, Section 302(b)(2)(A) creates unrealistic expectations by mandating a water transfer permit deadline of 30 days for completion of "all requirements under the National Environmental Policy Act of 1969 and the Endangered Species Act of 1973 necessary to make final permit decisions on the request." Reclamation recognizes the need to act efficiently and expeditiously and is frequently able to meet this turnaround time; however, all of the agencies involved in this process are also subject to the California Water Code and associated water transfer rules, which can extend the time needed to approve transfers. Additionally, if water transfer requests are made too early in the year, before operators can determine whether conveyance capacity is available, a 30-day decision deadline can be unworkable. Also of note, Section 302(b)(4) calls on the Secretary to "allow and facilitate" transfers from the Harvey O. Banks Pumping Plant, a State of California-owned and -operated facility. This Section provides yet another instance in which this bill misses the distinction between state and federal operations and under-appreciates the collaborative efforts necessary to address the drought. The Department has several other concerns about Title III which we would be glad to detail further for the Committee in writing.

Title IV of HR 2898 also poses several concerns for the Department. Of the five studies referenced in this Section, one is now complete and was submitted to Congress in July 2015 (Shasta Lake Water Resources Investigation); two are dependent upon local cost-share partners for completion (North of Delta Offstream Storage/Sites Reservoir, and Los Vaqueros Reservoir); one is undergoing final review and verification of the scientific assumptions associated with its conclusions relative to fish and wildlife benefits (Upper San Joaquin/Temperance Flat); and the final study, referenced at Section 401(5), San Luis Low Point Improvement Project (SLLPIP), requires further analysis and resolution of recently identified safety concerns at B.F. Sisk Dam. Requiring completion of the studies on the proposed dates could compromise Reclamation's ability to provide sufficient basis for a decision on construction, and could prohibit adequate input from cost-share partners.

In Section 502 of HR 2898, "Area of Origin Protections," the Secretary is directed, in operating the CVP, to "adhere to" the State's laws governing water rights priorities and to honor water rights senior to the rights held by the U.S. for the CVP. The Secretary does operate the CVP in compliance with state water rights law when Reclamation diverts water for CVP purposes. However, courts have concluded that deliveries of CVP water to Reclamation contractors are governed by Reclamation contracts. That is to say, Reclamation contractors' rights to receive deliveries of CVP water are based on their contracts with the United States. There is no rationale identified in the bill for providing a greater water supply benefit or certainty to these contractors – a benefit, which, by necessity, entails a possible detriment to other CVP contractors who derive some or all of their water supply from these rivers. Similarly, the requirements in Section 504 to provide "not less than 100 percent of their contract water quantities" in Wet, Above Normal and Below Normal water year types, and not less than 50 percent even in a Dry year, pose serious challenges to the ability of the CVP to meet the multiple purposes inherent in the project's authorization. The "No Effect on Allocations" language in Section 504(c) will likewise be almost impossible to implement without significant redirected impacts elsewhere in the CVP or elsewhere in California.

Title VI of HR 2898 amends the Central Valley Project Improvement Act (CVPIA) with new planning requirements on the expenditure of monies by the CVP Restoration Fund. Section 602(a) requires that "For each fiscal year, the Secretary shall submit to Congress a plan for the expenditure of all funds deposited into the Restoration fund in the preceding fiscal year." While this provision appears straightforward, there are already extensive annual reporting requirements associated with the CVP Restoration Fund that cover both planned expenditures and accomplishments. These reports are posted on Reclamation's web site,[1] comprise several hundred pages, and provide extensive transparency on the program's administration. Moreover, the bill's requirement that a plan be prepared to document expenditures from a preceding fiscal year's deposits ignores the fact that funds are almost always obligated for expenditure in the same year the deposits occur. There is no time lag, and so submitting such a new "plan" makes no sense because the expenditures have already occurred. That being said, we are constantly looking to improve the effectiveness of our expenditures within this important program. We facilitate these improvements through a flexible adaptive management program that responds to the latest scientific, economic, and environmental conditions. We would be happy to work with this committee as we make such improvements, and keep you informed as we continue to target increased effectiveness of CVPIA expenditures to achieve the program's challenging goals.

Some of the operational problems identified in Title III continue in Title VI, with requirements at Section 606 directing that the Secretary transfer the New Melones Unit to "interested local water and power providers". The Department has serious concerns about this language, not the least of which is the fact that the New Melones Unit is a significant feature of the CVP, and the CVP is an integrated project providing benefits to several-hundred-thousand acres of California. New Melones Reservoir is a major federal storage facility on the Stanislaus River, a large tributary of the San Joaquin River and whose flows directly affect the Delta. New Melones Reservoir has

[1] http://www.usbr.gov/mp/cvpia/docs_reports/

prevented tens of millions of dollars in flood damage, provides over two-million acre-feet of project storage, and provides critical water to meet the water quality requirements applicable to the CVP's permits under D-1641. In the absence of this resource, Reclamation would not be able to meet Delta water quality standards under D 1641, as measured at Vernalis, without purchasing water from other operators within the San Joaquin River watershed.

The CVP, including the New Melones Unit, has not been designated as complete and the construction costs associated with the CVP have not been fully repaid. While Reclamation has a long record of support for title transfer legislation when agreement has been negotiated among all affected parties, HR 2898 does not include specific language at Section 606(b) addressing price, or a process to determine the price to be paid, in title transfer negotiations concerning both the named facilities as well as appurtenant water rights. The bill should assure that there be no financial or other detriment to the United States or CVP contractors who rely on benefits provided to the rest of the project by the New Melones Unit.

Section 608 of the bill prohibits any releases of water from Lewiston Dam in excess of the volumes required by the Record of Decision (ROD) for the Trinity River Mainstem Fishery Restoration Final Environmental Impact Statement/Environmental Impact Report (EIS/EIR), dated December 2000. This provision specifically targets supplemental fall flows released by Reclamation from the Trinity River Division to the lower Klamath River. The Trinity River is the largest tributary to the Klamath River, whose confluence lies approximately 40 miles upstream from where the Klamath River flows into the Pacific Ocean.

Reclamation makes these fall flow augmentation releases separate from ROD flows to protect anadromous fish returning to the lower Klamath River. Flow augmentation releases prevent recurring outbreaks of Ich (*Ichthyophthirius multifiliis)*, the fish disease thought primarily responsible for a historic 2002 die-off of Chinook salmon and ESA-listed coho salmon that return to spawn in both the Trinity and Klamath Rivers. The Department makes these fall flow augmentation releases consistent with its statutory authorities and with Reclamation's obligation to protect tribal trust resources of the Hoopa and Yurok Tribes, who rely on Chinook salmon migrating through the lower Klamath River for subsistence, ceremonial, and other purposes.

The rest of HR 2898 consists of Titles taken from other legislation pending in the 114th and 113th Congresses. The Department has testified on the stand-alone bill version of each of these titles, and the remainder of my statement will summarize those positions.

Title VII, with some modifications, largely consists of language from S. 1533 (114th), the Water Supply Permitting Coordination Act. Reclamation testified on S. 1533 on June 18, 2015 before the Water and Power Subcommittee of this Committee. The Bureau expressed concern that the bill included lands lying beyond the 17 western Reclamation states, and we appreciate the clarification to this now found at Section 702(3) of HR 2898. However, the Department's other concerns about S. 1533, primarily the fact that there is already ample basis for review of projects and coordination among federal agencies involved in water supply planning, remain regarding the language in this current bill.

Title VIII is comprised of the provisions of HR 2097 (114th) and HR 5412 (113th) -- for which the Department provided a statement for the record to the House Natural Resources Committee's Subcommittee on Water and Power on September 10, 2014 when the bill was in draft form. In the Department's view, this legislation would restrict the time available to establish the merits of a surface water storage project and to consider a project's potential environmental effects. Constraining or circumventing project environmental reviews and permits impedes the opportunity to consider alternatives with potential impacts on communities and the environment which may be less adverse. Such constraints could make favorable recommendations for project construction less likely and increase the potential for delay as a result of litigation, which, I would note, would have the opposite effect of the provisions' intentions. The Department does not support Title VIII of HR 2898.

Title IX of HR 2898 is an updated version of HR 3981 (113th), the Accelerated Revenue, Repayment and Surface Water Storage Enhancement Act on which Reclamation provided a statement for the record to the House Water and Power Subcommittee on February 5, 2014. The bill contains provisions to enable the conversion of any water service contract to a repayment contract, with allowance for pre-payment. While Reclamation's February 2014 statement identified several programmatic concerns about the bill, it is also noteworthy that current CVP water service contracts already contain language for their eventual conversion to repayment contracts at such time that it is determined that the remaining construction costs of the CVP can be repaid within a specified repayment term and without adversely affecting the operations of the CVP. Additionally, the bill proposes a one-year timeframe to convert existing contracts, which may not be reasonable given the realities of CVP operations and repayment status.

Title X of HR 2898 contains the language of HR 2749 (114th), the Dams Accountability, Maintenance and Safety Act, and closely corresponds with Section 205 of the Senate version of the 2016 Energy and Water Development Appropriations bill (HR 2028) reported on May 21, 2015. Reclamation testified on HR 2749 before the House Water and Power Subcommittee on June 25, 2015. The Department sees merit in this proposal as a potential means to efficiently combine projects and maximize the benefit of existing facilities by amending the Reclamation Safety of Dams Act. In order to apply such provisions, Reclamation and the Department would evaluate the authorization of additional project benefits language from the perspective of preserving the effectiveness of the dam safety program, while also upholding the 'beneficiaries pay' principle that underlies Reclamation law. Any authorization should ensure that the beneficiaries of the non-safety-related project construction pay their full share of the costs as a condition of construction; i.e., there should be no repayment contract for that portion of the project.

If HR 2749, HR 2028, or HR 2898's Safety of Dams Act amendments were to be enacted, it would be important to assure that adequate appropriations authorization levels (i.e. "ceiling") specific to the additional benefits were available for the particular authorized project. Reclamation would need to certify this authority on a case-by-case basis in order to apply this new authority consistent with Congressional intent.

Finally, title XI of HR 2898 contains language from S. 982 (114th), the Water Rights Protection Act. As stated in testimony provided on June 18, 2015, to the Water and Power Subcommittee of this Committee, the Water Rights Protection Act is overly broad, drafted in ambiguous terms, and likely to have numerous unintended consequences that would have adverse effects on existing law, tribal water rights, and voluntary agreements. These provisions would interfere in multiple ways with legitimate federal water management activities and would likely generate years of needless litigation. The Department opposes Title XI and S. 982.

In closing, I would like to echo the Department's statement to this Committee on June 2 of this year: the Department is acutely aware of the drought-related challenges and worries confronting families, farmers, tribes, businesses, cities, rural communities and the environment throughout the west. Simply put, we understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change.

Throughout the debate surrounding these drought bills, there has been constant speculation that legislation dictating how to operate the water export facilities, or a strong El Nino event, will decisively end California's drought. For the reasons I've described above, we strongly disagree with the idea that this bill can salvage more water than the operators on the ground are wringing from the system every day. And as for El Nino, the odds of a one-year end to a four-year drought are also slim. In the areas most critical to California's water supply (the Shasta-Trinity mountains, the Sierra Nevadas, and the Colorado River basin), El Nino does not always result in large amounts of snow and rain. Even if it results in large amounts of precipitation in those key areas, it's highly unlikely to make up for the impacts of the current drought, which have left California's water supplies at historically low levels.

While El Nino will not be a standalone solution to our long-term water shortages, over the past few years, aggressive drought response measures at the federal, state, and local levels have helped to mitigate the impacts of drought. Working with the State Water Resources Control Board, operational changes by Reclamation have conserved nearly 800,000 acre-feet as of the end of August[2], substantially more than the 300,000 acre-feet I reported as of late May. While those and many other measures have not fully alleviated the drought's impacts, we've proven that we have the capacity to improve overall water management building on the work of creative local partners. By sustaining these activities, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought. We disagree with the language of HR 2898, but we stand ready to work with this Committee, the House, and the Senate to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

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[2] http://www.waterboards.ca.gov/waterrights/water_issues/programs/drought/tucp/accounting_reports/

Statement of Michael L. Connor, Deputy Secretary
U.S. Department of the Interior
before the
Committee on Energy and Natural Resources
United States Senate
on
S. 1894 – California Emergency Drought Relief Act of 2015
October 8, 2015

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary of the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on S. 1894, the California Emergency Drought Relief Act of 2015. I am pleased to have the opportunity to speak briefly about the Administration's efforts to assist California and the West in addressing drought, and to provide input on the introduced language of S. 1894.

As stated during this Committee's June 2, 2015, hearing on west-wide drought, the Administration is acutely aware of the drought-related challenges confronting families, farmers, tribes, businesses, cities, rural communities and the environment throughout the West, and we are committed to doing all we can to meet those challenges. Unabating drought poses health and safety risks to certain communities and threatens the economic livelihood of many others. Simply put, we understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change. The Department is taking a multi-faceted approach and marshalling every resource at its disposal to assist western communities impacted by drought. Those efforts were summarized in our testimony on June 2. I want to highlight some of our most important efforts for the Committee, including:

- The Department's WaterSMART Program is helping lead the way in drought response and preparedness. Under WaterSMART, Reclamation and its local partners will achieve water conservation capability for agricultural, municipal, industrial, and environmental uses in the western United States by 975,000 acre-feet (since 2009) through September 30, 2016. This Program's assistance to communities in stretching water supplies has already exceeded the prior goal of 840,000 acre-feet by the end of FY 2015 by partnering with states, Indian tribes, irrigation and water districts and other organizations with water or power delivery authority to implement programs resulting in water conservation.
- In 2013, the Administration announced a partnership between 7 Federal agencies, including the Department, to help communities better prepare for droughts and reduce the impact of drought events on families and businesses. The National Drought Resilience Partnership (NDRP) coordinates Federal efforts broadly across the country and is working closely with state and local governments, agriculture and other partners to improve community preparedness and resilience to drought.
- Working with the State Water Resources Control Board, operational changes by Reclamation have conserved nearly 800,000 acre-feet as of the end of August, substantially more than the 300,000 acre-feet I reported as of late May. While those and many other measures have not fully alleviated the drought's impacts, we've proven that we have the capacity to improve overall water management building on the work of

creative local partners. If sustained, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

- Since December 2013, state and Federal agencies that supply water, protect fish and wildlife, and regulate water quality, have worked tirelessly together to balance water supply, biological protections, and water quality during this drought. Following the Governor's emergency drought proclamation, on January 29, 2014, Reclamation and DWR sought and acquired temporary modifications to their water rights permits and licenses to respond to the drought conditions, resulting in the conservation of hundreds of thousands of acre feet of water in California that would otherwise not have been conserved.
- In June of this year, Reclamation announced investments in more than $24 million in grants for 50 water and energy efficiency projects in 12 western states, more than $23 million for seven water reclamation and reuse projects in California, and nearly $2 million for seven water reclamation and reuse feasibility studies in California and Texas.
- And also in June, the Department, the U.S. Department of Agriculture (USDA), and the State of California announced the California Headwaters Partnership. The program will coordinate the diverse activities of government agencies, property owners, and non-profit groups to restore streams and meadows, improve habitat and thin overgrown forests, and protect the economic uses of the land, such as logging and grazing. The California Headwaters contribute greatly to the state's water supply with the Sierra-Cascade watersheds provide drinking water to 25 million people, almost two-thirds of the California population, and the majority of water for irrigated agriculture.

Our efforts complement those of state and local leaders as well as other federal agencies. For example, on May 18, 2015, USDA announced the availability of an additional $21 million through the Natural Resources Conservation Service Environmental Quality Incentives Program to assist farmers and ranchers in eight western states experiencing drought. These additional funds were targeted to practices improving rangeland health and improving water use efficiency on cropland. In addition, the Department of Labor has provided assistance to dislocated workers, including $18 million for temporary jobs for drought affected workers; 6-month temporary positions working on drought mitigation through public and nonprofit agencies; and grant eligibility for dislocated workers.

Turning to S. 1894, the Administration gratefully acknowledges the many months of effort and constructive dialog underlying the bill's proposals for drought relief in California. We appreciate the work of Senator Feinstein and her staff to allow the Department and personnel from the Bureau of Reclamation (Reclamation) and our colleagues from NOAA to review some of the language as the bill was drafted over the past year. Each of the bill's four titles and subtitles contain distinct and targeted provisions that touch on operational, environmental, planning and budget functions. For this reason, my statement will articulate the Department's position for each of the titles rather than the bill as a whole. As a threshold matter, this is a complicated bill, with overlap and interplay between the Titles. In addition to policy issues, there are a number of technical drafting issues to be addressed. The Department will be available to work with the Committee on these issues.

Title I of S. 1894 applies to operational decisions on the state and federal water projects in California for two years, or for as long as the Governor has declared a drought emergency. While S. 1894 contains far fewer operational mandates than the House bill before the Committee today, HR 2898, Section 101 of S. 1894 directs that federal agencies "shall provide the maximum quantity of water supplies possible to…contractors, State Water Project contractors, and any other locality of municipality in the State by approving, consistent with applicable laws (including regulations), projects and operations to provide additional water supplies as quickly as possible". It is already Reclamation's practice, working closely with other federal and state agencies, as well as stakeholders, to provide maximum contract quantities when hydrology and operational constraints allow. But as stated in the Department's testimony on comparable provisions in Section 302(a) of HR 2898, there are significant potential legal uncertainties associated with a "maximum quantity of water supplies practicable" standard written into law which could readily generate litigation for the state and federal governments. Additionally, subparagraph 101(e) directs that federal agencies issue final decisions "not later than 10 days after the date on which a meeting is requested" by the state on projects or operations to provide additional water supplies. While Reclamation conducts operations in real time and works expeditiously to capitalize on every opportunity to provide emergency water supplies, this time limitation may be difficult for an agency that is already managing pursuant to a drought emergency and may ultimately prove a detriment to sound decision-making.

We are also concerned that there exists the potential for conflict between the mandate in 101(c) and the mandate in section 113(a) requiring no redirected adverse impacts. Additionally, the Department has concerns with the reporting requirements in Section 123. Collectively, the bill has over 20 reporting requirements which would have the effect of diverting resources away from the timely analysis and decision-making needed to effectively address drought conditions on a real-time basis. Finally, we are also concerned with the language in section 101(a)(2) as it could be interpreted to limit the Secretary's ongoing ability to manage water resources in the Klamath Basin. This language needs to be clarified to ensure there is no limitation on the Secretary's ability to meet all legal obligations, including protection of the tribal fishery.

The Department supports the discretionary approach to authorities found in Title II of S. 1894 and Section 203 of HR 2898 for the benefit of fish and wildlife. Provisions intended to build upon the agencies' current actions to improve data gathering, monitoring, and scientific methodologies can greatly benefit operations with respect to water supply and species protection. In particular, the language at Section 202(a)(3)(B)(i) of S. 1894 and Section 203(d) of HR 2898, authorizing federal participation in a 100-percent locally funded pilot program to protect native anadromous fish in the Stanislaus River, Delta and other tributaries, if based upon well shaped research strategies and developed through a collaborative scientific and technically disciplined process (akin to our work in the Collaborative Adaptive Management Team), could help create a strengthened predation research program able to provide near- and long-term benefits for the environment and for state and federal water users across California. We welcome a discussion with Members, staff, and the water districts on how to shape the proposal to achieve our desired outcome.

Titles III and IV of S. 1894 contain many new authorizations with different funding mechanisms. In general, the Department appreciates the bill's recognition that federal water resource investments are important in effectively leveraging state, local, and private funds to build

drought resiliency. Nonetheless, we have concerns that a number of the authorizations are duplicative with other federal programs and could expand Reclamation's responsibilities well beyond its limited budget. Nonetheless, there are numerous provisions that the Department can support. First, the Department appreciates and fully supports the increase in WaterSMART funding authorization to $400 million (Sec. 421(b)(3)). The water and energy efficiency grant program has been tremendously successful in stretching water supply in the West, and building drought resiliency. In addition, section 431would alter Reclamation's roles under the Water Desalination Act of 1996 and the Reclamation Wastewater and Groundwater Study and Facilities Act, commonly referred to as Title XVI.

Section 421(b) of the bill provides an additional appropriations ceiling under the Secure Water Act (Section 9504 of PL 111-11), enabling Interior to continue providing funding through the WaterSMART Program. As we describe above, this additional funding authority was requested in Reclamation's FY 2016 Budget Request, and the Department appreciates inclusion of this language in S. 1894.

Section 431 amends current law to provide blanket construction funding authority for projects to reclaim and reuse wastewater or impaired surface water based on their being determined to be feasible. While this language expands upon existing law, which provides that Reclamation can only fund design and construction of Title XVI projects when there is a specific Congressional authorization, it is timely to examine expanding program eligibility to any projects that are determined to be feasible and which compete well under Reclamation's existing prioritization criteria, which are consistent with the program's statutory origins in Public Law 102-575, as amended. Over the past 20 years, projects developed and constructed under the Title XVI program are contributing nearly 350,000 acre-feet of water annually to address California's water demands, particularly in Southern California. This supply has helped address drought and other issues in the oversubscribed Colorado River basin. Accordingly, water reuse has proven to be one tool in building regional resilience to drought.

It is not clear how Section 431 would relate to subsections 301(b) and (c) of S. 1894, which references 105 water reuse and 26 desalination project sponsors specifically enumerated for review and funding awards. With the proposed changes in section 431, it does not appear that the authorizations in Section 301 are necessary, particularly, since there is no funding made available to carry-out these projects in the near-term. In addition, given the Administration's support for increasing the authorized ceiling for WaterSMART, and the fact that the program as currently authorized is already oversubscribed, there is not a need to create duplicate authorizations as contemplated in Section 322 and the new authorization within Section 421 (i.e. the amendment to 42 U.S. 10368(c)). The Department does support reauthorization of the Desalination Act in subsections 302(a)-(d).

The Department also supports language in Title III, Subtitle B pertaining to federal and non-federal water storage, although technical changes are needed (e.g. Section 312(b) appears to authorize Reclamation to invest in storage projects outside its current 17-state service area). As the Committee is aware, federal agency budgets, including Reclamation's, are under increasing pressure due to expanding needs and the priority of deficit reduction. Accordingly, Section 312 includes requirements that construction of storage projects "shall not commence until the

Secretary secures an agreement providing such funds as are necessary to pay the capital costs for any purpose that would otherwise be considered to be reimbursable under the reclamation laws." This language is very timely, because the traditional Reclamation business model, in which feasibility studies, consistent with the 1983 Principles and Guidelines for Water and Related Resources Development, are first authorized, funded, and submitted to Congress, and then construction is authorized and funded, does not always address the needs of project sponsors at the state and local levels. Moreover, given budget limitations and the availability of other available financing mechanisms, the historic federal role in financing water storage projects through the Bureau of Reclamation must be revisited with a greater emphasis on non-federal financing.

The Department supports the above provisions in Title III, but recommends some changes. Section 312(a)(2) authorizes federal participation in up to 50% of project costs. While that 50% figure is a maximum, not a minimum contribution, the Department recommends that a 25% maximum federal share ceiling would better reflect the budget realities confronting federal agencies, and the appropriate balance of costs among project beneficiaries. Additionally, Section 312(b)(2) requires that federal participation in non-federal storage projects be requested by the Governor of the State. However, it may be appropriate to broaden, beyond the Governor of a State, which entities can request federal participation in non-federal storage, given that there are other entities involved in storage projects, such as those referenced at Section 312(a)(1).

The Department also has concerns about at Section 313(b), the provision in the "CALFED Storage Projects" Section that would set deadlines for the completion of ongoing water storage studies. Of the five studies referenced in this Section, one is now complete and was submitted to Congress in July 2015 (Shasta Lake Water Resources Investigation); two are dependent upon participation and funding by non-federal cost share partners (North of Delta Offstream Storage/Sites Reservoir, and Los Vaqueros Reservoir); one is undergoing final review and verification of the scientific assumptions associated with its benefits to fish and wildlife (Upper San Joaquin/Temperance Flat); and the final study, referenced at Section 313(b)(5), San Luis Low Point Improvement Project (SLLPIP), requires further analysis and resolution of recently identified safety concerns at B.F. Sisk Dam (B.F. Sisk impounds San Luis Reservoir). Requiring completion of the studies on the proposed dates could compromise Reclamation's ability to provide sufficient basis for a decision on construction and could prohibit adequate input from cost-share partners.

At the programmatic level, the Department supports language at Section 314 authorizing the combination of dam safety construction work with construction for other project benefits. This language closely corresponds with four other legislative vehicles pending this Congress: Title X of HR 2898 (Valadao); Section 205 of the Senate version of the 2016 Energy and Water Development Appropriations bill (HR 2028) reported on May 21, 2015; S. 1657 (Barrasso); and HR 2749 (Valadao), currently pending before the House. As stated in testimony this past June on HR 2749, the Department believes that any use of this new authority should ensure that the beneficiaries of the non-safety-related project construction pay their full share of the costs as a condition of construction; i.e., that there be no repayment contract for that portion of the project. The Department would be glad to work with the Committee to propose alternative language. It would also be important to assure, if S. 1894 or HR 2749 were to be enacted and those

provisions utilized, that adequate appropriations authorization (i.e. "ceiling") specific to the additional benefits was available for the particular project where the new authority would be applied. Reclamation would need to certify this authority on a case-by-case basis in order to apply this new authority consistent with Congressional intent.

The Department supports language in Section 325 to authorize federal agencies to assist efforts of the State Water Resources Control Board to help manage the state's water supplies during the drought emergency, so long as this provision is limited to illegal water diversions.

The Department supports Section 328 of the legislation, which formally establishes the Open Water Data Initiative. The Open Water Data Initiative (OWDI) is the process of taking federal water data sets and making them publicly interoperable or machine readable, to allow for use with other data sets. When implemented, OWDI will allow for the use of select federal water data sets with other data sets from other federal agencies, states, and localities.

An application of the OWDI process is data visualization, like the December 2014 California Drought visualization http://cida.usgs.gov/ca_drought/. The California visualization utilizes existing, open data sets (federal/local/state) and provides a visual platform in telling the story of the drought in California.

We are especially excited about the progress on the Colorado River Drought Visualization, which we anticipate to release by the end of this year. Visualizations are a great application of the OWDI process, providing a mechanism for communicating current water resource challenges to our key stakeholders and the general public through data-driven insights. The visualizations also show the possibility of progress through the OWDI process.

Title IV Subtitle A contains a "Reclamation Infrastructure Finance and Innovation Act" (RIFIA). Overall, the Department supports the development of new financing options that reduce pressure on agencies' appropriated budgets, and the Administration is exploring alternatives for infrastructure financing, including public-private partnerships and a National Infrastructure bank. The intent of this strategy is to facilitate the best use of federal and non-federal dollars to reduce risk and improve the reliability of the Nation's infrastructure. The Administration is still reviewing the RIFIA proposal and does not have a position at this time.

Finally, Sections 441-444 of the bill would provide $3.75 billion of mandatory funding for water resources investments in the 2026 to 2050 timeframe. The Administration believes that any major commitment of Federal funds such as this should be carefully considered and recognize the existing framework of budgetary and fiscal constraints. Originating these funds in 2026 circumvents existing PAYGO rules and undermines the fiscal constraints that those rules were intended to protect. The Department does appreciate the recognition that significant new investments are needed to meet the challenges associated water resources in an era of increasing demand and a changing climate, both of which are exacerbating the impacts of drought. Nonetheless, it is important that local communities, working with their state governments take the primary lead in developing and paying for these projects. The Federal government should continue to support these efforts through existing programs that facilitate studies, planning, technology development, and an appropriate cost-share for projects that provide for public

benefits. In addition, within Reclamation, there is already a substantial backlog of projects and actions for which Reclamation has legal obligations. Any new funding proposals should account for those obligations, and should not further impact Reclamation's existing backlog.

In closing, I would once again like to echo the Department's statement to this Committee on June 2 of this year, when we expressed the Department and Administration's deep concern about continuing drought and the toll it is taking on communities urban and rural communities, businesses large and small, farmers and fishermen, and hardworking families. We continue to do all we can to address this situation. As noted previously, Reclamation and California's Department of Water Resources (DWR) are operating through a Real Time Drought Operations Management Team (RTDOMT) comprised of representatives from Reclamation, DWR, State and federal fish and wildlife agencies, and the SWRCB to discuss more flexible operations of the Projects while protecting beneficial uses. Together, these agencies worked through existing statutory and regulatory obligations so that water operations could adjust quickly to changes in the weather and environment to support and improve water supply deliveries when possible while protecting water quality and fish and wildlife as required under state and federal laws and permits. The RTDOMT agencies recognize the importance of their efforts to minimize potential impacts from drought to provide food security, economic stability, and species protection in California.

Toward this end, we are open to further refinements to S. 1894. We understand the implications for western communities and the need to secure long-term water reliability and resiliency in the face of drought and the related impacts of climate change.

As noted in the Department's statement on HR 2898 which is also before the Committee today, the debate surrounding these drought bills has brought abundant speculation that legislation dictating how to operate the water export facilities, or even that relying on a strong El Nino, will decisively end California's drought. For the reasons I've described more specifically in our statement on HR 2898, we strongly disagree with the idea that new legislation will salvage more water than the operators on the ground are wringing from the system every day. And as for El Nino, the odds of a one-year event ending to a multiple-year drought are also slim. In the areas most critical to California's water supply (the Shasta-Trinity mountains, Sierra Nevadas and Colorado River basin), El Nino does not always result in large amounts of snow and rain. Even if it results in large amounts of precipitation in those key areas, it's highly unlikely to make up for the impacts of the current drought, which have left California's water supplies at historically low levels. By several metrics (e.g. snowpack, soil moisture, and even groundwater depth in some areas), this may be the worst drought in at least 500 years.

Simply put, there is no standalone solution to long-term water shortages significantly impacted by drought and the additive factor of climate change. Nonetheless, over the past few years, aggressive drought response measures at the federal, state, and local levels have helped to mitigate the impacts of drought. By sustaining these activities, I believe we can build long-term drought resiliency, even accounting for what El Nino may or may not yield in this and future years.

Looking ahead, it's imperative that the Federal government, states, tribes and local communities think beyond the scope and scale of the current drought, and plan for the needs of the future in a changing climate. According to the best available science, a warmer, drier climate this century will pose significant new challenges to communities across the West.

The Administration looks forward to working with Congress and communities across the West to: foster the development of new technologies to expand supply, reuse water and expand efficiency efforts; leverage water pricing systems and incentives to conserve water; ensure communities and decision makers have the data they need to manage water resources in a changing climate; encourage efficient water use across the agriculture sector; and utilize markets and water trading mechanisms to maximize scarce water resources.

We stand ready to work with this Committee and Senators Feinstein and Boxer to find common ground on legislation that can complement the Administration's efforts to assist communities impacted by drought.

This concludes my written statement. I am pleased to answer questions at the appropriate time.

Statement of Michael L. Connor, Deputy Secretary
U.S. Department of the Interior
Before the
Energy and Natural Resources Committee
United States Senate
on
S. 1936
New Mexico Drought Preparedness Act of 2015
October 8, 2015

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am Mike Connor, Deputy Secretary at the Department of the Interior (Department). Thank you for the opportunity to provide the views of the Department on S. 1936. This bill aims to enhance coordination for water acquisitions, authorize appropriations for projects to assist with water conservation, authorize appropriations for the study of the lower reaches of the Middle Rio Grande, support efforts to provide an annual spring peak flow for the Middle Rio Grande, and provide for a study of Rio Grande reservoirs. The Department supports many elements of the New Mexico Drought Preparedness Act of 2015, but has concerns with some of the new authorizations and with the introduced language of Section 6 of the bill as detailed in my statement.

Although this bill mentions the Upper, Middle, and Lower Rio Grande basins, as well as the Lower Pecos, Gila, Canadian, San Francisco and San Juan River basins, the primary focus is on work in the Middle Rio Grande in New Mexico. The 2003 biological opinion for water operations and river management in the Middle Rio Grande defines the Middle Rio Grande as the area of the Rio Chama watershed and the Rio Grande, including all tributaries, from the Colorado/New Mexico state line downstream to the headwaters of Elephant Butte Reservoir. The Bureau of Reclamation's (Reclamation) Middle Rio Grande Project (Project) extends from the Velarde area of northern New Mexico south to the backwaters of Elephant Butte Reservoir. The irrigation features of the Project divert water from the river to irrigate between 50,000 and 70,000 acres of irrigable land, including an approximate 20,000 acres of Pueblo Indian land.

Reclamation has been leasing water on the Pecos River and from San Juan-Chama Project contractors for over a decade to supplement river flows for endangered species, consistent with the language of Section 3 of S. 1936. We have spent tens of millions of dollars acquiring San Juan-Chama Project water and relinquished Rio Grande Compact credit water in recent years to augment flows in the Middle Rio Grande. However, other than the relinquished Rio Grande Compact credit water, Reclamation has not been able to lease and make use of the water that is native to the Rio Grande in New Mexico due to the administrative, legal, and institutional complexities involved. In the explanatory statement printed December 11, 2014, for the Congressional Record, in reference to P.L. 113-235, the Consolidated and Further Continuing Appropriations Act, 2015, Congress encouraged Reclamation to pursue efforts to facilitate agricultural water leasing along the Middle Rio Grande and San Juan Chama Projects. In response, Reclamation has started a pilot leasing program of pre-1907 water rights and is planning a grant opportunity to solicit the services of outside experts to evaluate a leasing program led by the Middle Rio Grande Conservancy District (District). This bill would provide

Reclamation and the District with increased flexibility to implement and effectively manage such a program.

For years, Reclamation has provided funding and technical assistance for irrigation districts and water utilities in New Mexico and west Texas to develop sustainable water supplies under various water conservation programs. Examples of such assistance include improving efficiency and conservation under the WaterSMART Program through Water and Energy Efficiency Grants to entities such as the Elephant Butte Irrigation District and funding for the Albuquerque Bernalillo County Water Utility Authority's water recycling and reuse (Title XVI) project, and through the Native American Affairs Program. Reclamation is also working with partners to carry out various basin studies and other related efforts through Landscape Conservation Cooperatives, the Cooperative Watershed Management Program, and the Water Conservation Field Services Program. This year, Reclamation and the District are beginning work on a plan of study for a Middle Rio Grande Basin Study, and the six Middle Rio Grande Pueblos participate in the Rio Grande Pueblos Irrigation Infrastructure Improvement Project. Any water conservation actions by the District and Pueblos that would result in more efficient use of the available water supply is welcome by Reclamation. However, as indicated previously, existing programs are available to provide the opportunity to cost-share conservation actions that will benefit the Rio Grande system. Two such programs, WaterSMART and the Reclamation States Emergency Drought Relief program, are proposed for additional appropriations ceiling in S. 1936 and, therefore, new authority such as provided in Section 4(a) is not necessary.

Section 5(a) of S. 1936 contains provisions granting five more years of the temporary deviation in the operation of Cochiti Reservoir by the U.S. Army Corps of Engineers. Such deviations allow for creation of a spike flow in the Middle Rio Grande through the impoundment and regulation of spring flows. The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti Pueblo are addressed. The ability to stage water in the spring to augment the native flows in the Middle Rio Grande is an important cue to the endangered Rio Grande silvery minnow to reproduce.

Section 5(b) of S. 1936 authorizes a comprehensive study and a series of projects in the Isleta and San Acacia reaches of the Middle Rio Grande aimed at giving Reclamation and other partnering agencies a better understanding of this area, which is designated as critical habitat for the Rio Grande silvery minnow. The Middle Rio Grande below Cochiti Dam is divided into four reaches defined by locations of mainstem irrigation diversion dams. The Cochiti Reach extends from Cochiti Dam to Angostura Diversion Dam. The reach from Angostura Diversion Dam to Isleta Diversion Dam is called the Albuquerque Reach. The Isleta Reach is bound upstream by Isleta Diversion Dam and downstream by San Acacia Diversion Dam. Finally, the reach below San Acacia Diversion Dam to the headwaters of Elephant Butte Reservoir is the San Acacia Reach. The study would also assist with development of a plan for moving forward with coordinated water conservation measures.

Reclamation and Department policy require scientific and scholarly information considered in our decision making to be robust, of the highest quality, and the result of best possible scientific and scholarly processes. Most importantly, users must be able to trust the information. Section 6

of S. 1936 authorizes a National Academy of Sciences Study of the water and reservoir management and operation from Heron and El Vado down to Abiquiu, Cochiti, Jemez Canyon, Elephant Butte, and Caballo reservoirs. A full evaluation of the legal authorities of each of these reservoirs weighed against the hydrologic reality and potential impacts of climate change would likely provide water managers all along the Rio Grande in New Mexico with useful information that could prove important as we struggle to meet growing needs with a decreasing water supply. However, there is a budget concern associated with such a study. A study of this magnitude is not anticipated in Reclamation's budget and would have to compete for funding among numerous existing priorities. Additionally, this study would likely duplicate other efforts, including the Upper Rio Grande Impact Assessment completed by Reclamation in 2013, or even the Lower Reach or Cochiti studies that would be authorized by S. 1936. As an alternative to the study proposed under Section 6 of S. 1936, the Department recommends commissioning a National Academy of Sciences review of the findings of the Middle Rio Grande Basin Study that Reclamation anticipates the District will pursue. The Department would seek to secure cost-share partners for the review, consistent with the requirements for Basin Studies. This approach would achieve the study objectives outlined in S. 1936, allow for independent scientific and scholarly input, and limit duplication of efforts and resources.

New Mexico has endured five years of consecutive drought. Rain this spring and summer has provided some temporary relief. Emergency funding for infrastructure improvements, crop losses, and settlement of water rights claims would be positive. Although Reclamation utilizes drought funding for water leasing, it should be noted that Reclamation is currently in the process of leasing all of the water that is available at a reasonable price (i.e. excluding what would be covered under the pilot leasing program described above).

The Department supports language in Sections 8 and 9 of S. 1936 relating to the authorizations for the WaterSMART Program and under the Reclamation States Emergency Drought Relief Act. There are some technical changes warranted to bring those Sections into conformance with recently passed language provided in appropriations bills (e.g. Section 8(2) should be $400 million, not $300 million), and to ensure that the language can be carried out through Reclamation's existing programs. We would be glad to work with the sponsors' offices and the Committee to refine those sections, and to ensure that the additional financial assistance authorities included in Section 7 do not duplicate other existing authorities. In addition, the legislation should ensure that any drought relief wells funded should be in response to a critical need and prioritization process, and do not add to existing problems associated with groundwater depletion.

Section 10 of S. 1936 provides additional time for completion of the study originally authorized under Section 9106 of the Omnibus Public Land Management Act of 2009 (P.L. 111-11). The purpose of the study is to assess the feasibility of projects to repair, rehabilitate, reconstruct, or replace Pueblo irrigation facilities recommended to be implemented from fiscal years 2010 through 2019. The study was to be submitted to Congress in March 2011; however, due to a lack of funding, Reclamation was delayed in starting the study. Now that sufficient funds have been appropriated and transferred, Reclamation is scheduled to complete the study in 2016.

All 18 New Mexico Rio Grande Pueblos have agreed to participate in the project. Reclamation supports the language in S. 1936 to extend the study period until December 31, 2016, and extend the ten-year construction period through 2024. The Department acknowledges the potential need for the bill's language increasing authorization for construction appropriations from $6 million to $12 million per year during this ten-year period, though we note that budget realities may not allow for the opportunity to request this level of funding, and these authorizations would need to compete with other budget priorities. Because not all projects can be built, Reclamation will prioritize the projects based on the cost-effectiveness of the proposed investments.

This concludes my statement. I am pleased to answer questions at the appropriate time.

The CHAIRMAN. Thank you, Secretary Connor.

Mr. Kightlinger, welcome.

STATEMENT OF JEFFREY KIGHTLINGER, GENERAL MANAGER, METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Mr. KIGHTLINGER. Thank you much, Chair Murkowski, Ranking Member Cantwell, members.

As noted, Jeffrey Kightlinger, Metropolitan Water District of Southern California. We are the largest municipal water agency in the U.S. We supply water to one in every two Californians, 19 million people across southern California. That works out to about two million acre-feet of water a year, two billion gallons of water every single day on average. That results in about 50 percent of all of southern California's water. We get that water from two main sources, the Colorado River and Northern California, through long aqueducts that supply that water to Southern California.

As noted by many of the speakers, it is not just California that is in drought. We are in the midst of a cataclysmic drought in California. The last four years, driest period in 500 or 1,200 years, depending on which tree rings you are looking at. But the seven of the last eight years have been drought in California; four of the last six years have been declared by our Governors to be emergency droughts over the last six years.

So an incredible drought in California, but it is a West-wide drought. Colorado River basin has been in drought since 2000. So we are very concerned about the future of this area, and we are—and we do greatly appreciate this committee taking the time to look at the issue, and we certainly appreciate the efforts of Senators Feinstein and Boxer to introduce legislation.

What we particularly like about both bills, both the Senator's bill and the Congressman's bill, is that it focuses on two things: both short-term flexibility as well as some long-term improvements. Short-term flexibility is critical. Metropolitan keyed a whole group of—a whole suite of scientific efforts to focus on real-time monitoring, the use of turbidity as a measure in which to substitute for smelt-tracking.

We believed in this process. We had a number of scientists work on it. We engaged with the fishery agencies and the regulatory agencies to do that. We did not do a good job in 2013 and 2014, and we probably lost 800,000 acre-feet by storms that we didn't—weren't able to move that water. That resulted in taking a bleak year into a cataclysmic drought year.

To their credit, the regulatory agencies didn't want to repeat what we experienced in '13–'14. They have worked hard to come up with how to use this real-time monitoring and adaptive science, and we used it as well as we possibly could 2014–2015. I believe we wrung as much water that could be possibly wrung out of the system this past year and kept a bleak year to being a bleak year. So that was as good as we could do, and the agencies worked hand-in-hand with us, the water providers, to make sure we did that.

That is what a lot of the provisions in both the Congressman Valadao's and the Senator Feinstein-Boxer bill really are looking at how do we even go further, better, faster with that real-time monitoring, the adaptive science, and we think there is a real pathway

there to do what we can to—in the short-term to increase our chances of providing more water supply.

We also appreciate that the bills talk about fast-tracking and moving on storage. Metropolitan built a $2 billion reservoir in 2000. We have our own storage in southern California. But for that, we would have been in dramatic rationing these past four years. But because we have had storage, we have been able to manage through that and work through this drought. The state needs more storage. We need more storage throughout California, and we appreciate how both of those bills are looking at that.

Finally, Senator Feinstein's bill really takes a focus on recycling, reclamation, other projects. We would applaud that effort. Obviously, we know money is tight, but we think those are real critical measures that we can do.

So our board has supported the Feinstein-Boxer bill. Our board has not taken a position on the Valadao bill, but we want to work with both offices and try and come up with a compromise solution that works for all of California.

So thank you for your time. Thank you for your attention to this incredible issue, and I stand prepared to answer any questions that you have.

Thank you.

[The prepared statement of Mr. Kightlinger follows:]

Testimony of Jeffrey Kightlinger, General Manager
Metropolitan Water District of Southern California

S.1894
California Emergency Drought Relief Act of 2015
SUPPORT AND SEEK AMENDMENTS

H.R. 2898
Western Water and American Food Security Act of 2015
NO POSITION

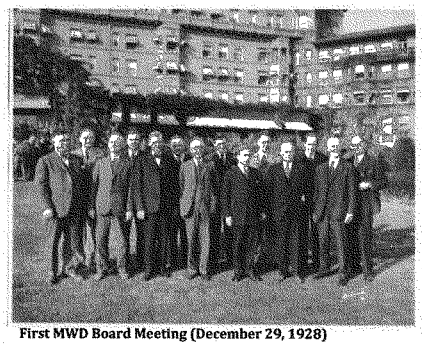
Chairman Murkowski and Ranking Member Cantwell:

On behalf of the Metropolitan Water District of Southern California, I would like to thank you for the opportunity to testify today. We appreciate your leadership and the ongoing efforts of the Committee to address the challenges gripping our state and much of the Western United States during this fourth year of an historic drought.

On September 22, 2015, the Metropolitan Board of Directors voted to support S.1894 and to seek certain amendments. At the present time, our Board does not have a position on H.R. 2898.

I wish to personally thank Senator Feinstein for her legislation. S. 1894 not only seeks to address the immediate water crisis, but provides much-needed direction to better prepare for future droughts and achieve California's co-equal goals of providing reliable water supplies while restoring the Sacramento-San Joaquin Delta ecosystem.

Before addressing some of the legislative or policy specifics, I would like to take a step back to provide some background on Metropolitan. In cooperation with our 26 member agencies, Metropolitan has done extensive planning and made significant investments that have allowed us to withstand this and future droughts and to prepare California for future water challenges we will face.


First MWD Board Meeting (December 29, 1928)

Metropolitan: A History of Regional Cooperation and Progress

Every generation of Southern Californians has had to face drought and in every generation, Metropolitan has made the necessary investments to ensure water supply reliability for the region. Metropolitan was created by the California Legislature in 1928 to form a regional water cooperative of the rapidly urbanizing areas of Los

Angeles and Orange counties. In the throes of the Great Depression, voters of these counties approved $220 million in bonds, funded through property taxes, to construct a 242-mile aqueduct from the Colorado River that would provide a needed water supply for future generations of Southern Californians. At that time, these urbanized areas had a combined assessed value of approximately $2 billion. Today, urban Southern California has an assessed property value of approximately $2 trillion. A secure reliable water supply has been one of the primary drivers fueling the great economic engine of this region for decades. If Southern California were a nation, it would be the 16th largest economy on the globe, just behind Mexico and ahead of Indonesia.

A generation after Metropolitan was formed, the district in 1960 became the cornerstone of the effort to build the California State Water Project. That same year, the state's voters approved bonds to finance the construction of the project. The SWP was the most expensive water project ever constructed and Metropolitan agreed to finance 50 percent of the project with a 75-year financing commitment. This water system, a modern engineering marvel, provided an additional water supply to the region from Northern California via the Feather River in the northern Sierra Nevada Mountains, down into the Sacramento River, then across the Delta. From there, pumps lift the water into aqueducts that eventually lead to the San Francisco Bay Area, Central Valley, and Southern California. This project now provides about 30 percent of Southern California's water supply. Some of the issues before us today pertain to how to best operate and manage this project amid new challenges of declining fish species, various stressors that threaten the health of the Delta estuary and climate change.

Federal and State Commitment to State Water Project

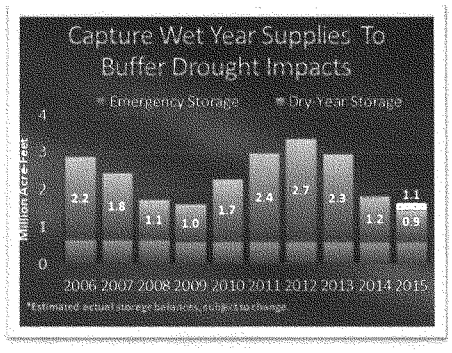
"Things do not happen. They are made to happen.

Drought: Lessons and Responses Past and Present

The weather of the West is marked by dramatic shifts in hydrology ranging from deluges to droughts. Yet, our economy depends on a steady and reliable water supply. Drought cycles in particular have played an important role in re-examining water policies to better prepare for the future.

A generation after the historic investment in the State Water Project came the drought of the late 1980s and early 1990s. This led to significant water shortages in the Southland and a complete rethinking of Metropolitan's water management programs, investments and planning objectives. Since that time, the region has spent billions of dollars to develop new and improved infrastructure that can transport and store imported water supplies in wet years in order to have sufficient supplies in reserve for drought and emergencies. Overall, Metropolitan has increased its network of local storage assets more

than 13-fold since the early 1990s. Metropolitan currently has capacity to store more than 5.5 million acre-feet of water above and below-ground. Thanks to these investments, we entered the current drought cycle with more water in storage than at any time in our history.



Investing in storage was one important lesson learned from previous droughts. Diversification of supply was another. Soon after managing through the drought of 1991, Metropolitan turned its attention to developing its first long-term water vision, our Integrated Water Resources Plan (IRP). That plan was adopted in 1996. It provided a road map for the coming generation to expand conservation through plumbing code reforms and device subsidies to make homes and businesses more water efficient. Metropolitan also began to provide direct financial assistance to local agencies that sought to develop their own supplies including recycled water, groundwater cleanup and storage projects. While Southern California has five million more people than it did in 1985, total water use has not increased. Thanks to this lowering of per-capita water use, the region has conserved and stored more water rather than consuming it wastefully. The bottom line is this: Had we not reacted to the previous drought with sound improvements to our water management strategy, Southern California and all of the state would be in the throes of a water crisis far greater than what we are facing today.

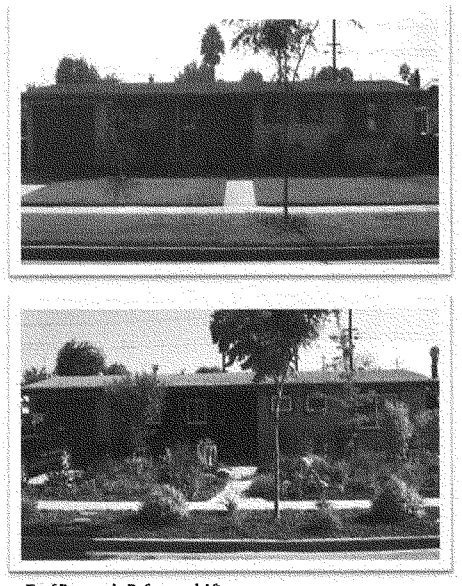
Lake Oroville

And now, a generation after the drought of 1991, a much more severe drought is gripping California. It comes at a time when monumental water policy issues are before this Committee, Metropolitan, California and the West.

Historic Drought Conditions Require Unprecedented Actions

This drought is straining California and the Metropolitan system unlike any before. The northern portion of our distribution system depends on supplies arriving from Northern California via the State Water Project, yet the lack of a Sierra snowpack has significantly curtailed these deliveries. Our local supplies from Southern California's groundwater basins have been greatly reduced by the absence of rain. The physical ability to move water from our

Colorado River system to these basins had been limited or non-existent, requiring changes to this distribution system.



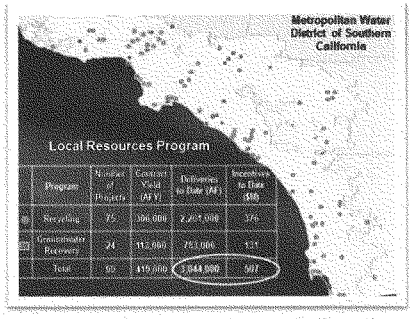
Turf Removal: Before and After

In response to the current drought, Metropolitan has invested in the largest conservation program not only in its history and California's, but the largest seen anywhere in the nation. Earlier this year, our Board directed $450 million into a series of durable permanent conservation efforts such as rebates for turf removal, low-flow showerheads and toilets, and high-efficiency dishwashers and washing machines. We estimate that more than 170 million square-feet of turf will be removed as a result of this effort, which is more than three times the statewide goal set by Governor Jerry Brown in an executive order last April. The total conservation program is projected to save more than 70 million gallons of water a day for Southern California, or enough water for 160,000 households. The district is also conducting a $5.5 million public education and outreach campaign in five languages to help all Southern Californians make lasting and permanent reductions in the water they use. The campaign is getting the word out and Southland communities are meeting the goal set by Governor Brown for a 25 percent reduction in residential urban water use during this drought.

A New Metropolitan Vision Amid New Circumstances: Groundwater

To build on these past successes and prepare for future growth, climate change and other challenges to water supply, Metropolitan is currently updating its IRP, to provide an even more robust long-term water resources strategy to meet our mission of providing a high quality, reliable water supply for its service area. While the work is not complete and our Board has yet to make final decisions, the analysis to date is providing new and valuable insights.

Some of the most compelling findings relate to groundwater. Southern California is fortunate to have large and productive groundwater basins in parts of our service area. All have been carefully managed and operated for decades. Yet because of this drought, these groundwater basins have been tapped to nearly the full extent of their sustainable management ranges. The basin managers are telling us to expect lower yields in the future. Collectively, the loss in groundwater production is roughly equivalent to the amount of water necessary to serve a city the size of San Diego for a year.

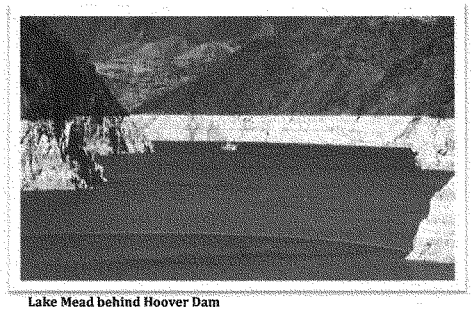


Program	Number of Projects	Contract Yield (AFY)	Deliveries to Date (AF)	Incentives to Date ($M)
Recycling	75	306,000	2,267,000	376
Groundwater Recovery	24	112,000	753,000	131
Total	99	419,000	3,044,000	507

While these groundwater basins are partially recharged by local rainfall, imported water provided by Metropolitan is absolutely essential to replenishing the basins. Metropolitan has provided financial assistance to develop recycled water for years, but we are now exploring a maiden effort with the Sanitation Districts of Los Angeles County to develop the largest single water recycling project in the nation. Currently, the Sanitation Districts operate a facility near the Los Angeles International Airport that treats wastewater and discharges it to the Pacific Ocean. We are exploring large-scale recycling to purify this water to drinking water standards and use it to replenish groundwater basins in at least three counties. This project will take decades for full build-out and will be an important new source of water. Yet even at full capacity, it will not make up for all of the expected decrease in yield from the region's groundwater basins.

The Colorado River

Southern California depends on the Colorado River for about 25 percent of our supply. But the River has been experiencing drought conditions since the turn of the century. The long-term studies point to an imbalance between supply and demand. Overall, California has the largest share of the River among the seven western states, with 4.4 million acre-feet of an allocated supply. Yet Metropolitan's share of the state's supply is only 550,000 acre-feet. Our Colorado River aqueduct has a capacity of more than twice that, at 1.2 million acre-feet. The aqueduct historically ran at full capacity when that water was needed because of surplus conditions on the River and unused



Lake Mead behind Hoover Dam

allocations by other states. But that chapter in our water history is now behind us. Ahead of us is the challenge to work cooperatively among the Basin states and with our intra-state agriculture partners.

A leading example in our partnership with agriculture is the one we have forged in California's Palo Verde Valley in the Sonoran Desert south of the Mojave Desert and within Riverside and Imperial counties. Palo Verde has some of the most senior water rights on the River. We have a voluntary program with farmers in that valley to fallow a portion of their land in drought cycles, when we at Metropolitan are looking for additional water supplies for a full aqueduct. We paid farmers to enter this program and provide additional compensation every year in which we fallow lands for supply. In so doing, we have provided the community with funds for local economic development projects while supporting agriculture. Metropolitan also owns farmland in this valley. Recently our Board of Directors approved the purchase of additional lands in the valley, providing even greater opportunities to both maintain agriculture activities and provide water supplies to Metropolitan when needed. This project alone does not solve our challenge of stabilizing our overall supply of water from the Colorado River. But it does exemplify the kind of partnership that is possible and needed in the years ahead. All of us who depend on the Colorado River must work towards closing the gap between supply and demand in each state.

Federal Government Can Help California Meet Drought Challenges

These various examples of what is happening inside Metropolitan point to the fact that there is no single solution to Southern California's water challenge. We need to embrace an "all of the above" strategy to provide reliable water supplies in the future. This begins with local actions such as Southern California's longstanding commitment to conservation, more storage and sound groundwater management. While we have invested in many of these actions through local water rates, outside financial assistance can greatly accelerate progress. That is why partnering with the federal government is so important to meet the challenges ahead.

We support the efforts of S. 1894 to provide additional funding and foster regulatory incentives to ensure greater water supply reliability and reduce water use throughout our region. S. 1894 includes funding for the WaterSense labeling and certification program, and supports innovative water supply and conservation technologies. The federal government can also help us prepare for future droughts with long-term planning and projects that will expand our water supplies. S. 1894 includes a competitive grant program through Title XVI to authorize $200 million in recycled water funding through 2020. Partnering in these investments can help diversify water portfolios throughout the West.

S. 1894: Fostering Progress in the Delta

An "all of the above" strategy also means that, while we will need more local supplies and conservation, imported supplies will remain the foundation on which we build. That is why hearings like this are so important to help us work together to solve the ongoing challenges in the Delta.

In California, every storm is precious. Every opportunity to safely capture supply is important. Wet periods can provide California the water to keep in storage to survive future droughts if there is sufficient storage to capture and adequate plumbing to move the supply. S.1894 has provisions that will allow us to manage storm flows better in the short-term and helps to develop long-term storage.

Both California's State Water Project and the U.S. Bureau of Reclamation's Central Valley Project face operational restrictions that threaten our ability to capture peak storm flows when they pass through the Delta. A few winters ago, as an example, the first major storm of the season in December brought a sub population of adult delta smelt, a state and federally listed species, southward toward the project pumps in a plume of turbid water. A small number of these fish were detected at the pumping facilities of the two projects. Within days the facilities were forced to the lowest levels of pumping for the year in an effort to protect the smelt. Meanwhile the water supplies flowing through the Delta were at the highest level of the year. A precious opportunity to capture water supplies was lost. As a result in the following weeks, the systems failed to capture a quantity of water that would have been sufficient to supply the entire city of Los Angeles for more than a year. And this lost opportunity occurred in the midst of a four-year drought when every drop was sorely needed. Moments like this have reinforced for Metropolitan the need to modernize the state's water system's infrastructure and to improve real-time monitoring and operations in the Delta so that sensitive species and public water supplies are both protected. S. 1894 is a prudent, positive and rational response to challenges such as this.

Regarding S. 1894, this testimony includes three attachments that help guide Metropolitan's positions on this specific legislation and the Delta overall. In 2007, our Board set specific benchmarks to assess any potential solution to the Delta water system and ecosystems. Some proposals satisfy some of the benchmarks. Very few work to meet all the needs of the environment, reliable water supply, seismic risk, water quality and other challenges. Those benchmarks are attached. So are principles that the Board recently adopted to analyze federal proposals such as S. 1894. Lastly, Metropolitan's Board approved a detailed position supporting S. 1894 while advancing a series of specific amendments. At the present time, our Board does not have a position on H.R. 2898, but we note that many provisions in the bill are similar to concepts set forth in S. 1894.

An important feature of S. 1894 is its emphasis on better monitoring on a real-time basis to understand the abundance and location of important fish species such as salmon and smelt in the Delta. While Metropolitan supports water supply restrictions when they are scientifically demonstrated to be necessary to protect endangered species, we firmly believe there are missed opportunities to safely capture water supplies within the confines

of the existing biological opinions that could be regained if the agencies had better information. Good monitoring and good measurement, using sound science, will lead to better management. We lost a number of opportunities to safely capture water back in 2013 and 2014. In 2015, with help from the federal agencies, California made great strides in effectively managing the system, learning from past mistakes. We will need more of this cooperative effort as we move forward. With even better monitoring and information, the agencies could do better tomorrow.

Working within the Endangered Species Act, we support actions to address ongoing conflicts between water supply operations and native fisheries through enhanced scientific modeling and real-time monitoring for the benefit of people and fish. Every effort to protect migrating fish species on the San Joaquin River system should be taken, including pilot efforts such as transporting some of these fish via barges. Sacrificing public water supplies as the solution has not worked and will not work, but there are significant opportunities to address ecosystem and fisheries issues that should be pursued.

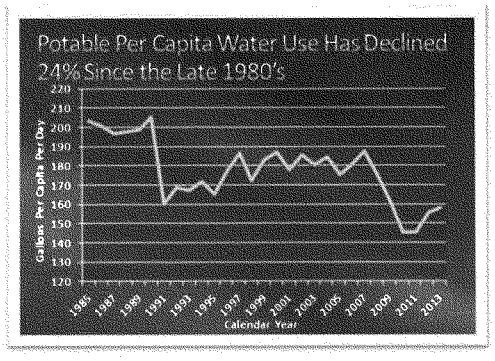
Among our drought legislation priorities is the need for legislative solutions that have strong bipartisan support. Southern California is an extraordinarily diverse region. Metropolitan could not function as the leading water planner for Southern California if our board members did not work jointly to embrace the common challenge and find that common ground. This same spirit of cooperation and collaboration must guide efforts to successfully address water issues today and in the future. Water is not a partisan issue. It's a health and safety issue. Fish, farms and families all need water to survive and our economy depends on it. We need everyone working together to address the drought impacting California and help us prepare for a reliable water future in the West.

California's Water Action Plan: A State-Federal Partnership

At this moment in California's fast-evolving water history, we find ourselves at more than a single crossroad. S.1894 attempts to address the immediate crisis of drought and provide important direction to better manage existing water systems to endure future droughts. The California WaterFix process, supported by the state and federal administrations, is advancing a historic set of long-term improvements to the water system. These plans seek to address existing conflicts with sensitive fish species and protect public water supplies for generations to come from seismic events, floods, climate change and other challenges. The state and federal agencies are on track to have a final plan next year and that will be the time when Metropolitan and other participating public water agencies decide whether to invest in the improvements and water operations as advanced by this plan.

The tandem California EcoRestore program seeks to accelerate restoration of tidal marsh and floodplain habitat, most of which has been lost over the past century and a half due to reclamation activities. Additionally, the State Water Resources Control Board is embarking on proceedings to identify water flow objectives and responsibilities in both the San Joaquin and Sacramento river watersheds.

The challenges are many and they are outlined in Governor Brown's Water Action Plan, which Metropolitan fully embraces. The plan advances the much-needed "all of the above" strategy. As an example, conservation is happening at record levels throughout California during this drought, but it must become a permanent and lasting change in our lifestyle. Lowering water demand has been part of Metropolitan's portfolio approach since the 1990s and will continue to be. Yet one worthy water management effort does not negate the need for another. In fact, one effort builds upon another. We also need modernized systems to safely and efficiently move water supplies from one part of the state to other regions. We need additional storage above- and below-ground to store these conveyed supplies. We need action at a local, regional, and state level to plan, invest, and innovate to provide safe reliable water supplies in ways that also protect the environment. This action plan, and the steps underway at Metropolitan, embrace every tool in the toolbox to make progress in the months and years ahead.



The Delta: A Key to Statewide Progress

Because of its strategic position in California water supply, the Delta is inevitably a center of political and policy discourse on water for the state and the West. John Muir explored the Sierra and coined it our Range of Light. In an average year, the Sierra Nevada is our largest supply of water, whether it be rain or snow. The 700,000 acre Delta is where the rivers of the western Sierra merge before heading to San Francisco Bay. It is the largest estuary on the West Coast of the Americas, home to 750 species of plants and animals, and supplies freshwater to more than 27 million Californians and three million acres of farmland. It is at the center of any reasoned and rational discussion on the future of water management in our state.

Our state has many regions, many views and many perspectives. Yet there is no getting around the need to properly manage the Delta and the water supply that flows through it for the good of the California economy and environment. With a sense of common purpose, we recognized that the consequences of inaction are simply unacceptable. There is no viable status quo. And we are confident that there is sufficient common ground that can be found via S.1894 and other proposals now before Congress.

We thank you for your efforts and leadership on these issues. We hope that you will look to Metropolitan to continue to be a constructive participant in addressing the many

water challenges that we all face today and in the future. Thank you again for the opportunity to testify today.

MWD
METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Water Planning and Stewardship Committee

September 11, 2007 Board Meeting

Revised 8-4

Subject

Adopt criteria for conveyance options in implementation of Long Term Delta Plan

Description

Overview In June 2007, Metropolitan's Board approved a Delta Action Plan that provides a framework for actions to build a sustainable Delta and reduce conflicts between water supply conveyance and the environment (**Attachment 1**). Additional detailed information on potential near-, mid-, and long-term actions, and their water supply planning implications, were provided in written and oral reports to the Board in July and August 2007.

The approved Delta Action Plan also established a process where staff would provide monthly updates to the Board on Delta-related processes and would seek board direction on key issues including: Bay-Delta legislation; administrative decision processes; and legal and regulatory decisions.

This board letter requests further board direction on key conveyance components being discussed in the Governor's Delta Vision Process and the Bay-Delta Conservation Plan. Other near-term actions previously brought before the Board are summarized below.

Near-Term Actions. Recent action by the California Department of Water Resources and U.S. Bureau of Reclamation to curtail pumping of the State Water Project and Central Valley Project from the Delta to protect Delta smelt underscores the incompatibility of how water is conveyed to California's economy and protection of in-Delta native fisheries. While the shutdown was temporary, the underlying need to protect Delta smelt and other fisheries is likely to challenge Metropolitan and other Delta export users with more prolonged water supply curtailments and potentially serious economic consequences throughout the state prior to the implementation of a long-term solution. The following is a set of near-term actions previously brought before the Board that staff is moving forward on:

- Post-Event Emergency Response Plan. Analyses from the Delta Risk Management Study state there is a significant risk of levee collapse from an earthquake or flood in the Delta. Consistent with April 2007 board direction regarding implementing a Post-Event Strategy, efforts are being made to secure state approval and funding for a Delta Levees Emergency Preparedness and Response Plan, including pre-placement of rock and material in key locations throughout the Delta.
- Real-Time Operations and Monitoring. Current operations of the state and federal pumping plants in the Delta rely heavily on prescriptive flows and water quality standards to assist in maintaining a viable ecosystem for fisheries. However, these standards do not take into account the natural variability of runoff patterns, tidal cycles, temperature and other factors that significantly affect fish migration and consequently salvage of fish at the state and federal pumping plants. In an effort to minimize fish salvage, efforts are being made to fund and implement real-time fish monitoring/tracking along with integrated, real-time operations of the Delta Cross Channel and Sacramento and San Joaquin River flows.
- Temporary & Reversible Eco-Crescent/Middle River Corridor. In addition to the real-time operations and monitoring, additional near-term, stop-gap efforts are being further analyzed to turn a portion of the estuary from a habitat area with conflict for smelt into a safe haven, away from the north-to-south movement of water supplies to the Bay Area, Central Valley and Southern California. This effort would include a series of temporary and removable rock barriers with tidal-gates, located strategically on four waterways in the

southern Delta, to create a physical separation between the flows for water supply and the nearby rearing habitat for smelt. These temporary structures would only be in place and operated from February through June when Delta smelt enter the Delta to spawn and rear. This project would include funding for real-time monitoring and operation of these gates, and assessments would be made to ascertain whether a more permanent structure should be constructed later as part of a more comprehensive Delta Vision.

Long-Term Delta Vision Alternatives. In addition to the ongoing effort to resolve near-term issues, two efforts are in progress to develop long-term solutions to resource management conflicts within the Sacramento-San Joaquin Bay Delta system: the Bay-Delta Conservation Plan (BDCP) and the Governor's Delta Vision process. The BDCP is a voluntary effort initiated by water user representatives and state/federal fishery regulatory agencies to develop a conservation plan that will serve as the basis for long-term federal and state endangered species act operational permits for the SWP and CVP. The Governor's Delta Vision process is an effort to develop a specific long-term alternative for addressing Delta resource conflicts and a strategic plan for implementation.

As initially reported to the Board at its workshop in July 2007, four alternatives are under discussion by the Governor's Delta Vision Stakeholder Coordination Group, which advises the Blue Ribbon Task Force. These alternatives include:

1. Existing Delta (with fortified levees)
2. Eco-Crescent/Middle River Corridor Conveyance
3. Dual-Intake Facility (Eco-Crescent + Isolated Conveyance Facility)
4. Fully Isolated Facility

On August 4, 2007, the Delta Vision Stakeholder Coordination Group submitted a report to the Blue Ribbon Committee that narrowed the list of recommended alternatives for further analysis to the Eco-Crescent/Middle River Corridor Conveyance and the Dual-Intake Facility. In addition to these alternatives, the Governor's Blue Ribbon Task Force has received a number of other alternatives from various groups and individuals. The Task Force has begun narrowing down the alternatives and intends to select a Delta Vision to move forward in its Phase I Report to the Governor's cabinet-level Delta Vision Committee. The Phase I Report is due on January 1, 2008,[1] and will include a vision for sustainable management of the Delta's multiple uses, resources and ecosystem.

Phase II of the Governor's Delta Vision effort includes development of a Strategic Plan to drive implementation of a Vision, addressing related governance, funding and system management issues relative to that Vision.

Proposed Direction on Delta Vision Alternatives. In August, the four alternatives listed above were reviewed with the Board. Each alternative was evaluated with feasibility-level modeling of water supply and water quality impacts, and quantitative information regarding environmental enhancement and costs. The alternatives were also compared to the Metropolitan Board principles (April 2006) relating to development of a long-term Delta Vision.

Although Metropolitan staff is continuing to participate in the collaborative BDCP and Delta Vision efforts to further analyze the pros and cons of these alternatives, after a review of existing analyses and board policies, staff proposes the Board adopt the following criteria to further clarify Metropolitan's position on the water supply conveyance element of the long-term solution:

1. Provide water supply reliability. Conveyance options need to provide water supply reliability consistent with DWR's most recent State Water Project Reliability Report (2005).

2. Improve Export Water Quality. Conveyance options should reduce bromide and dissolved organic carbon concentrations. Existing in-Delta intakes cause direct conflict between the need to reduce organic carbon to meet stricter urban drinking water standards, and the need to increase carbon to promote a healthy food web for fish.

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[1] The Delta Vision Committee is comprised of the Secretary of Resources as Chair, and the Secretaries of Business, Transportation & Housing, Food & Agriculture, and Cal-EPA; and the President of the California Public Utilities Commission.

3. Allow Flexible Pumping Operations in a Dynamic Fishery Environment. Water supply conveyance options should allow the greatest flexibility in meeting water demands by taking water where and when it is least harmful to migrating salmon and in-Delta fish species. All options should reduce the inherent conflict between fisheries and water conveyance.
4. Enhance Delta Ecosystem~~Fishery Habitat Throughout Delta~~. Conveyance options should provide the ability to restore fishery habitat throughout the entire Delta ~~(not just in partial areas)~~ and minimize disruption to tidal food web processes, and provide for fluctuating salinity levels.
5. Reduce Seismic Risks. Conveyance options should provide significant reductions in risks to export water supplies from seismic-induced levee failure and flooding.
6. Reduce Climate Change Risks. Conveyance options should reduce long-term risks from salinity intrusion associated with rising sea levels. Intake locations should be able to withstand an estimated 1- to 3-foot sea-level rise in the next 100 years.

Future Recommendations. As outlined in Metropolitan's Delta Action Plan, staff will seek board direction on other key issues including funding for environmental restoration, governance and financing issues, levee improvements, potential infrastructure or floodway corridors, sizing and location of an isolated facility component, potential legislation, and other key components of the Governor's overall Delta Vision.

Policy

By Minute Item 45753, dated May 11, 2004, and Minute Item 46637, dated April 11, 2006, the Board adopted a set of Delta policy principles to ensure a solid foundation for development of future Metropolitan positions and to provide guidance to Metropolitan staff.

By Minute Item 47135, dated May 25, 2007, the Board supported, in principle, the proposed Delta Action Plan, as set forth in the letter signed by the General Manager.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves continuing administrative activities such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines). For future, and not yet known, proposed projects, the appropriate lead agencies will be responsible for complying with all applicable federal and state environmental laws and regulations.

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA detrmination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and conveyance criteria, as described in this board letter, for water supply conveyance options in a long-term Delta Vision.

Fiscal Impact: None

Business Analysis: The recommended conveyance criteria would be beneficial in reducing conflict while enhancing the Delta ecosystem, water quality, and water supply reliability. It would also reduce longer-term risks associated with seismic-induced flooding and sea-level rise.

Option #2

Do not adopt conveyance criteria.
Fiscal Impact: None
Business Analysis: Metropolitan's ability to influence conveyance criteria will be significantly reduced. Criteria established by others may not meet Metropolitan's water supply and financial interests.

Staff Recommendation

Option #1

Stephen N. Arakawa 9/7/2007
Stephen N. Arakawa *Date*
Manager, Water Resource Management

Debra C. Man 9/7/2007
for Jeffrey Kightlinger *Date*
General Manager

Attachment 1 – Metropolitan Water District Delta Action Plan

BLA #5548

METROPOLITAN WATER DISTRICT

DELTA ACTION PLAN

I. Overview

The Delta is the hub of California's water supply and is critically important to the entire state. The Delta is in a state of ecological crisis and is not sustainable unless action is taken. Building a sustainable Delta will require significant investment and will take decades. The Delta Action Plan must prioritize immediate short-term actions to stabilize the Delta while an ultimate solution is selected, and mid-term steps to maintain the Delta while the long-term solution is implemented. By 2020, California should have a long-term solution for the Delta in place that can be adjusted and adaptively managed to deal with the coming changes from climate change and California's continued population growth.

II. Short-Term Action Plan

The Governor's Delta Vision Process calls for a recommendation from the Delta Vision Blue Ribbon Task Force to be made by January 2008. SB 27 (Simitian, et al.) urges the Task Force to make its recommendation based on the findings of the Public Policy Institute of California Delta Report for legislation to be enacted in 2008. While 2008 will be the year for selecting a course of action on the Delta, actions must be taken over the next 18 months to stabilize the current situation. These actions include the following: securing state and federal Endangered Species Acts take authorization; emergency preparedness steps to prepare for possibility of catastrophic failure in the event of earthquake or flood; actions to enhance habitat for Delta smelt and other pelagic species; completion of the Bay-Delta Conservation Plan (BDCP); and actions to begin work on ecosystem restoration projects that will help species regardless of which ultimate solution is selected (e.g., marsh restoration, island rebuilding.)

III. Mid-Term Action Plan

Upon selection and enactment of an ultimate Delta solution, it will likely take ten years or more to complete environmental documentation and construct new facilities. During this period, it will be necessary to maintain the stabilization process of the Delta through the following actions: continue implementation of the BDCP projects; continue with selected habitat and fishery improvements to improve Delta native species; begin implementing flood control protections, including bypasses and levee improvements; finalize site selection and environmental documentation for new storage projects; implement new governance structures for managing the Delta; and undertake implementation of the long-term Delta solution.

IV. Long-Term Action Plan

The Long-Term Action Plan must take a global, comprehensive approach to the fundamental issues and conflicts in the Delta to result in a truly sustainable Delta. A piecemeal approach cannot satisfy the many stakeholders that have an interest in the Delta and will fail; there must be a holistic approach that deals with all issues simultaneously. In dealing with the basic issues of the Delta, solutions must address the physical changes required, as well as the financing and governance. There are three basic elements that must be addressed: Delta ecosystem restoration; water supply conveyance; and flood control protection and storage development.

A. **Delta Ecosystem Restoration** – A complete Delta restoration plan must address land use, growth, agriculture, water usage and conveyance, and the aquatic and land habitat of the Delta through the following elements:

- **Bay-Delta Conservation Plan** – The BDCP is a subset of Delta restoration primarily focused on the aquatic environment of the Delta and will address fishery issues.

- **Habitat Land Acquisition and Restoration** – A portion of the Delta will need to be restored to native marsh habitat for protection of aquatic and terrestrial species.
- **Sustainable Agriculture** – Programs will be needed to maintain sustainable agriculture within the Delta in ways that limit oxidization of soils, rebuild Delta islands, limit carbon production, improve water quality and provide habitat opportunities.
- **Governance** – Management of Delta restoration will require a governance structure such as a conservancy or special district that has financing and land use powers and can manage a program within multiple counties.
- **Financing** – Costs of restoration must be shared by multiple parties with water exporters and other utilities helping finance the BDCP, the state paying for broad public benefits, developers within the Delta area paying for development rights, etc.

B. **Water Supply Infrastructure** – The current practice of using Delta channels and levees for water conveyance is not sustainable. Delta species require fluctuating salinity levels that will be harmful to drinking water quality. The levees are unstable and pose a constant threat of collapse. In addition, global warming threatens water supply with rising sea levels and increased flooding. Either new Delta conveyance infrastructure must be constructed or there will be significant reductions in Delta exports requiring new water facility development elsewhere to replace lost water supplies. Important elements of this needed infrastructure include:

- **Isolated Facility** – If water supply is to be maintained, that water must be separated from Delta water supplies through construction of an isolated facility either in or around the Delta. The three isolated facility alternatives in the PPIC Report must be analyzed to determine which performs best for water supply reliability, is cost-effective, protects against earthquakes and floods, provides water quality, deals with rising sea levels and allows for Delta salinity fluctuation for native species protection.
- **Eco-Delta/Reduced Exports** – If an isolated facility is not constructed, the PPIC Report recommends that a fluctuating salinity Delta be achieved primarily through a reduction in water exports. This approach must be thoroughly analyzed to determine the economic consequences of loss in water supply, whether reduced exports will actually protect species, and identify additional water supply facilities that would be required.
- **Governance** – Management of the State Water Project should be given to a separate agency tasked with the single mission of managing and operating the Project. This would separate the utility function from the Department of Water Resources thereby removing conflicts within DWR in its role of operating a utility for certain contractors while providing state-wide water planning. Appropriate forms of such an independent agency include a special district or a joint powers authority. This new entity would continue to be regulated by state and federal agencies and all applicable laws.
- **Financing** – State and federal water contractors should pay for the operation and management of the water supply projects, including construction of new water infrastructure such as an isolated facility. A state decision to reduce exports should be financed by the state including payment for lost agriculture lands and financing for replacement of water supplies.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Communications and Legislation Committee

8/18/2015 Board Meeting

Revised 8-4

Subject

Adopt legislative priorities for federal drought legislation

Executive Summary

Multiple federal bills have been introduced in Congress to respond to drought conditions in the western United States, particularly in California. The proposed bills vary widely in approach and have been the subject of considerable debate and media attention. To ensure a consistent response to these proposals, staff recommends the Board adopt specific legislative priorities that articulate Metropolitan's policy goals to help California respond to current drought conditions and prepare for long-term future droughts.

Details

In response to historic drought conditions in the West, California's Congressional delegation introduced several bills in 2014 to provide financial, regulatory or policy-based assistance to California. Despite the broad concern over increasingly severe reports of drought conditions, however, none of those bills received approval from both the House of Representatives and the Senate.

This year, drought conditions have worsened, and several members of the California delegation are again attempting to bring California relief through federal legislation. Earlier this year, Senator Boxer and Representative Napolitano reintroduced S. 176 and H.R. 291, companion legislation entitled the Water in the 21st Century Act, for which Metropolitan has adopted support positions (based on identical legislation introduced and supported in the 113th Congress). On June 25, Representative Valadao introduced H.R. 2898, the Western Water and American Food Security Act of 2015, cosponsored by Representatives Calvert, Costa, and 23 other members of Congress. On July 8, Representative Huffman introduced H.R. 2983, the Drought Recovery and Resilience Act of 2015 with Senator Boxer introducing companion legislation S. 1837 on July 22. Additionally, on July 29, Senator Feinstein introduced S. 1894, the California Emergency Drought Act of 2015. Members from other western states are also expected to introduce legislation related to the drought, in addition to several other single subject bills that have been introduced related to water supply and system improvements.

To date, the introduced bills vary widely in their approaches. Some are aimed at funding long-term water supplies, such as recycling. Others attempt to streamline regulations, expand operational flexibility, fund conservation or expedite current water supply projects. There has been strong partisan difference in the approaches that has made consensus difficult to achieve. Given the severity of the current drought and the likelihood of future water shortages, legislation that provides federal funding and regulatory assistance, and recognizes scientific advancements, would offer the most comprehensive solution for regions impacted by drought. Also, a successful measure will require bipartisan support in order to pass both the House of Representatives and the Senate and ultimately secure the President's signature. Currently, the only bill to successfully secure passage in either house is H.R. 2898 (Valadao), which passed the House of Representatives on July 16, 2015. Other bills have yet to be scheduled for mark-up.

In December 2014, the Board adopted a set of legislative priorities (**Attachment 1** and **Attachment 2**), including a priority related to the drought, which reads as follows: "Support administrative or legislative actions to respond

to drought, including funding for immediate water supply improvements, while maintaining environmental protections." In order to encourage the development of a successful, comprehensive drought relief package, staff recommends the Board augment its current 2015/16 Legislative Priorities with the following additional drought priorities:

Federal drought legislation should specifically:

1. ***Reflect broad, bipartisan agreement***: Metropolitan urges federal leaders to identify and adopt legislation that can pass Congress and secure a signature from the President. This priority is not born of policy, but of the reality that divided federal leadership requires all stakeholders to identify policy that can win bipartisan agreement broad enough for legislation to have any chance of success.
2. ***Provide funding and regulatory assistance for regions affected by the drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water***: Immediate attention should be given to projects that can help communities respond to the current drought crisis, but only long-term planning and projects that make our water supply more resilient and reliable will prepare California for climate change and future droughts.
3. ***Provide funding and regulatory incentives for conservation and water use efficiency measures***: Consistent with 2003 board-adopted principles on Water Conservation, this legislative priority urges passage of legislation that could provide direct funding and regulatory incentives to support urban retrofit actions and efficiency programs that reduce water use. Other than water transfers, conservation and water use efficiency are the most immediate actions water agencies can take to balance reduced water supplies with demands. By investing in demand reductions, agencies like Metropolitan can further improve its ability to maintain limited water reserves in storage, extending the region's ability to withstand prolonged drought. The increased media attention and public awareness of the need to conserve during a drought also provides agencies with the opportunity to successfully change behaviors and encourage conservation as a way of life. This helps Metropolitan attain its goal of reduced per capita water use and attain compliance with state mandated reductions of 20% by 2020.
4. ***Protect State Water Project (SWP) and local water supplies and ensure SWP and local water supply reliability.*** On average, the SWP supplies more than 50 percent of the water that Metropolitan provides to its customers in Southern California, and makes up fully one-third of the water supply for the entire region. In recent years, both the quality and the quantity of SWP supplies have eroded due to various conflicts and conditions in the Sacramento-San Joaquin Delta. Federal Central Valley Project water supplies have been similarly impacted. California is suffering statewide impacts from the drought; therefore, any legislation that could yield additional supplies merits consideration. However, as agencies seek to improve their water supplies, Metropolitan should guard against legislative policies that shift impacts or liabilities to the SWP. While Metropolitan plans to meet all future growth in water demands through investments in conservation and local supply development rather than increase imported supplies, protecting SWP and local supplies and reliability continue to be critical priorities for the region.
5. ***Provide funding and regulatory incentives for conservation projects that increase the reliability of Colorado River water supplies to all users.*** With the Colorado River currently in its 15th year of drought and Lake Mead at record low levels, Metropolitan has been working with other urban entities in the Colorado River basin and the Bureau of Reclamation to implement conservation measures to increase water levels in Colorado River reservoirs. Additional funding and incentives to help this program and others like it are needed to help ensure long-term sustainable supplies in the Colorado River basin.
6. ***Work within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species***: Metropolitan urges adoption of legislation that will help facilitate water transfers and maximize SWP deliveries without weakening measures adopted under federal and state environmental laws like the ESA that protect listed species and their critical habitat. Metropolitan believes that by using an adaptive and collaborative science-based approach, under current existing laws, improvements can be made to water supply operations and existing biological restrictions that would not only enhance conditions for species but would also provide water supply benefits.

7. ***Provide direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, including data collection, scientific understanding, and real-time monitoring of listed Delta species***: Metropolitan supports increased funding for unbiased, sound science and research to improve species recovery efforts and further California's co-equal goals of improved ecosystem heath and improved water supply reliability as authorized by California's Sacramento-San Joaquin Delta Reform Act of 2009. Metropolitan urges adoption of legislation that would enhance the knowledge base on listed Delta species. Improved understanding of listed species would allow regulatory protections to be maintained or enhanced and could improve water supplies or supply reliability. For instance, real-time monitoring could allow for more flexible SWP operations that improve water supplies while meeting ESA regulatory standards. Improved understanding of listed Delta species and water project operations can reveal opportunities for improved implementation of existing regulatory standards, or new alternatives to achieve the same or better protections while improving water supplies. Should California experience heavy rainfall early this winter, enhanced monitoring and operations may enable the SWP to capture water that would otherwise be lost, helping offset future dry months. Additionally, better data may also allow project operators to temporarily suspend pumping for greater protection of Delta species to avoid "take" issues.
8. ***Encourage use of the most current scientific data and analysis to provide enhanced flexibility for water project operations***: Water project operations are too important, especially during a drought, to not be based on the most up-to-date scientific understanding of climate change, hydrology, and fish behavior and the effect of project operations on species survival and abundance. This principle bridges the potential gap between improved scientific understanding, policy, and implementation of operational measures that are at least as protective as existing regulations while improving water supplies.

Staff recommends that the Board adopt these additional drought priorities, which, in their breadth and the urgency of the situation, demonstrate the need for comprehensive drought legislation rather than piecemeal, single-issue bills. As multiple federal bills related to the drought advance, these additional priorities will help Metropolitan articulate its policy goals and offer both support and guidance to Congress and the Obama Administration as they negotiate solutions to California's water supply challenges.

Staff will return to the Board for discussion and formal action on drought legislation.

Policy

Supports Metropolitan's mission and reflects its overall water supply reliability and Bay-Delta objectives

Legislative Priorities for 2015/16, Minute Item 49980, dated December 9, 2014

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not defined as a project under CEQA and is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Adopt the proposed federal drought legislative priorities.

Fiscal Impact: Unknown
Business Analysis: If successful, new federal drought legislation could potentially provide short-term and long-term benefits to operations for current and future drought.

Option #2

Do not adopt additional federal drought legislative priorities.
Fiscal Impact: Unknown
Business Analysis: Not applicable

Staff Recommendation

Option #1

8/18/2015
Dee Zinke — *Date*
Deputy General Manager, External Affairs

8/18/2015
Jeffrey Kightlinger — *Date*
General Manager

Attachment 1 – Board Letter on Legislative Priorities for 2015/16, Item 8-3, dated December 9, 2014

Attachment 2 – Amendment to Legislative Priorities for 2015/16, Item 8-3, dated December 9, 2014

Ref# ea12638666

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Communications and Legislation Committee

12/9/2014 Board Meeting

8-3

Subject

Adopt Legislative Priorities for 2015/16

Executive Summary

This board letter outlines the state and federal 2015/16 legislative priorities recommended by staff for the Board's consideration and adoption.

Details

After consulting with Metropolitan member agencies in October 2014 and the Board Communications and Legislation Committee in November 2014, the following federal and state legislative priorities are submitted for your consideration and approval. The priorities for 2015/16 support Metropolitan's mission and incorporate its overall water supply reliability and water quality objectives.

Federal Legislative Priorities

Bay-Delta and State Water Project Improvements

- Support administrative or legislative action and funding to keep the Bay Delta Conservation Plan (BDCP) on schedule to advance conveyance and ecosystem improvements to meet the coequal goals of water supply reliability and Delta ecosystem restoration.
- Support administrative or legislative action and funding to advance emergency response and near-term Delta improvements, consistent with coequal goals.

Colorado River Initiatives

- Support continued funding authorization and coordination between states for continued implementation of the Lower Colorado River Multi-Species Conservation Plan.
- Encourage coordination between federal and state agencies to implement the Quantification Settlement Agreement.
- Promote continued funding and coordination between states for the Colorado River Basin Salinity Control Program under the Departments of Agriculture and Interior.
- Protect and preserve Metropolitan's interest in water conservation programs enabled by the Water Treaty between the United States and Mexico.

Drought Related Legislation

- Support administrative or legislative actions to respond to drought, including funding for immediate water supply improvements, while maintaining environmental protections.

Regional Water Resource Management

- Support legislation authorizing the U.S. Environmental Protection Agency (EPA) to provide grant funding for programs such as the Water Research Foundation to conduct research enabling water agencies to adapt to hydrologic changes.
- Support legislation authorizing EPA's *WaterSense* program and other federal incentive programs that promote water use efficiency and energy efficiency.

Water Quality

- Support local jurisdictions' continued use and storage of chlorine gas as treatment disinfectant. Support authorizing EPA oversight of water system security through updated vulnerability assessments and site security plans.
- Support legislation, initiatives and funding to protect and improve water quality from various constituents, including but not limited to chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.
- Support policies and administrative or legislative actions that protect surface water and groundwater supplies from energy development activities that may impair water resources. Covered energy development activities include, but are not limited to, enhanced oil and gas recovery techniques such as hydraulic fracturing.

Cybersecurity

- Support national associations' and coalitions' efforts to develop standard guidance and best management practices for consistent and ongoing actions to reduce vulnerabilities in process control systems for major water system providers.

Environmental Planning and Environmental Compliance

- Support administrative or legislative actions to improve clarity and workability of the National Environmental Policy Act (NEPA), and eliminate duplicative NEPA and state California Environmental Quality Act (CEQA) processes.
- Support administrative or legislative actions for environmental compliance (e.g., air, water, hazardous materials and waste) that provide for regulatory compliance flexibility, promote consistency and reduce regulatory duplication.
- Support administrative or legislative actions, including those related to the California Desert Wilderness Protection Act, to ensure the reliability and continuity of Metropolitan's system operations and real estate assets, including rights of way necessary to access Metropolitan's facilities.
- Support administrative or legislative actions, including those that address EPA's proposals related to the Clean Water Act definition of "waters of the United States," to ensure reliability and continuity of Metropolitan's water transfers, and water supply facilities and infrastructure.
- Support administrative or legislative actions to consolidate the review and oversight of anadromous species protection under the Department of Interior to eliminate duplication and increase efficiencies

Invasive Species

- Support administrative or legislative actions and funding for biological controls, mitigation management, and elimination of invasive species, including, but not limited to, quagga mussels and striped bass.
- Support administrative or legislative actions pertaining to invasive species that are consistent with, and in no way interfere with, existing interstate water transfers.

Energy Sustainability

- Encourage coordination to implement federal law that is consistent with Metropolitan's long-term contract for hydropower generated at Hoover Dam for the benefit of Arizona, Southern California and Nevada water users that rely on Hoover power to minimize costs to consumers.
- Support authorization for grant funding for energy efficiency, including programs to reduce greenhouse gases and develop renewable resources.
- Promote water/energy nexus legislative or regulatory activities that preserve Metropolitan's ability to pursue a wide variety of supply options and oppose constraints on supply development such as water resource loading orders based on energy intensity. Support legislation that provides renewable energy credits for both small and large hydroelectric facilities, irrespective of the facility's nameplate generating capacity.

Infrastructure and Public Finance

- Support measures to reduce the cost of financing water infrastructure planning and construction, such as tax-credit financing, tax-exempt municipal bonds, an expanded Water Infrastructure Finance Innovation

Act, or similar financing mechanism that funds new water supply infrastructure, including water conduits, pipelines, canals, pumping, power and associated facilities, the Environmental Infrastructure Accounts and other funding mechanisms.

- Support Bureau of Reclamation's Title XVI and WaterSMART programs.
- Monitor pension reform and Other Post-Employment Benefit proposals.

Appropriations Priorities

- BDCP planning and implementation funding for near-term projects, including near-term and emergency response projects.
- Farm Bill/USDA programs to support habitat projects in the Delta and agricultural water use efficiency projects in the Delta or in the Colorado River basin.
- Colorado River Basin Salinity Control Program.
- Colorado River drought resiliency projects.
- Water quality protection initiatives (e.g., chromium 6, nitrate, perchlorate, salinity, uranium, pharmaceuticals, personal care products, etc.).
- Biological controls, mitigation management and elimination of invasive species.
- Solar retrofits and other renewable energy and conservation projects.
- Water conservation and water use efficiency programs and water resource projects.
- Desalination and salinity management research, including funding for the Brackish Groundwater National Desalination Research Facility through the Desalination Reauthorization Act of 1996.
- Lower Colorado River Multi-Species Conservation Plan.
- Bureau of Reclamation Title XVI program.
- Climate change adaptation and mitigation research.

State Legislative Priorities

Bay-Delta and State Water Project Improvements

- Support administrative or legislative action and funding to keep the BDCP on schedule to advance conveyance and ecosystem improvements to meet the coequal goals of water supply reliability and Delta ecosystem restoration.
- Support administrative or legislative action and funding to advance emergency response, near-term Delta improvements and expenditures to support fish monitoring activities in the Delta consistent with coequal goals.
- Continue support for implementation of state policies adopted as part of the 2009 Delta Reform Act and water management package, including clarification of the monitoring and enforcement provisions related to in-Delta diversions.
- Support state funding for public share of Delta ecosystem restoration costs.
- Support administrative or legislative action to add storage statewide and to remove existing prohibition for state funding to raise Shasta Dam.
- Oppose administrative or legislative action that would unfairly shift procurement of renewable resources to the State Water Project, irrespective of transmission limitations, cost and portfolio availability.

California Water Action Plan

- Support implementation of the Brown Administration's comprehensive water strategy, consistent with Metropolitan's goals and objectives, to ensure effective drought management and near-term actions to guide development of programs and investments to meet the state's long-term water infrastructure needs.

Colorado River Initiatives

- Encourage coordination between federal and state agencies to implement the Quantification Settlement Agreement.

Regional Water Resources Management/Foundational Actions

- Support effective administrative solutions to improve the permitting process for proposed seawater desalination projects in California while complying with all existing environmental regulations, as initiated by AB 2595 (Hall, 2012).
- Support administrative or legislative action to promote recycled water as a water resource, without compromising the operational, financial, water quality, regulatory and customer interests of Metropolitan and other drinking water agencies.

Groundwater Management

- Monitor implementation of the 2014 Sustainable Groundwater Management Act, including subsequent legislation to address expedited adjudications and designation of groundwater recharge as a beneficial use.

Environmental Planning

- Support administrative or legislative action to improve clarity and workability of CEQA.
- Support administrative or legislative action for environmental compliance (e.g., air, water, hazardous materials and waste) that provide for regulatory compliance flexibility, promote consistency and reduce regulatory duplication.

Invasive Species

- Support administrative or legislative actions and funding for biological control, mitigation management and elimination of invasive species, including, but not limited to, quagga mussels and striped bass.

Energy Sustainability

- Support expanding definition to qualify state and local hydropower generation as renewable resource.
- Pursue allocation of Cap-and-Trade auction revenues or free allowances from the California Air Resources Board or other administering agencies for Metropolitan and Department of Water Resources/State Water Project, to be used for greenhouse gas reduction measures and related projects.
- Promote water/energy nexus legislative or regulatory activities that preserve the Metropolitan's ability to pursue a wide variety of supply options and oppose constraints on supply development such as water resource loading orders based on energy intensity.
- Continue to support and promote integrated water resources portfolio planning.

Water Quality

- Support local jurisdictions' continued use and storage of chlorine gas as a treatment disinfectant.
- Support legislation, initiatives and funding to protect and improve water quality from various constituents, including, but not limited to, chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.
- Support policies and regulations or legislation to protect surface water and groundwater supplies from energy development and other activities that may impair water resources. Covered energy development activities include, but are not limited to, enhanced oil and gas recovery techniques such as hydraulic fracturing.

Infrastructure and Public Finance

- Support "beneficiaries pay" approach as financing mechanism for statewide projects and programs.
- Oppose de facto taxes levied solely on water agencies for funding broader public benefits.
- Monitor implementation of 2012 pension reform legislation and Other Post-Employment Benefits reform initiatives for potential impacts on Metropolitan's long-term liability.
- Support legislation or administrative action that deters metal theft and protects critical public water infrastructure.
- Monitor implementation of the 2014 water bond, Proposition 1, and influence how water bond dollars are spent, both through program development — including regulations and guidelines at the agency and department level — and through the appropriation of bond funds through the state budget process.

Policy

Supports Metropolitan's mission and incorporates its overall water quality and supply reliability objectives.

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and adopt the Legislative Strategy for 2015/16.
Fiscal Impact: None

Option #2

Take no action.
Fiscal Impact: None

Staff Recommendation

Option #1

12/1/2014
Dee Zinke *Date*
Deputy General Manager, External Affairs

12/1/2014
Jeffrey Kightlinger *Date*
General Manager

Ref# ea12634028

From Communications and Legislation Committee

OTHER BOARD ITEMS - ACTION

8-3 At the Communications and Legislation Committee meeting on December 8, 2014, the Communications and Legislation Committee voted to adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and to adopt the Legislative Strategy for 2015/16 as amended in committee pursuant to a request by Director McKenney to add the phrase "from unacceptable risks" to the second bullet item in the Water Quality section for both federal and state legislative priorities, so that it reads: Support legislation, initiatives and funding to protect and improve water quality from unacceptable risks from various constituents, including but not limited to chromium 6, nitrate, perchlorate, salinity, uranium, various fuels and their additives, pharmaceuticals/personal care products, and other constituents of emerging concern.

With this amended language, the Board approved Option #1, to adopt the CEQA determination that the proposed action is not subject to CEQA and is categorically exempt, and adopt the Legislative Strategy for 2015/16.

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

BOARD ACTION

- **Board of Directors**
  Communications and Legislation Committee

9/22/2015 Board Meeting

8-5

Subject

Express support and seek amendments to S. 1894 (Feinstein, D-CA) – California Emergency Drought Relief Act of 2015

Executive Summary

S. 1894, the "California Emergency Drought Relief Act of 2015" was introduced on July 29, 2015 (**Attachment 1**) by Senator Feinstein and cosponsored by Senator Boxer. S. 1894 seeks to alleviate the impacts of the drought in California by: (1) directing federal agencies to use their authority and discretion under existing laws and regulations to improve water supply conditions through operational flexibility measures; (2) providing direction and funding for actions to benefit fish and refuges; (3) providing financial assistance for water supply, water conservation, and drought-alleviation projects; and (4) authorizing new programs and creating new financing and funding programs. Altogether, S. 1894 authorizes over $1.2 billion in appropriations over the next 10 years and directs spending of three times that amount between 2026 and 2050.

Details

Background

S. 1894 utilizes language from legislation introduced by Senator Feinstein in 2014 (S. 2016 and S. 2198), but has an expanded scope with provisions similar to other legislation introduced by other members of the California delegation in 2015. The author states that the goals of the legislation are "moving and creating water long-term to help those communities suffering the worst effects of the drought, while remaining completely compliant with environmental laws such as the *Endangered Species Act* and *Clean Water Act* as well as all biological opinions." Senate Energy and Natural Resources Committee Chairwoman Lisa Murkowski has announced that S. 1894 and other drought-related legislation will be heard at an October meeting of that committee.

Measures to Take Advantage of Operational Flexibility under Existing Law

Title 1 contains a number of actions that the Secretaries of Interior and Commerce are directed to take during the drought emergency or until September 30, 2017, whichever is later. Many provisions are similar to S. 2198 introduced by Senator Feinstein last year. For example, the Secretaries of Interior and Commerce are directed to "provide the maximum quantity of water supplies possible" to the water projects and "any other locality or municipality in the state." Title 1 contains provisions directing the Secretaries to act, including that the Secretaries ensure the Delta Cross Channel Gates remain open to the greatest extent possible; that they manage reverse flow in Old and Middle Rivers (OMR) to minimize water supply reductions to the projects (but as prescribed by the biological opinions); adopt a 1:1 inflow to export ratio for new transfer water during the spring; issue permits within the shortest practicable time period for temporary barriers or operable gates and for decisions on water transfers; have the National Academy of Sciences conduct a study on the effectiveness of saltcedar biological control efforts; and "use all available scientific tools to identify any changes to real-time operations" of water projects that could result in the availability of additional water supplies.

Actions to Benefit Fish and Refuges

S. 1894 authorizes nearly $60 million over five years to benefit listed fish species. The bill contains direction and authorizes appropriations for various actions to benefit listed fish species. In general, the authorizations are through 2020. It begins by authorizing funding for projects to recover listed salmonids, along with direction for federal agencies to expedite federal reviews and approvals of individual projects. Other projects include reports on the use of non-physical barriers; reports on adding gravel and other ways to restore additional salmonid rearing areas along with direction to implement restoration if it is feasible; a pilot program to test alternative hatchery release strategies; a pilot program to identify habitat that favors predatory fish to the detriment of sensitive native species and make recommendations (without implementation) of how to modify that habitat to reduce predation; and an assessment of whether reduced lighting at artificial structures would reduce predation and direction to implement recommendations. Other projects include evaluating and improving delta pump salvage systems; creating a pilot program to increase salmonid survival through the Delta using a trap and barge program for San Joaquin origin fish; and improved temperature modeling.

Financial Assistance for Water Supply and Demand-Management Projects

The bill also authorizes substantial financial assistance through a variety of federal programs for water supply, water conservation and water use efficiency projects, including desalination, storage, and recycling projects; emergency projects to provide drinking water to areas where water shortages pose a risk to public health and safety; on-farm water conservation actions; combating water theft for illegal marijuana cultivation; innovative water supply and conservation technologies; and establishing an open water data system within the United States Geological Survey to improve access to and exchange of water data and information for water management, education, research, assessment, and monitoring purposes.

New Programs and Authorizations

S. 1894 provides direction to existing programs to expedite drought relief and authorizes a number of new programs. Most notably, the bill authorizes the U.S. Bureau of Reclamation (Reclamation), without further Congressional approval, to partner in both federally owned and non-federal storage projects. This sea-change in federal policy would allow Reclamation's expertise to be shared more widely and could give more local control for projects, such as Sites Reservoir. The bill also calls for feasibility studies authorized under CalFed to be completed. In addition S. 1894 makes amendments to the Safety of Dams Act to allow increased reservoir capacity as part of a dam safety project. The bill also directs the Army Corps to identify and carry out five pilot projects to update operation manuals at federal and non-federal dams in states with a drought declaration.

Also of note, S. 1894 creates the Reclamation Infrastructure Finance and Innovation (RIFIA) Act. Similar to Transportation Infrastructure Financing and Innovation Act for transportation projects and Water Infrastructure Financing and Innovation Act (WIFIA) (authorized by WRDA) for certain water projects, RIFIA is a program to provide secured loans or loan guarantees for various infrastructure projects, but would be limited to water-related projects in the Reclamation states. Other provisions include authorizing the Secretary to designate, subject to certain conditions, the state as lead agency for the purposes of National Environmental Policy Act (NEPA), which could expedite environmental review for state drought projects that also trigger NEPA review. Similar to WIFIA, projects that use tax-free municipal financing may not be eligible for RIFIA funding.

Among other changes, S. 1894 would also amend the Reclamation Wastewater and Groundwater Study and Facilities Act (43 USC 390h), known as Title XVI, by adding a competitive grant program and authorizing $200 million through 2020.

Impacts of the Legislation upon Metropolitan

Assuming that federal regulatory officials diligently exercise their discretion under existing law to use the flexibility inherent in the biological opinions, the operational flexibility measures in the bill, particularly the 1:1 San Joaquin River Inflow to Export ratio for water transfers and exchanges, the use of turbidity triggers, application of the OMR criteria to minimize water supply impacts, revised Delta Cross Channel operations, and use of temporary barriers and operable gates in the Delta could provide both water supply and water quality benefits to Metropolitan. The actions to benefit species in the bill are unlikely to create short-term water supply

relief, but in the long run will improve information about listed species. Substantial funding for water supply and demand-management projects will facilitate Southern California's ability to respond to the next drought and may provide some short-term relief to areas of the state at risk of facing an inadequate supply of water. Moreover, S. 1894 could assist or accelerate additional new storage, which could make Central Valley Project-State Water Project (SWP) coordinated operations more flexible in the future, increasing water yields of both projects relative to the current system and regulatory constraints.

Suggested Metropolitan Position and Response

Metropolitan adopted priorities for federal drought legislation in August 2015. S. 1894 represents legislative progress on many of those priorities. S. 1894 is an expansive bill that provides funding and regulatory assistance for regions affected by drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water. The bill provides funding and regulatory incentives for conservation and water use efficiency measures. S. 1894 could help protect reliability for the SWP, Colorado River and local water supplies. The bill also works within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species. The bill additionally provides direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, while also encouraging the most current scientific data and analysis to provide enhanced flexibility for water project operations. It is unclear the degree the bill will secure broad, bipartisan support, but it has been set for a hearing by the Republican Chair of the Senate Energy and Natural Resources Committee, and could potentially win broad support there.

Staff recommends that the Board authorize the General Manager to express a support and seek amendment position for S. 1894. If the Board approves, the General Manager would send a letter stating the Board's positon on S. 1894, listing the Board's federal drought legislative priorities as adopted August 18, 2015 and urging that the final drought bill be amended to represent those priorities

Suggested Amendments

In addition to technical amendments, staff would seek a number of amendments to S. 1894 that relate to four important Metropolitan interests.

- First, the bill contains protections for SWP contractors against redirected impacts of federal actions, but also contains a loophole from those protections. Staff recommends providing language to close that loophole.
- Second, S. 1894 amends the Reclamation Safety of Dams Act of 1978 to allow additional project benefits (such as increasing storage) to be approved concurrent with Safety of Dams projects. While this language is much better at protecting SWP water supplies than other language we have seen in House of Representative bills, staff recommends that to protect SWP interests in San Luis Reservoir provisions be added to retain cost allocations under existing law.
- Third, S. 1894 amends the Water Desalination Act of 1996 to prioritize projects that "reduce reliance on imported water supplies that have an impact" on listed species. The term "reduced reliance," is not defined in federal or state law, and is the source of diametrically opposed state law interpretations that are the basis of claims in the *Delta Stewardship Council Cases*. Staff recommends the term and associated language addressing limitations on imports be removed to reduce litigation risks.
- Finally, the Collaborative Science and Adaptive Management Program (CSAMP) was started in 2013 by the federal, state, local, and Non-Governmental Organization parties to the biological opinions litigation as a means to seek improved scientific understanding of species in a way that would reduce the chance of litigation in the future. This program is working well with the exception that funding has been difficult to obtain and Reclamation has experienced serious difficulties and delays in contracting. Staff recommends that a provision be added to Title II to fix contracting issues, authorize Reclamation to contribute directly to CSAMP, and authorize $5 million in appropriations.

Policy

Minute Item 46637, dated April 11, 2006, adopting a set of Delta policy principles ensuring a foundation for development of future positions and provide guidance to staff

Minute Item 47135, dated June 12, 2007, adopting Metropolitan's Delta Action Plan

Draft Minute Item 50217, dated August 18, 2015, adopting additional Metropolitan 2015/2016 Legislative Priorities

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because the proposed action involves organizational and administrative activities that will not result in physical changes in the environment (Section 15378(b)(5) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to the provisions of CEQA pursuant to Sections 15378(b)(5) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Authorize the General Manager to express a support position for, and seek amendments to S. 1894.

Fiscal Impact: Unknown
Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Option #2

Adopt the CEQA determination that the proposed action is not defined as a project under CEQA and is not subject to CEQA, and

Take no position on S. 1894.

Fiscal Impact: Unknown
Business Analysis: If passed, S. 1894 could potentially provide short-term benefits to SWP operations during the drought. If authorized funding is appropriated, it could also provide a significant amount of funding for water supply and demand-management projects that benefit Southern California.

Staff Recommendation

Option #1

9/16/2015
Dee Zinke
Deputy General Manager, External Affairs
Date

9/16/2015
Jeffrey Kightlinger
General Manager
Date

Attachment 1 – S. 1894 introduced July 29, 2015

Ref# ea2639178

Note: Attachment filed with Electronic Copy

The CHAIRMAN. Mr. Kightlinger, thank you very much. we appreciate it.

Ms. Woolf.

STATEMENT OF SARAH WOOLF, PRESIDENT, WATER WISE, AND PARTNER, CLARK BROTHERS FARMING

Ms. WOOLF. Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and Senators of the committee. I was honored to be invited to testify today before the committee, and I am hopeful that my remarks can help facilitate progress on critical legislation you have before you because entire communities are depending upon you to find a resolution.

I am a second-generation farmer. My two brothers and I grow tomatoes, garlic, and onions in Fresno County. My husband, who is here with me today, is also a farmer in his family business, and we both farm in the Westlands Water District.

While our farms rely on some seasonal employees, many of our employees are long-term and have been with us for many, many years.

I know that in June you received testimony from another fellow farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time, he discussed many of the key facts associated with the water challenges facing California farmers, and he explained that 44 percent of California's 9.6 million acres of irrigated farmland are receiving zero surface water. I am one of those farmers. Almost 75 percent of the state's irrigated farmland, nearly seven million acres, will receive 20 percent or less of this normal water supply and 692,000 acres of farmland were fallowed in 2014.

There are very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water, people without jobs and business owners recognizing they potentially have no future. The fear and despair in people's eyes today is real, and it is heart-wrenching. And Senator Murkowski, you referenced it. I know this because I spend a lot of time working in these communities.

These people are Californians, and they are working hard to produce the basic necessities for our country and our world and, of course, for themselves. They work the land while trying to improve our schools and our communities. Many of them have come to our country recently and others from many generations before, but all with the hope of improving the lives of their families. They want the opportunities that all Americans want: an education and an opportunity for a better life.

If our elected representatives are responsible for anything, it should be to provide the most basic of needs: water, access to schools, and most importantly, the ability to work. Without these basic needs, residents of our communities are forced to live in tents made of pallets behind minimarts and on the sides of railroad tracks and stand in food lines on a weekly basis to fulfill those basic needs. We cannot be the land of opportunity while communities lack water and residents are actually showering in church parking lots.

What makes our water situation so disturbing is that many of these negative effects have been imposed on our community not by Mother Nature but as a direct result of conscious policy decisions.

Before you today, you are hearing H.R. 2898, the Western Water and American Food Security Act, and Senate bill 1894. I believe that both of these bills address our issues very well, but we have to go further. We have to have some legislation because we are running out of time. So to that end, I want to provide some constructive suggestions.

Last year, a broad cross-section of local community leaders, such as the Mayor of Fresno and growers from all over the Central Valley, came together to provide a unified set of concepts that we believe would be helpful for bridging the differences between last year's bills and this year's bills. And to that extent, the same group of growers has put together a letter that I believe you received yesterday, but I brought copies again for you today, asking for five critical points.

Provide congressional discretion concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply—excuse me—water supply reliability. The operations of these projects must be able to capture water from the delta during periods of higher flows and move water from north to south in a rational way.

Extend the provision of any legislation for a period of time that will allow communities to establish sound long-term water supplies for their future.

Establish a process that could lead to increased storage in a reasonable timeframe.

Ensure the additional burdens are not placed on the State Water Project as a result of congressional action.

And finally, recognize the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changing conditions.

Both bills address most of these issues, but I believe the House proposal gives better direction to the agency on how they should operate the projects and is a bill that, unlike the Senate bill, offers permanent solutions. Nevertheless, we think the differences are surmountable and will—and are interested in finding a resolution.

Again, thank you all for your invitation today to testify, and I am prepared to answer any questions.

[The prepared statement of Ms. Woolf follows:]

Testimony of Sarah Woolf, Fresno County Farmer

Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing on
Western and Alaska Water Legislation
October 8, 2015

Good morning, Chairwoman Murkowski, Ranking Member Cantwell, and members of the Committee. I was honored to be invited to testify before the Committee today, and I am hopeful that my remarks can facilitate progress on the critical legislation you have before you today because entire communities are depending upon you to find a resolution.

I am a second generation farmer. My two brothers and I grow tomatoes, garlic, and onions in Fresno County. My husband, who is here with me today, is also a second generation farmer. While our farms rely on some seasonal employees, many of our employees are long-term employees who have been with us for years. I am testifying today to share my personal perspective, although I am also an elected Member of the Board of Directors of Westlands Water District.

I know that in June, you received testimony from another California farmer, Cannon Michael, who explained the impacts of the water crisis facing California agriculture. At that time he discussed many of the key facts associated with the water challenges facing California farmers, and he explained that:

- 44% of California's 9.6 million acres of irrigated farmland are receiving zero surface water allocations from state, federal, and local irrigation projects, according to the California Farm Water Coalition Agricultural Water Supplies Survey;

- Almost 75% of the state's irrigated farm land, nearly seven million acres, will receive 20% or less of its normal surface water supply; and

- According to the California Department of Water Resources (DWR), 692,000 acres of farmland were fallowed in 2014 because of water shortages.

These are very significant facts for you to consider. However, I also want to bring to your attention the impacts felt by individuals who live and work in the cities and communities without water, people without jobs and business owners recognizing they potentially have no future. The fear and despair in people's eyes today is real, and it is heart wrenching. I know this because I spend a lot of time working in these communities.

These people are Californians, and they are working hard to produce the basic necessities for our country and our world, and of course, for themselves. They work the land while trying to

improve our schools and communities. Many of them have come to our country recently, and others from many generations before, but all with the hope of improving the lives of their families. They want the opportunities that all Americans want, an education and an opportunity for a better life.

If our elected representatives are responsible for anything, it should be to provide the most basic of needs: water, access to schools, and most importantly the ability to work. Without these basic needs, residents of our communities are forced to live in tents made of pallets behind mini marts and stand in food lines on a weekly basis to fulfill those basic needs. We cannot be the land of opportunity while communities lack water and residents are actually showering in church parking lots.

What makes our water situation so disturbing is that many of these negative effects have been imposed on our community, not by Mother Nature, but as the direct result of conscious policy decisions made by federal agency employees who believe they are following the will and direction of Congress. The people of the State of California, which includes my family, have very strong environmental values - and I deeply understand the importance of protecting the environment - but environmental concerns cannot be put above all else, without any regard to the negative impacts that are caused by the policy choices made.

When confronted about these consequences, the administrators of federal agencies claim they are merely exercising their discretion under the law in a way that causes these impacts. The Courts have agreed that they are free to cause these ill wills with your blessing. The Courts have explained:

> We recognize the enormous practical implications of this decision. But the consequences were prescribed when Congress determined that "these species of fish, wildlife, and plants are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people." . . . Consequently, any other "[r]esolution of these fundamental policy questions" about the allocation of water resources in California "lies . . . with Congress . . ."

(San Luis & Delta-Mendota Water Auth. v. Jewell, 747 F.3d 581, 593 (9th Cir. 2014)).

Ultimately, that is why we need legislation. We need it because the Courts and the federal agencies place the consequences for these decisions at your feet and you actually have the power to address these ills. At the same time, I believe you can direct the agencies to minimize the negative impacts of the decisions on these communities, while still requiring that they be thoughtful about the impacts their actions have on wildlife and other environmental values.

It is important to note that it is unquestionable that California is in the midst of a drought. The hydrology and snowpack in the state is the only evidence you need to understand that. But the impacts of the crisis have been made worse by government decisions, interpretation of the law by fish agencies, and inaction by the Congress. It's undeniable. Lake Shasta has over one million acre-feet more of water stored today than it did during the worst drought in California history of 1977. Consider for a minute that as a result of the 2009 biological opinions that restrict water

pumping in the Delta, over 1.1 TRILLION gallons of water have been flushed to the ocean. And there have been countless other laws and government decisions on the management of California's water resources that have been just as frustrating. That is water that is lost forever, and the impact of that lost water is felt most by cities, communities, business, and farmers across the state. All while the people of the state are being forced to kill off their landscapes, capture shower water, not flush their toilets regularly, and watch their children play Saturday morning soccer on fields that resemble a sheet of sandpaper. In my opinion, the government can't have it both ways. The government cannot make decisions to flush that amount of water, while bemoaning the "drought". Not with a straight face, anyway. Simply put, the people of California are out of water because of decisions made by the people that represent them. And those decisions have resulted in devastating consequences.

From my perspective, both H.R. 2898, the Western Water and American Food Security Act of 2015, and S. 1894, the California Emergency Drought Relief Act of 2015, are efforts to address the problems we are seeing in our communities but they take very different approaches to address the issues we face. Therefore, I am deeply appreciative of your willingness to hold a legislative hearing. I am also optimistic that Members of Congress can bridge their differences between the two bills because absent enactment of legislation that gives more explicit direction to agencies, we will see no relief from the situation we face.

To that end, I want to provide constructive suggestions. Last year, a broad cross-section of local community leaders, such as the mayor of Fresno and growers from all over the Central Valley, came together to provide a unified set of concepts that we believed would be helpful for bridging the differences between last year's bills. I believe these concepts are still applicable to the bills before you today. Therefore, we ask that you:

- Provide congressional direction concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply reliability. The operators of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in a rational way.

- Extend the provisions of any legislation for a period of time that will allow communities to establish sound long term water supplies for their future;

- Establish a process that could lead to increased storage in a reasonable timeframe;

- Ensure that additional burdens are not placed on the State Water Project as a result of congressional action; and

- Recognize that the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changed conditions since its authorization, including the reality of federal budget constraints.

Both bills address most of these issues, but I believe the House proposal gives better direction to the agencies on how they should operate the projects and is a bill that, unlike the Senate bill,

offers permanent solutions. Nevertheless, we think the differences are surmountable with actual interest in finding a resolution. Again, thank you for the invitation to testify, and I am prepared to answer any questions you have.

The CHAIRMAN. Thank you, Ms. Woolf. I appreciate your attention to the human aspect in very clear terms. Thank you.

Mr. Keppen, welcome.

STATEMENT OF DAN KEPPEN, EXECUTIVE DIRECTOR, FAMILY FARM ALLIANCE

Mr. KEPPEN. Good morning, Madam Chair, Ranking Member Cantwell, and members of the committee.

My name is Dan Keppen, and on behalf of the Family Farm Alliance, I thank you for this opportunity to present this testimony today.

Our organization has a long history of collaboration with constructive partners in all levels of government, with conservation and energy organizations, and with Native American interests who seek real solutions to water resources challenges in the 17 Western states.

Policymakers and problem-solvers work with our members because they deal with realities of the arid West at the ground level every day. They are the men and women who run farms, ranches, and irrigation districts. They are people for whom scarcity is a fact of life and cooperation and innovation are tools of survival.

Last summer, California farmer Cannon Michael represented the Alliance at this hearing and testified before this committee—actually, before this committee on the Western drought. He emphasized the drought challenges faced by him and his neighbors like Sarah in California's Central Valley. Since Mr. Michael testified in June, things have continued to worsen; however, the recommendations he provided are still relevant today.

In order to respond to current and future water shortages, we believe Congress should provide Federal agencies with more flexibility under existing environmental laws and regulations to encourage a cooperative approach toward achieving multiple goals. And where such flexibility currently exists in law, Congress should demand that agencies use it promptly and with a minimum of bureaucratic nonsense. Time is of the essence when making water management decisions during a drought.

Western drought legislation should shift the regulation of water resources away from the current adversarial structure and toward an approach that produces better results through cooperation and innovation. This includes promoting the use of new technology and water management. Real-time monitoring and data collection can be used to align water supply operations to actual fishery and environmental needs.

Agencies need to address non-flow stressors in the Bay Delta environment, especially non-native fish that prey on fish species protected by the Endangered Species Act.

Finally, we must invest and reinvest in the Western water infrastructure necessary to meet current and future demands. Our existing water infrastructure is aging and in need of rehabilitation. We need new water storage in order to adapt to changing hydrology and develop usable and sustainable supplies to meet growing demands for water.

Streamlining regulations and permitting processes can help. The Federal Government can continue to be a partner in solving these

water problems in the West by using financial mechanisms that have very low Federal cost and make water resources investment more attractive and affordable for non-Federal entities.

Taken together, the bills before the committee today incorporate nearly all of these elements, and the Alliance commends the authors for their hard work and foresight. H.R. 2898 provides for more flexible, multipurpose drought water management in California's Central Valley. It offers a path for water users in California and other Western states toward streamlining regulatory hurdles and encouraging the development of crucial new water storage projects, and it upholds and protects state-based water rights.

In addition to its California Delta-focused sections, H.R. 2898 contains a number of provisions that would apply throughout the West. The bill would streamline permit decisions and authorize expedited procedures to make final decisions on operations in water projects that can maximize water supplies. H.R. 2898 provides new authority for agencies to approve projects that normally would require congressional authorization. It also directs the development of a Drought Operations Plan.

The Family Farm Alliance has always taken the position that the Western system of prior appropriation still fundamentally works. We are pleased that the drought legislation before the committee today includes specific provisions intended to protect water rights holders.

H.R. 2898 is a large, detailed bill that aggressively and constructively attempts to tackle the drought challenges of California's Central Valley and also provides solutions that will assist other Western states. We support the intent and vast majority of the bill's provisions.

The Congress and the Federal Government certainly cannot change the hydrology of the West, but there is a role it can play to support family farmers and ranchers. As the committee continues its efforts to address the current drought and develop policies to improve water management in the long-term, we ask that you consider the observations and principles that are outlined and further detailed in our written testimony.

The House has passed H.R. 2898 to address this crisis, and California Senators have introduced S. 1894; however, two separate bills are of absolutely no value to a parched West. What is needed is a single bill that can be enacted by Congress and signed into law by the President, and unfortunately, time is not on our side. We must all work together to ensure that Western water users have every tool available to survive and recover from the current drought and the hard, dry years that the future may hold.

Thank you, and I would stand for any questions you may have.

[The prepared statement of Mr. Keppen follows:]

Testimony of Dan Keppen
Executive Director
Family Farm Alliance

Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing on Western and Alaska Water Legislation

Washington, D.C.
October 8, 2015

Good morning Chairwoman Murkowski, Ranking Member Cantwell and Members of the Committee.

My name is Dan Keppen, and on behalf of the Family Farm Alliance (Alliance), I thank you for this opportunity to present this testimony on a matter of critical importance to our membership: the Western drought. The Alliance is a grassroots organization of family farmers, ranchers, irrigation districts, and allied industries in 16 Western states. The Alliance is focused on one mission: To ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. We are also committed to the fundamental proposition that Western irrigated agriculture must be preserved and protected for a host of economic, sociological, environmental, and national security reasons – many of which are often overlooked in the context of other national policy decisions.

The Family Farm Alliance has a well-established relationship with Congress, with nearly 50 invitations to testify before Congressional committees on Western agriculture, water and environmental matters in the past decade. But more important, the Alliance has a long history of collaboration with constructive partners in all levels of government, with conservation and energy organizations, and with Native American tribal interests who seek real solutions to water resources challenges in the West. Policy-makers and problem-solvers work with the Alliance because our members deal with the realities of the arid West at the ground-level, every day. They are the men and women who run farms, ranches and irrigation districts. They are people for whom scarcity is a fact of life and cooperation and innovation are tools of survival.

Earlier this year, the Family Farm Alliance released a report, "*Innovations in Agricultural Stewardship: Stories of Conservation & Drought Resilience in the Arid West*," which focuses on five case studies that profile producers across the Colorado River Basin and beyond, who -- with curiosity, creativity and seasons of trial and error -- are conserving resources while enhancing productivity. (A copy of the report is attached.) The Alliance partnered with the National Young Farmers Coalition on this report with the aim of elevating the voices of farmers and ranchers

who are employing smart solutions to build drought resilience, steward water and grow good food.

Government needs to support, encourage and facilitate such efforts. The Alliance believes achieving genuine, lasting solutions requires a more productive and proactive federal role in Western water matters: a role that focuses on research and development; and full integration, coordination and maximum sustainable use of water resources. It requires water resource policies that are driven from the "ground up" – not from the "top down" – and water resources planning and management that acknowledge irrigated agriculture as an asset to our still-growing nation.

Periods of drought are not new to the West, but the negative impacts of today's droughts have reached staggering levels for our farmers and ranchers, their families and the irrigated agricultural economy. Earlier this summer, California farmer Cannon Michael represented the Family Farm Alliance when he testified[1] before this Committee on the Western drought, with emphasis on the drought challenges faced by him and his neighbors in the Central Valley of California. Our organization is composed of farmers and ranchers like Mr. Michael from all over the West. The drought problems they face vary by region, topography, climate, soil conditions, hydrology, and crop. But these problems also share some common elements, including:

- Inadequate or deteriorating water management and storage infrastructure;
- Inflexible or outdated operational requirements and regulatory conditions;
- Increased competing demands on existing water supply systems for growing municipal, industrial and environmental uses; and
- Public agencies that either are not nimble enough, or not motivated enough to seek out and embrace better ways of ensuring the most benefit for the broadest suite of public interests.

Mr. Michael's testimony also illustrated that solutions also vary by state and region, but they, too, are characterized by certain common elements, including creativity, flexibility and balance.

Chronic Water Shortages in the West

Droughts occur routinely in the West; that is why the Bureau of Reclamation (Reclamation) made such important investments in water supply infrastructure over the past century. However, this infrastructure was never designed to meet the burgeoning demands of growing communities and environmental needs, while continuing to help farmers, ranchers and rural communities make it through periodic droughts. Unfortunately, future droughts in the West are predicted to be deeper and longer than we have historically experienced in the 20th century.

[1] Mr. Cannon Michael's written testimony from the June 2, 2015 Senate Energy and Natural Resources Committee hearing is *available at*: http://www.energy.senate.gov/public/index.cfm/files/serve?File_id=1786822e-5a9a-4d2b-be51-e474b8eaa9b4.

The larger issue, the underlying problem, is the ever-present and worsening shortage of water. Droughts only exacerbate water shortages. They also highlight the need to re-examine how we manage our limited water resources in the West.

The Alliance believes that we need a new approach to Western water management, one that includes a broader view of how water is used, along with consideration of population growth, food production and habitat needs. Our past water development investments in the West have provided economic certainty for both rural and urban communities, afforded the Nation with a stable, safe, and healthy year-round food supply, and allowed people to recreate, raise families and live a high quality life. Those achievements should not be sacrificed to meet growing demand for water with static or shrinking supplies. When planning our water infrastructure and management, we must consider how we will continue to maintain existing rural economies, support food production and enhance the quality of life and the environment, rather than plan to abandon those things to accommodate future needs arising from population growth or environmental demands. We can't expect to thrive in the 21st Century with a water-supply system and management regime that weren't adequate to the needs of the late 20th Century.

The fact is that, in many areas of the West, we have outgrown our aging water supply infrastructure. We have been living off our forefathers' investments in water infrastructure and have not planned well enough (or in some cases at all) to replace or add to those investments to meet the demand for water into the future.

Climate and hydrologic conditions are not the only causes of water shortages in the West. Other factors include the adversarial application of federal environmental laws, such as the Endangered Species Act (ESA), the Clean Water Act (CWA), and the National Environmental Policy Act (NEPA). There can be no doubt that these laws have provided significant benefits to our society. But they also have been used as weapons to thwart new investments in water development, to reallocate existing water supplies away from traditional uses, and to destabilize water supply systems, often in pursuit of the unattainable goal of turning back the clock to a "better" time. Too frequently the result is minimal environmental improvement gained at great financial cost and significant water shortages both in the short- and long-terms.

In order to respond to current and future water shortages, as well as today's drought conditions, we believe Congress should provide federal agencies with more flexibility under existing environmental laws and regulations to encourage a cooperative approach toward achieving multiple goals. And where such flexibility currently exists in laws, Congress should demand that agencies use it promptly and with a minimum of bureaucratic nonsense. Time is of the essence when making water management decisions during a drought.

Western drought legislation should shift the regulation of water resources away from the current adversarial structure and towards an approach that produces better results through cooperation and innovation. This includes promoting the use of new technology in water management. Real-time monitoring and data collection can be used to fine tune water supply management decision-making to more closely match water supply operations to actual fishery and environmental needs. Congress must empower local stakeholders and the states – and federal agencies – by recognizing and rewarding collaboratively developed solutions where all sides have come together to work out differences and build future solutions to complex water issues.

Finally, we must invest (and reinvest) in the Western water infrastructure necessary to meet current and future demands. Our existing water infrastructure is aging and in need of rehabilitation; we need new water storage in order to adapt to changing hydrology and develop usable and sustainable supplies to meet growing demands for water. Small cost-shared grants for water management improvements and conservation projects through Reclamation's WaterSMART program have assisted many local water providers in making significant investments in their aging water delivery systems. Coordinating federal conservation programs at the U.S. Department of Agriculture (USDA) and with other water programs at Reclamation can result in much more effective investments in on- and off-farm water management improvements.

Streamlining regulations and permitting processes, along with federally-backed loans and loan guarantees that provide affordable financing tools for local water investments can help to replace the more traditional approach to water infrastructure development that relies on mostly federal water projects. The federal government can continue to be a partner in solving these water problems in the West by using financing mechanisms that have very low federal cost and make water resources investment more attractive and affordable for non-federal interests.

Taken together, the bills before the Committee today incorporate nearly all of these elements, and the Alliance commends their authors for their hard work and foresight.

H.R. 2898, the "*Western Water and American Food Security Act of 2015*"

While we have a few suggestions on how to improve the House-passed bill, in general, the Alliance supports the approach taken by H.R. 2898 because it provides for more flexible, multi-purpose drought water management in California's Central Valley. It offers a path for water users in California and other Western states toward streamlining regulatory hurdles and encouraging the development of crucial new water storage projects. And, it upholds and protects state-based water rights, which forms the cornerstone of Western water allocation policy.

H.R. 2898 includes provisions that would give water project managers and regulators additional flexibility to address water conveyance and flows in relation to fish populations under the ESA. Specifically, the bill would address certain operations of the Central Valley Project (CVP) and

the State Water Project (SWP) in relation to the biological opinions (BOs) associated with the threatened Delta smelt and with threatened and endangered salmon species under the ESA.

Especially during times of crisis, operational entities need to be able to weigh the needs of the environment as well as the needs of the economy and our communities. There should be ways for federal agencies to exercise some discretion when making decisions regarding resource management. We have seen that the application of rigid regulatory standards can have a very detrimental effect at a time when every gallon of water is important.

We support provisions that would improve management of the Delta smelt, such as mandating greater data collection on the smelt population through a Delta smelt distribution study. We also support the authorization of greater real-time monitoring of Delta smelt which, along with the best scientific and commercial data, can be used to advise water conveyance management and maximize the use of water for humans as well as fish species.

Also, we support the provisions in H.R. 2898 that seek to ensure that salmonid management is responsive to new science. The bill contains specific directions for implementing new science and data into the management of salmon stocks in California's Bay-Delta. We strongly support legislative direction for agencies to address "stressors" in the Bay-Delta environment, especially non-native fish that prey on the ESA listed species such as Delta smelt and Chinook salmon. For example, the drought bills before the Committee today would authorize pilot projects to implement an invasive species control program authorized in the *Water Supply, Reliability, and Environmental Improvement Act* (P.L. 108-361) as part of the CALFED Bay-Delta program. The goal is to reduce and remove invasive vegetation and predator fish species in the Delta that adversely affect water supply operations and the health of ecosystems. The bills also authorize Reclamation's participation in a locally funded program to reduce predation of salmon by non-native fish on the Stanislaus River.

In addition, predation control in the Delta is one of the measures that H.R. 2898 directs federal agencies to assess within a framework intended to identify various non-regulatory means to protect salmon populations or to offset any potential adverse effects to the species that might be caused by easing regulatory restrictions on water deliveries. This is one of the several ways in which H.R. 2898 emphasizes operational flexibility and drought relief. More regulation usually reduces flexibility. Federal agencies managing the competing demands for water in the West have in some cases failed to examine or pursue opportunities for more flexible water management that serves both economic and environmental goals. This lack of flexibility and innovation exists in no small part because Congress has not explicitly directed agencies to be flexible and innovative, so they default to the actions that are least likely to get them sued.

The pending bills in very general terms direct the Secretaries of Commerce and the Interior Departments (Secretaries) to maximize water supplies to CVP users and SWP contractors by

approving, consistent with applicable laws, projects and operations that provide additional water supplies. H.R 2898 provides permanent and broad authority to the Secretaries to approve any project or operational change to address emergency provisions, although it does also contain limitations on this authority.

West-wide Scope

In addition to its California Delta-focused sections, H.R. 2898 contains a number of provisions that would apply throughout the West and have been supported by the Alliance's West-wide membership. For example, H.R. 2898 would streamline permit decisions and authorize expedited procedures to make final decisions on operations and water projects that can maximize water supplies. It also provides the Secretaries with new authority to approve projects that normally would require congressional authorization. In addition, H.R. 2898 would require the Secretaries to develop a drought operations plan.

H.R. 2898 also would inject more balance into water management decisions so that human and community needs have a priority closer to that given to environmental and water quality objectives. H.R. 2898 addresses compliance under NEPA by directing the Secretaries to consult with the Council on Environmental Quality (CEQ) to make alternative arrangements to comply with NEPA.

As we stated above, the Alliance supports new sustainable water storage projects in order to increase usable supplies of water to help meet current and future demands. Both drought bills would direct Reclamation to complete certain ongoing feasibility studies for new or augmented surface water storage in California that were originally authorized nearly 20 years ago and have languished ever since. H.R. 2898 would compel Reclamation to meet deadlines by imposing financial penalties for failure to do so. The bills also allow Reclamation to partner or enter into an agreement on certain water storage projects identified in the *Water Supply Reliability and Environmental Improvement Act* with local joint powers authorities formed pursuant to state law by irrigation districts and other local water districts and local governments within the applicable hydrologic region. H.R. 2898 authorizes the Interior Department to carry out feasible water storage projects, but prohibits federal funds from being used for construction.

Both federal and non-federal storage projects would be authorized under the House drought bill to receive reimbursable funding from a proposed new "Reclamation Surface Storage Account" (authorized under Title IX). H.R. 2898 would authorize accelerated repayment (or prepayment) by non-federal Reclamation project users of certain project construction costs that are currently paid over 40-year or 50-year terms. The new surface storage account would be funded with proceeds from the accelerated repayments, with 50% of the revenues available for new surface water storage projects. In allowing early repayment, H.R. 2898 also allows for the conversion of water service contracts to repayment contracts. This provision would allow contractors to forgo

certain requirements (e.g., acreage and full-cost pricing limitations) under Reclamation laws sooner than would otherwise be the case, but water users would still have to pay their share of project operations and maintenance (O&M) costs.

Safety of Dams Provisions

The Alliance has always been supportive of Reclamation's Safety of Dams Act (SOD) Program. The average age of the 84,000 dams in the United States is 52 years old. That is of great concern to us. In order to avoid dam failures, which would cause substantial economic damage and, more importantly, loss of human life, significant investment and regular maintenance are necessary. Under current law, Reclamation identifies dam repairs and modifications that arise from "new hydrologic or seismic data" or those actions that are "deemed necessary for safety purpose," and carries out repairs or remediation actions on a cost-shared basis with project beneficiaries. Work that would create new or additional project benefits cannot be carried out under the SOD program and must instead be authorized and funded separately by Congress.

H.R. 2898 and S. 1894, the *"California Emergency Drought Relief Act of 2015,"* include similar provisions that would authorize the planning, design and construction of additional project benefits, subject to a feasibility analysis, as part of regular SOD repairs. This could include development of additional reservoir storage. Under H.R. 2898, the Interior Secretary can move forward on construction of additional project features or benefits only if "*the costs associated with developing the additional project benefits are agreed to in writing between the Secretary and project proponents.....*"

It is important to note that this latter provision does not say that the parties agree to pay, only that they agree as to what the costs are. H.R. 2898 further provides that such costs "*shall be allocated to the authorized purposes of the structure and repaid consistent with all provisions of Federal Reclamation law.....*" Those cost allocations are already in place and are obligations of existing project contractors.

While we strongly support the concept behind the proposed SOD provisions, some of our members are concerned with the relatively vague nature of the title language, which could have some unintended negative consequences. For example, nothing in the title requires *"project proponents*" to be project contractors, assume any cost responsibility, or pay the total bill under cost causation principles. In fact, nothing in the bills explicitly requires the Interior Secretary to consult with, or even agree with, water and power contractors regarding the construction or costs of additional benefits, although S. 1894 requires a cost-sharing agreement with *"applicable Federal, State and local agencies..."*

Other key concerns are primarily centered on the Interior Secretary's discretion and lack of definition regarding "*additional project benefits*" and how that might be implemented in the

future. Under the proposed amendments to the SOD Act, authorizing "*additional project benefits*" is not qualified by limiting those benefits to existing project purposes. Given the ESA challenges that many of our members are facing, the fear is that the storage (new, expanded, or potentially reallocated) would be used for purposes (fish flows, ecosystem functions, and/or water quality) that do not directly benefit the existing water and power contractors, even though those interests would bear the costs.

We believe a broad mandate to increase Reclamation dam capacity should be specific, not be limited to situations where there are dam safety concerns, require beneficiaries of new projects to pay for them, and require the consent and cooperation of existing contractors.

Water Rights

Finally, the Alliance has always taken the position that the Western system of prior appropriation still fundamentally works. The doctrine of prior appropriation and the need for certainty in Western states' water rights systems make it the cornerstone of Western water resource allocation policy. The Alliance has long advocated that solutions to conflicts over the allocation and use of water resources must begin with the recognition of and the traditional deference to state water allocation systems. We are pleased that the drought legislation before the Committee today includes specific provisions intended to protect water right holders. In addition, Title XI of H.R. 2898 requires the Interior Department and USDA to coordinate with states to ensure that federal actions are consistent with, and impose no greater restrictions or regulatory requirements than, state groundwater laws and programs. The bill also prohibits the Interior Department and USDA from taking actions that adversely affect: (1) water rights granted by a state, (2) a state's authority to adjudicate water rights, (3) groundwater withdrawal conditions and conservation measures established by a state, or (4) the use of groundwater in accordance with state law.

H.R. 2898 is a large, detailed bill that aggressively and constructively attempts to tackle the drought challenges of California's Central Valley and also provides solutions that will assist other Western states. It would take a dozen or more pages of additional testimony to address the multitude of details contained in this bill, but overall, we can safely conclude that the Alliance supports the intent and vast majority of the bill's provisions.

Principles to Consider

The Congress and the federal government certainly cannot change the hydrology of the West, but there is a role it can play to support family farmers and ranchers. As the Committee continues its efforts to address the current drought and development policies to improve water management in the long-term, we ask that you consider the following observations and principles:

- State water laws, compacts and decrees must be the foundation for dealing with shortages.
- Water use and related beneficial use data must be accurately measured and portrayed.
- Benefits of water use must reflect all economic / societal / environmental impacts.
- Water conservation can help stretch water supplies, but has its limits in certain situations.
- Public sentiment supports water remaining with irrigated agriculture, and developing strategic water storage as insurance against shortages.
- Technologies for water reuse and recycling are proven effective in stretching existing supplies for urban, environmental and other uses.
- Urban growth expansion should be contingent upon sustainable water supplies; using irrigated agriculture as the "reservoir" of water for municipal growth is not sustainable in the long run.
- Planning for water shortage in the West must look to the long-term in meeting the goals of agriculture, energy, cities, and the environment.
- A successful water shortage strategy must include a "portfolio" of water supply enhancements and improvements, such as water reuse, recycling, conservation, water-sensitive land use planning, and water system improvements. New infrastructure and technologies can help stretch water for all uses.
- Temporary fallowing proposals should be approached in a thoughtful, thorough manner only after urban, energy and environmental users of water demonstrate a better management of their share of the finite supply.
- Unintended consequences associated with reducing productive agricultural land/groundwater recharge/riparian habitat benefits should be avoided and, if unavoidable, minimized and fully mitigated.

Conclusion

There are no guarantees that the West will not experience more intense multiple drought years in the future. In order to avoid disaster and to ensure that all reasonable water demands are met in the future, California and the West must begin to manage water as if every year was a drought year. This will require everyone in the West to adopt a new paradigm, one that promotes wise, cooperative management of the resource and protects carryover storage for future use in dry periods. This new paradigm will also mean additional investments in technology, conservation, and new infrastructure in order to deal with the uncertainties that lay before us.

The House has passed H.R. 2898 to address this crisis, and California's Senators have introduced S. 1894. However, two separate bills are of absolutely no value to a parched West. What is needed is a single bill that can be enacted by Congress and signed into law by the President, and time is not on our side. More than a year ago, thousands of Californians from all walks of life signed an open letter to their Congressional Delegation pleading for action to address the

drought. The message they sent speaks for all of us working in Western agriculture, and I reiterate it here:

On behalf of our member farmers and ranchers, we must respectfully insist that Members of Congress set aside their regional, ideological and political differences and work together to address the West's current (and future) water supply crisis. Our farmers and ranchers need you – all of you, urban and rural, Republican and Democrat – to come together and find a way to fix this broken system now, before it breaks us all.

What happens this year and next could fundamentally change the face of Western agriculture forever. Family farmers have been good stewards of the land for generations, but are now facing catastrophic losses from which they may never recover. Young farmers just starting out are at great risk of being driven off the land. Thousands of men and women working throughout our great and diverse community, from the field, to the store, to the restaurant, are overwhelmed by the uncertainty of what this "mega drought" means for their families.

We must all work together to ensure that Western water users have every tool available to survive and recover from the current drought and the hard, dry years that the future may hold.

Thank you and I would stand for any questions you may have.

INNOVATIONS in AGRICULTURAL STEWARDSHIP

Stories of Conservation and Drought Resilience in the Arid West

A compilation of case studies from

NATIONAL YOUNG FARMERS COALITION

Family Farm ALLIANCE™

The **National Young Farmers Coalition (NYFC)** represents, mobilizes, and engages young farmers to ensure their success. We are a national network of farmers, ranchers, and consumers who support practices and policies that will sustain young, independent, and prosperous farmers now and in the future. Visit youngfarmers.org or contact kate@youngfarmers.org for more information.

The **Family Farm Alliance (FFA)** is a powerful advocate for family farmers, ranchers, irrigation districts, and allied industries in seventeen Western states. The Alliance is focused on one mission: to ensure the availability of reliable, affordable irrigation water supplies to Western farmers and ranchers. Visit familyfarmalliance.org or contact dankeppen@charter.net for more information.

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Photo courtesy Singing Frogs Farm

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LETTER TO THE READER

In the arid West we are entering a new normal. Drought and climate variability are colliding with population growth, spiking the demand for food and fresh water. Across the Colorado River Basin, a geography that supplies water to over 35 million people in seven U.S. states from Wyoming to California, and two states in Mexico, new efforts are underway to close the gap between supply and demand. While everyone is feeling the sting, farmers and ranchers are all too often caught in the middle.

The last 14 years have seen prolonged drought in the western U.S., but 2015 has set new historical records. California offers a prime example. Like most western states, California relies primarily on snowmelt for its drinking water, irrigation, and water for the environment. On April 1st of this year, the state's snowpack was a mere 5% of normal.[1]

The southern portion of the state relies on melt from the Colorado River system, which is experiencing far below average snowpack, as well. In an urgent response, Governor Jerry Brown ordered mandatory water cutbacks in towns and cities statewide. Meanwhile, many farmers are already receiving little to no surface water allocation due to the miniscule supply and regulatory constraints, even after many regions have invested billions of dollars in efficiency improvements.

This sense of urgency has spurred renewed efforts to find solutions across western states. However, too often agriculture is viewed as the default "reservoir" that other sectors can access to satisfy growing demands for water. A report released by the Bureau of Reclamation in 2012 identifies a 3.2 million acre-foot gap between water supply and demand in the Colorado River Basin by 2060.[2]

Suggestions to meet this gap indicate taking 6-15% of existing irrigated agriculture out of production. Such efforts are already underway: Thirsty cities continue to buy water from farmers at tough-to-beat prices while the almond unfairly bears the brunt of the latest round of negative PR targeting water-demanding crops. If we continue down this path we risk serious implications for our farmers, ranchers, and food supply.

Without a doubt, agriculture has a significant role to play in water conservation. But all too often discussions of what to do about water scarcity take place off the farm, without input from those who have a direct connection to our food supply and far away from the landscapes that will be most affected. In order to develop **smart policy, it is critical to understand the solutions farmers and ranchers—young and seasoned alike—are utilizing to build drought resilience, steward water, and grow good food for all of us.**

The National Young Farmers Coalition and the Family Farm Alliance have teamed up to elevate the voices of farmers and ranchers doing just this. Following are five case studies profiling producers across the Colorado River Basin and beyond who—with curiosity, creativity, and seasons of trial and error—are conserving resources while enhancing productivity. Some are integrating efficient irrigation technology with soil health to increase both productivity and water savings. Others are navigating conservation within constraints outside of their control, such as the operations of the ditches which deliver water to farms.

To paint a deeper picture of the complexities and nuances of agricultural water conservation in the West, we worked with the engineering firm Applegate Group to create a water balance for three of the case studies. These water balances utilize a technical, objective approach to assess the producers' water rights, current conservation efforts, and barriers or opportunities for future conservation. They underscore the reality that conservation practices are different on every operation and unique from farm to farm.

Of all the producers whose stories are told here, what binds them together is their ability to manage for the economic, ecological, and social health of their operations, communities, and environments. They represent a growing movement of agriculturalists who are stepping up to the plate—and have been for years, despite the lack of attention—to farm with "whole systems" in mind. These farmers see that healthy soil is integral to healthy crops; that efficiency is an investment in future food and water security; that ecological services contribute to the bottom line; and that farmers sharing knowledge with one another is critical to innovation and adaptation.

As the pressures of climate variability and drought increase, farmers and ranchers are at the forefront of our national adaptation strategy. Producers are coming together to help one another, but they also need support from consumers, policy makers, scientists, and service providers. Our hope is these case studies will provide policy makers and other stakeholders with a more nuanced understanding of the diversity and complexity of western agricultural water conservation and an appreciation of what continuing to take agricultural lands out of production might mean.

Now is the time to engage farmers and ranchers as allies in finding innovative solutions that support the health of our land, water, and Western communities.

Sincerely,

Kate Greenberg
National Young Farmers Coalition

Dan Keppen
Family Farm Alliance

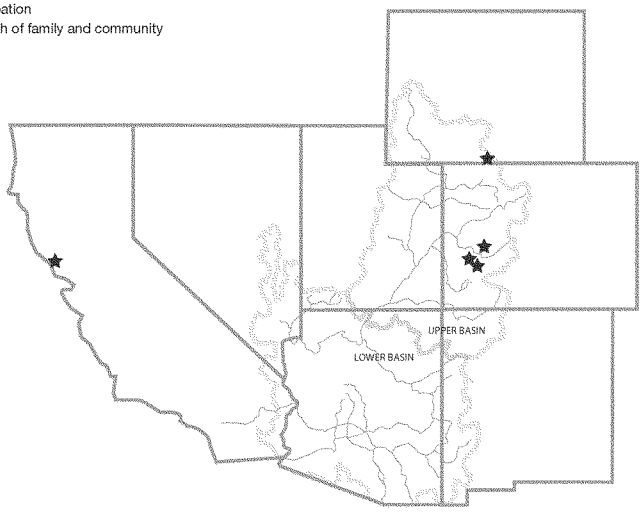
1 http://www.water.ca.gov/news/newsrel/snsr/2015/040115snsrsurvey.pdf

2 http://www.usbr.gov/lc/region/g4000/natdem/CRBstudy/FactSheet_June2013.pdf

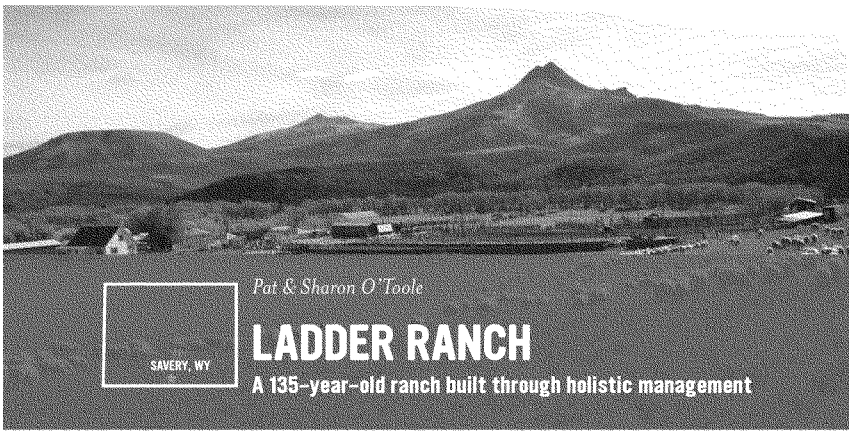
EXECUTIVE SUMMARY

Through the process of researching and compiling the following stories, a number of common themes emerged. These themes point toward more conservation-oriented, resilient agriculture evolving in the arid West. These ideas are not new but have not yet been implemented at a scale equivalent to their potential. The solutions illuminated here must be amplified across all sectors invested in western water.

- **Farmers are investing in irrigation efficiency and conservation**
- **Efficiency improvements may be cost-prohibitive for some producers**
- **Many farmers and ranchers manage their water for multiple values including:**
  - food production
  - ecosystem services
  - biodiversity and wildlife habitat
  - recreation
  - health of family and community
- **Soil health is critical to drought resilience, productivity, and water conservation. This includes such methods as:**
  - cover cropping
  - rotational grazing
  - no-till
  - mulching
- **Soil health is an investment with long-term benefits; it connects producers across operation types, regions, and philosophy; it enhances other forms of water-use efficiency**
- **Farmers and ranchers are our first line of innovation for climate change adaptation and drought resilience**



The Colorado River Basin is a seven-state geography governed by complex interstate and international water law. The river travels some 1,450 miles from the Rocky Mountains to the Gulf of California. It supports over 35 million people; 15% of U.S. produce; and recreation, industry, wildlife, and the environment.



Pat & Sharon O'Toole

SAVERY, WY

LADDER RANCH

A 135-year-old ranch built through holistic management

CONSERVATION AS FOUNDING PRINCIPLE

The Little Snake River Valley runs along the border between Colorado and Wyoming and helps form the headwaters of the Colorado River. This is a portion of the same water that eventually fills millions of taps in cities like Los Angeles and Phoenix. But first, it is stewarded on the Ladder Ranch, home to Pat and Sharon O'Toole, their children, and grandchildren.

The O'Tooles husband the same landscape that Sharon's great-grandparents settled on in 1881. Today, Ladder Ranch raises cattle, commercial sheep, horses, and working dogs. The O'Tooles have also created a ranch recreation business, which caters to fishermen, birders, hunters, and cyclers, as well as visitors interested in ranch life.

Sharon's family has long practiced what is known as holistic management—a way of integrating the whole farm or ranch, not just for economic health but for environmental and social benefits as well.[3] While Sharon grew up on the ranch, Pat is a first-generation rancher. From day one, he adopted the holistic management practices that for so long have been part of Sharon's family legacy. With their children taking on other elements of the business, the ethos of stewardship lives on.

To the O'Tooles, there is no inherent conflict between production and conservation. As Pat puts it, "We were always taught to keep one eye on the livestock and one eye on the landscape. One does not do well without the responsible management of the other. This is the resource ethic that we try to pass down through the generations."

WATER MANAGEMENT

Ladder Ranch, like many ranches in the interior West, relies on irrigation water derived from melting mountain snowpack. That water feeds a myriad of purposes. It grows hay and grass pasture, which supports the financial bottom line. It buffers soil against drought and fills creeks and streams. It supports trout fisheries and the anglers who seek them. It enhances biodiversity and provides water to wildlife that use Ladder Ranch as a migratory corridor. It draws in beneficial insects and pollinators and helps build a beautiful landscape. The O'Toole's holistic approach manages for all of these values simultaneously.

On 600 acres of irrigated land for hay and tens of thousands of additional acres of non-irrigated grazing land, the O'Tooles carefully monitor soil health. They plant

ABOVE: The O'Tooles have received many awards for conservation
TOP of PAGE: Ladder Ranch
Ladder Ranch photos courtesy Pat and Sharon O'Toole

Baling hay for the herd

cover crops on the farmland and utilize rotational grazing, which Sharon's father, George Salisbury, pioneered in the fifties. Rotational grazing imitates the movement of wild animals by rotating large herds of grazers—in this case sheep and cattle—on a carefully planned schedule. This allows the grasses ample time to regenerate while adding organic matter to the soil.

The irrigation practices the O'Tooles use vary depending on the nuances of the specific tract of land they are irrigating. Side-roll sprinklers irrigate about one-third of their pastures and flood irrigation waters the other two-thirds. While flood irrigation is considered less efficient, at the Ladder Ranch the "excess" water is essential to supporting waterfowl habitat. The water moves slowly across the land and eventually seeps back into rivers and streams to feed nine miles of trout fisheries and to provide irrigation for downstream users. In this specific case, increased irrigation efficiency could hinder other conservation values, a key example of the need for nuanced approaches to water management.

LEVERAGING PARTNERSHIPS

Another way the O'Tooles have conserved their lands' agricultural heritage is by partnering with land trusts to place a significant amount of acreage under conservation easement. Conservation easements are critical legal tools used to protect open space and working agricultural lands from development. The O'Toole's easement requires future owners to uphold the conservation values the family has agreed to, long into the future.

These decisions have made the O'Tooles leaders in collaborative conservation. Their partnerships include Trout Unlimited, Audubon Wyoming, and The Nature Conservancy—organizations some ranchers once viewed as adversaries. The O'Toole's recognize they share a common goal with many in the conservation community and have collaborated to protect threatened species, restore native habitat, and promote biodiversity.

A FAMILY ADAPTING TO A CHANGING CLIMATE

For the family, conservation is a pragmatic business choice that enhances their operation and ensures a productive landscape for future generations. With careful and specific management, the O'Tooles have watched their business and the landscape thrive together. In a changing climate—with a less reliable snowpack and thus a potentially less consistent water supply than in earlier years—they remain highly adaptable and responsive. Nothing is ever set in stone. As Pat puts it, "Our ranch is 135 years old, and we are still learning."

SNAPSHOT

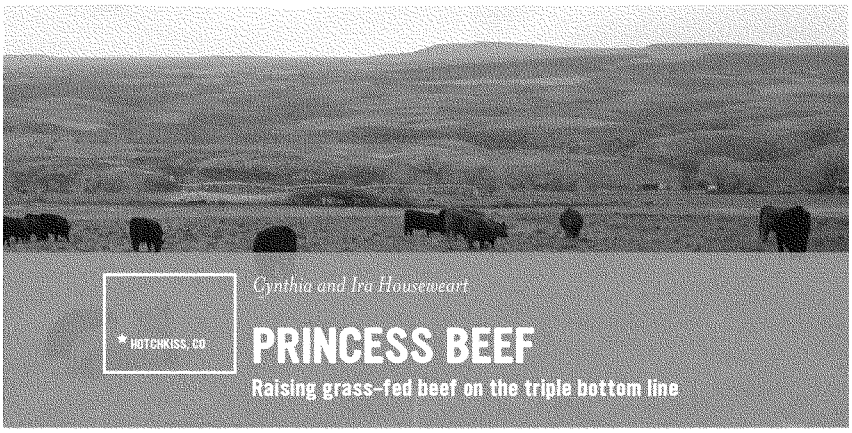
Years owned by the same family: 135

Irrigated acres: 600

Commercial land use: cattle, sheep, working dogs, agritourism

Water management: Cover crops, rotational grazing, integrating ecosystem services

7 http://profsomaggen-ed.org/wp-content/uploads/2011/12/GladeManagement-1-22.pdf



Cynthia and Ira Houseweart

* HOTCHKISS, CO

PRINCESS BEEF

Raising grass-fed beef on the triple bottom line

RECORD OF RESILIENCE

Along the North Fork of the Gunnison River, a tributary of the Colorado River, orchards, ranches, and farm stands dot the landscape. This valley is home to rancher Cynthia Houseweart, who owns and operates Princess Beef, a grassfed beef operation she founded over 15 years ago with her husband, Ira. Like all farmers and ranchers in this arid region, Houseweart is constantly pushed to adapt her operation to an increasingly unpredictable water supply.

A historic drought in 2012 led many ranchers to cull their herds as they watched their pastures—and thus their winter feed—dry up. Yet Houseweart's pastures stayed alive, even after irrigation was turned off in August. Houseweart attributes this to how she manages her soil. As she recalls, "Down here on our place [...] it stayed green. You couldn't really tell it was a drought. [The soil] holds the moisture so much better when the ground can soak it up." The unique way Houseweart manages her herd, her soil, and her water kept her afloat through one of the worst drought years on record. She is an example of how many innovative ranchers today think about their operations.

ROTATE RATHER THAN TILL

Houseweart's first tool for resilience is to keep the soil covered. She does this through rotational grazing and no-till pasture management. Traditional ranching involves moving cattle infrequently, leaving them out in open pastures to graze for extended periods of time. This often leads to over-grazing, which, in turn, compacts soil or makes it prone to erosion, heightens rates of evaporation, and prevents the soil from soaking up precious moisture.

Rotational grazing, on the other hand, is the practice of moving the herd frequently to allow previously grazed pastures to regenerate. Houseweart rotates her cattle every two to three days. This brings some short-term disturbance to the soil, but by resting each pasture for much longer than it was grazed, Houseweart builds up organic matter and naturally fertilizes her land through the cattle's urine and manure. This also helps restore the carbon and water cycles on her ranch.

In addition, Houseweart has not tilled her pastures in the nearly two decades she has managed them. Underneath the soil surface a complex ecosystem of life delivers water and nutrients to the plants. Tillage would disrupt and damage that ecosystem and the soil structure.

ABOVE: Cynthia Houseweart and her herding companion
TOP of PAGE: Cattle graze on healthy forage
Princess Beef photos courtesy Cynthia Houseweart

The Housewart family on their centennial ranch

Houseweart has found that by not tilling her pastures, her forage grows more vigorously throughout the year and is supported by this subsurface ecosystem. She has also reduced fuel costs by not running a tractor over her pasture. These practices build soil structure and sequester carbon, which allows the soil to work as a sponge to hold water in place for when it's most needed. This means that even in extremely dry years, or when surface water is tenuous, Houseweart has a buffer against drought.

Houseweart's ranch is also unique in the efficiency of its irrigation technology. Instead of flood irrigating her pastures, as is common, Houseweart has invested in a center pivot sprinkler, which is typically around 80% efficient versus 65% efficiency for flood.
But Houseweart has taken her efficiency to the next level by integrating this technology with stewardship practices. She rotates her cattle behind the sprinkler, which both increases the fertility of her pasture and reduces the amount of cutting and baling hay she needs to do.

THE TRIPLE BOTTOM LINE

From the get-go, Houseweart has managed for the whole health of her ranch and family. The decisions she makes for economic reasons must also be ecologically viable while supporting the well-being of each individual on the ranch, her family, and the community. This way of managing is possible on any operation at any scale.

But it is not Houseweart alone who drives this. She collaborates with a broad host of partners, from her local Natural Resources Conservation Service (NRCS) agent to a strong local growers' network. The Housewearts rely not only on a supportive community but on their willingness to adapt and try new things to meet modern challenges. As snowpack and irrigation supplies become more variable, and aridity continues to be a growing pressure, producers like the Housewearts point to a viable way ahead.

SNAPSHOT

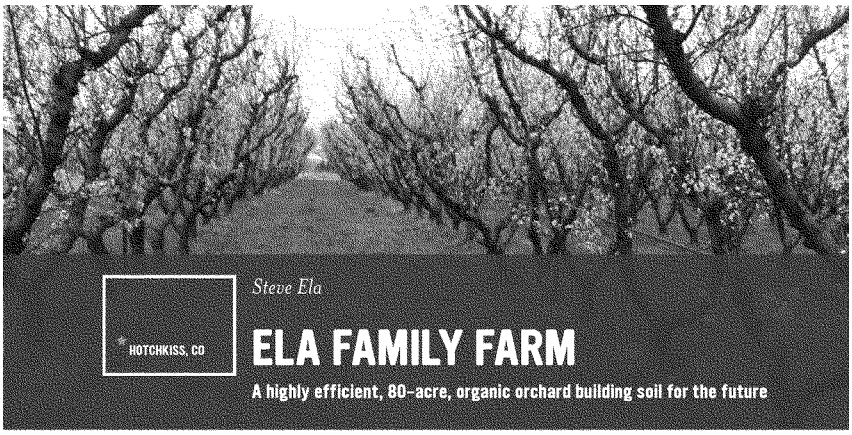
Years owned by the same family: 100

Irrigated acres: 100

Commercial land use: Grass-fed beef

Water management: Rotational grazing, no-till, center pivot irrigation

4 http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1042208.pdf P. 48



Steve Ela

HOTCHKISS, CO

ELA FAMILY FARM

A highly efficient, 80-acre, organic orchard building soil for the future

WATER ONLY WHERE IT'S NEEDED

High up on a south-facing hillside overlooking the North Fork Valley in north-central Colorado, orchardist Steve Ela grows 80 acres of organic tree fruits. In the peak of summer, Ela Family Farm is a locus of bounty: apples, peaches, pears, plums, and cherries hang heavy from the trees, tempting passersby with their undeniable sweetness. But the bounty doesn't grow itself: In as hot and dry a region as this, averaging less than 15 inches of precipitation a year, water is a top limiting factor to success. In his decades of farming, Ela has learned a thing or two about water.

When Ela's family bought the orchard in 1987 it was furrow irrigated. This form of irrigation, which remains a standard practice for many orchards to this day, lets water flow by gravity from a ditch or stream through furrows running through the crop. Based on the specific needs of his orchard, Ela felt he could improve the growing environment for his trees—and thus his productivity—by becoming more efficient.

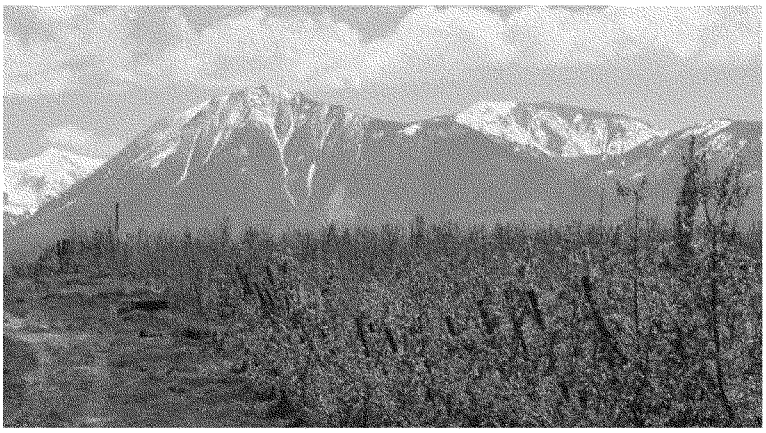
Upgrading the orchards' irrigation system was Ela's first priority. He worked with his local Natural Resource Conservation Service (NRCS) agent to design and install a permanent drip irrigation system, an array of flexible plastic tubing with small emitters that release water directly where and when it's needed. The cost of this upgrade was significant, running nearly $2,500 per acre. The upgrade required care during installation to avoid damaging the tree roots as well as additional maintenance. But the increased efficiency has allowed for more effective watering, so the trees are irrigated consistently and with only the amount of water they need.

MANY SOURCES OF IRRIGATION

One of the primary challenges when it comes to irrigation water for farmers in the valley is late-season irrigation water. Surface water there is stored in a series of reservoirs and released into a network of ditches throughout the growing season. When the reservoirs are empty, the ditches are shut off. The amount of water in the reservoirs is primarily determined by that years' snowpack and subsequent spring melt.

Snowpack in recent years has been well below average. To mitigate this, Ela uses a few techniques. First, the farm owns and utilizes a broad array of water rights from multiple sources. These include Leroux Creek, the Highline Ditch, and numerous small reservoirs. Not only does this offer Ela options throughout the growing season, many of these rights are senior rights. That means that in the event of a "call," or when water supplies are too low for every user to get their full share, senior rights take priority. These rules are based on western water law that is over a century old. When Ela is unable to pull from the ditches, he can then tap the reservoir supply.

ABOVE: Ela admires his orchard
TOP of PAGE: Spring blossoms mark the start of the growing season
Ela Family Farm photos courtesy Steve Ela



A view of the North Fork Valley from Ela Family Farm

But relying on this system of water allocation isn't Ela's only approach. Nor is being as efficient as possible with his irrigation technology. Ela takes it yet a step further: into the soil.

HEALTHY SOIL GROWS HEALTHY FRUIT

Step into Ela's office and you will find binders full of farm records tracking the soil fertility of his orchard. Before becoming a full-time farmer, Ela received his Masters degree in soil science from the University of Minnesota. With the desire to someday return to his family's land, he knew that growing healthy soil would be essential to fostering a thriving business.

On his orchard, Ela curates what he calls a "soil smorgasbord," meaning he manages for overall soil health so the ecology of his orchard can provide the crops with what they need at a given time. A key part of this "smorgasbord" is a permanent cover crop mix, which holds water in the soil, provides nutrients, and produces a healthier fruit crop. The mix, which includes species such as alfalfa and white clover, provides the orchard with 50% of its nitrogen needs and the majority of its mineral needs. This greatly reduces the need to apply organic fertilizers and also reduces the associated cost. Ela mows the cover crop three to four times a year, which has built his soil organic matter (SOM) to 3-4%, an impressive percentage for a region where average SOM is 2% or less. These healthier soils wick up moisture and maintain cooler temperatures in the orchard throughout the hot summer months. The less water the trees expend under heat stress, the less water needs to be applied to keep them thriving. And the more water they can keep in the soil to grow larger, sweeter fruit.

DOLLARS AND "SENSE" OF CONSERVATION

Economics may best explain the value for these improvements. When the orchard was purchased in 1988, gross revenue was about $200,000. Now, 27 years later, the orchard's gross revenue is $1.1 million, a 450% increase using the same amount of water and acreage. By integrating modern irrigation technology, soil health practices and a tenacious marketing sense, Ela has watched his productivity climb and his operation withstand the tests of time. Water efficiency and conservation have proven smart business risks that turned into real returns. For Ela, managing his orchard for long-term ecological health and economic viability just makes sense.

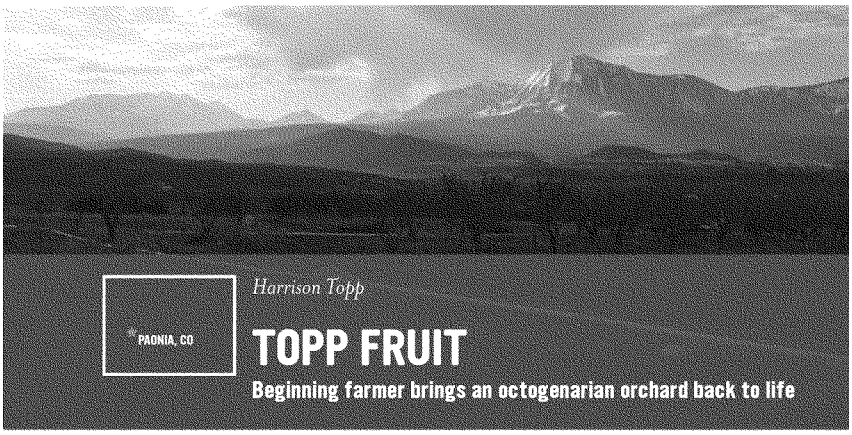
SNAPSHOT

Years owned by the same family: 27

Irrigated acres: 80

Commercial land use: Organic apples, peaches, pears, plums, and cherries

Water management: Drip irrigation, microsprinklers, cover crops



PAONIA, CO

Harrison Topp

TOPP FRUIT

Beginning farmer brings an octogenarian orchard back to life

LEARNING TO FARM

In the fertile North Fork Valley outside of Paonia, Colorado, Harrison Topp prepares for his second season growing organic cherries and plums. The orchard, which Topp's parents purchased in 2007, has been in production for over eighty years. His family previously leased the orchard to a larger farm in the valley, but due to the age and condition of the trees, the operators decided to end the lease. In 2014, the responsibility of bringing the orchard back into working order fell to Topp.

At a spry 28 years old, Topp first began farming six years ago on small-scale vegetable operations, first as an apprentice and then as manager. It wasn't until last year that Topp took the leap from annual vegetable production to perennial fruit and became the primary operator of his new business, Topp Fruit. When asked what drew him to farming, Topp notes a desire for the lifestyle and a good dose of stubbornness. Now he is figuring out the day-to-day work of growing food in a region with just 15 inches of average annual precipitation.

WATER MANAGEMENT

As Topp experiments with the arts of pruning, cover cropping, harvesting, and caring for the daily needs of his orchard, he is also learning the intricacies of irrigation. Topp has a single source of irrigation water: surface water from the Fire Mountain Canal. The canal runs just upslope of the orchard and carries water to many producers throughout the valley. In Colorado, as in many western states, this is the original irrigation structure: Canals, also known as "ditches," supply users water that has often been captured and stored in reservoirs. Many ditches in Colorado are earthen—the same canals hand-carved through the landscape by homesteaders or, in some places, by native farmers millennia ago. The Fire Mountain canal is concrete lined, while others in the area have been piped to save water.

The way the Fire Mountain Canal is operated determines to a great extent the choices Topp can make with his irrigation practices. Some ditch systems deliver water to users throughout the season according to their rights and needs. The Fire Mountain Canal, however, runs on what is called a constant flow: when water flows through the canal, Topp and the other water users must use it before it flows downstream. However, neither Topp nor any individual producer alone can determine canal or ditch operations as the ditch is operated by the Fire Mountain Canal and Reservoir Company whose members include shareholders along the ditch. When water is released from Fire Mountain Canal, Topp receives the entire amount diverted at this point for four-and-a-half days straight on an ongoing cycle until the water is turned off. There

ABOVE: Topp takes a break for a photo shoot
TOP of PAGE: Gated pipe irrigates Topp's orchard
Topp Fruit photos by Kate Greenberg

Topp and fellow farmer Elizabeth Woods Darby mark irrigation furrows

is no benefit to him as a producer—and in fact some disincentives—to use less than his full allocation.

RESILIENCE IN HEALTHY SOIL

Topp uses furrow irrigation, or shallow channels that run alongside the trees. This type of flood irrigation is often considered less efficient than such technologies as sprinklers or drip irrigation. But for Topp, installing more efficient irrigation comes with a steep price tag, one he might be willing to consider if it did not also pose a risk to the health of his orchard.

Some years, particularly in drought years, the Fire Mountain Canal can be turned off as early as July. This is often due to scant snowpack producing below-average runoff. Summer rains can help but are not reliable. This means Topp risks losing late-season irrigation, which is critical to fruit ripening. Topp relies on furrow irrigation to store water in the soil. As water flows through the furrows, some of it is used by the trees, some returns to the river, and some is stored in the soil. Topp is essentially using his irrigation technology to do what the larger irrigation infrastructure prohibits him from doing: storing water on-farm for late-season irrigation. His management also supports multiple values, including building healthy soil, enhancing river flows, and growing delicious fruit. While water conservation and efficiency are critical to the future of the West, Topp offers an example of why their nuances must be sufficiently understood.

The limits on Topp's irrigation infrastructure have urged him to build the health of his soil. This year he is planting multiple mixes of cover crops—an amalgamation of crop types that bring nutrients and organic matter to the orchard. The healthier the soil, the more water it can store. And the more water Topp can store in his soil, the less he risks losing his crop in a drought year due to lack of surface water. (See the Appendix for an in-depth discussion on options for supplementing irrigation supplies).

YOUNG FARMERS OF THE FUTURE

Conservation means many things to farmers and ranchers. Soil conservation is critical to Topp's ability to conserve water, while his operation is also driven by the constraints of his irrigation infrastructure, the cost of efficiency improvements, and the particular operations of his ditch. Yet Topp is perpetually questioning how to do things better. He looks to his neighbors who, as one-time beginning farmers, have navigated decades of their own challenges. Topp says there have been few things more valuable than the mentorship of fellow farmers.

When asked where he sees himself in forty years, Topp replies, "I'd like to say I'm still farming [....] If I do continue, I'd like to expand to a scale that gives me more flexibility so I can grow fruit for a greater portion of the population." It will take a reliable water supply for Topp to realize that future. There is no easy answer. But one thing is clear: We need more young farmers like Topp on the land, learning from their predecessors, forging innovative routes to conservation, and adapting to the variables of a changing climate.

SNAPSHOT

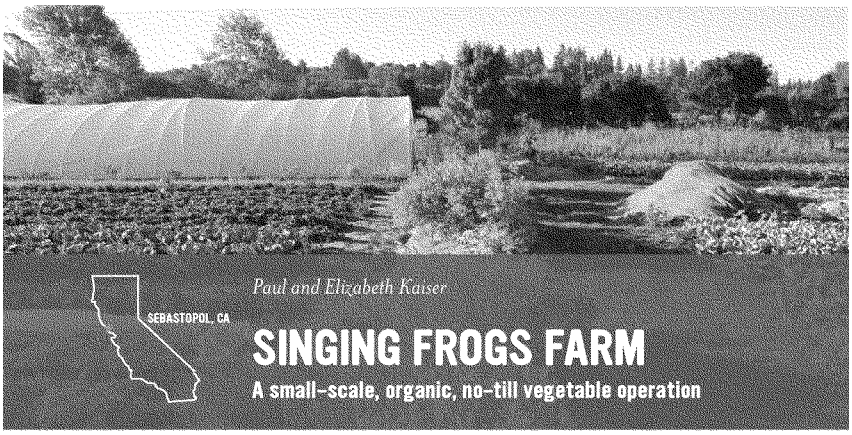
Years owned by the same family: 8

Years operated by Topp: 2

Irrigated acres: 4.4

Commercial land use: Organic cherries and plums

Water management: Cover cropping, soil moisture management, furrow irrigation



Paul and Elizabeth Kaiser

SINGING FROGS FARM

A small-scale, organic, no-till vegetable operation

GROWTH IN DROUGHT

Take a tour of Singing Frogs Farm and you will see crop rows packed with purple kale, butterhead lettuce, and heirloom tomatoes—over one hundred vegetable varieties in total. In this cool, low valley just outside of Sebastopol, California, farmers Paul and Elizabeth Kaiser are surprising their neighbors. In the midst of California's driest year on record, the Kaisers are increasing revenue on their two-and-a-half acres of cultivated bottomland while drastically reducing water consumption, an unlikely combination when the drought is driving farms elsewhere out of business.

Even in a historically unprecedented dry year, and in a region with an average of 30 inches of annual precipitation, the Kaisers are not daunted by the drought. Instead, they take it as a challenge to build drought resilience on their farm, where the precious groundwater they use to irrigate is just as tenuous as surface flows elsewhere. Whether through no-till, composting, or an intensive greenhouse schedule, the Kaiser's resilience always comes back to the health of their soil.

THE PATH TO NO-TILL

Like many young farmers today, the Kaisers did not grow up on a farm. In 2004, ready to raise a family and try out the ideas they experimented with while working on land restoration in The Gambia, West Africa, they purchased eight acres in Sonoma County. This land was not exceptional. The light, tan soil had only 2.4% soil organic matter (SOM) when the Kaisers bought the property, relatively low for the area. Only a couple of the acres were arable. Cold air funnels in from the surrounding vineyards, driving temperatures below freezing in the winter and bringing frost dates as early as September and as late as May.

The Kaisers started out tilling the soil, as is still the norm on most operations big and small. Soon they realized tillage, the process of breaking up the soil for cultivation, was disturbing critical life processes taking place underground. Now with no-till, Paul and Elizabeth are building their soil structure. This means they are able to capture more water—not to mention beneficial carbon and nitrogen—and store it in the soil where it supports the soil biome and the next crop.

The Kaisers also use an intensive greenhouse schedule to rotate crop successions and keep the soil covered at all times. The beds are not bare for more than a few

ABOVE: Farm employee Marty harvests a head of lettuce
TOP of PAGE: Singing Frogs Farm produces over 100 varieties of vegetables
Singing Frogs Farm photos courtesy Paul Kaiser

Most of the Singing Frogs Farm Crew: L to R (back row) Miguel, Elizabeth, Paul, John, Marty & Kim. L to R (front row) Anna, Lucas, Nina and Bryanna

hours at a time, which greatly reduces water loss to evaporation. Paul and Elizabeth are able to achieve this with transplants grown in their greenhouse and ready to plant-out immediately following harvest. They also apply a massive amount of compost, which they top-dress to the beds rather than tilling in. They plant directly into the compost, which retains moisture, builds organic matter, and delivers nutrients to the crop.

MORE ORGANIC MATTER, LESS IRRIGATION

Now, after eight years of no-till production, composting, and keeping the ground covered, the Kaisers have measured their soil organic matter at a twelve-inch depth at 6.5% and at a six-inch depth an astounding 9.5%. That's an increase of over four-fold from when the couple turned over their first row on this land. With every percent increase in SOM, the soil can hold upwards of twenty thousand gallons of water per acre, with some sources citing that number up to twenty seven thousand gallons. So when the rains come, as they have been and are predicted to continue in more intense events, Kaiser's soil not only captures and retains that moisture, but also evades damaging erosion. After a recent eleven-inch downpour, the Kaiser's fields remained intact.

The Kaisers's soil water savings is showing up as savings in their irrigation, too. The Kaisers use precision drip irrigation across the farm. Two slender tubes run the length of each thirty-inch wide bed, dripping water precisely where it's needed. This system irrigates at around 90% efficiency, meaning that 90% of the water diverted to the farm is used by the crop, rather than lost to evaporation, runoff, or deep percolation, an extremely high level of efficiency for any farm.

The Kaiser's attribute the efficiency of their farm to a combination of healthy soil, efficient irrigation technology, and refined management practices. Paul explains, "When we started farming here [...] I was typically running the irrigation system two to three hours every-other day. And that was pretty standard. Now I am down to 45 minutes to an hour every five to seven days." The Kaisers grow the same crops now as they did then.

Not only are the Kaisers saving water, they're making more money doing it. Their high-intensity production pumps out over seven times the average volume of similar farms in California, pulling in around $100,000 an acre in sales and supporting four full-time staff.

A COMMITMENT TO INNOVATION

The improvements at Singing Frogs Farm didn't happen overnight. The Kaisers have put in seasons of trial and error integrating biology, ecology, and human stewardship to realize a profitable, productive, and conservation-oriented operation. They have invested in efficient irrigation and continue to refine their water management. Rather than finding productivity and drought resilience at the expense of healthy soil and an intact ecosystem, the farm is thriving precisely because they foster both.

SNAPSHOT

Years owned by the same family: 11

Acres owned/managed: 8

Irrigated acres: 2.5

Commercial land use: Diversified vegetable operation

Water management: No-till, composting, constant soil cover, drip irrigation

[5] http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/stelprdb1082147.pdf

[6] https://farmsps.ucsd.edu/swap/PI55

GLOSSARY

WATER MANAGEMENT

Acre-foot: Amount of water that will cover an acre of land at a depth of one foot, or 325,851 gallons of water[1]
Center pivot: A type of automated sprinkler irrigation that rotates around a fixed point
Ditch: A channel constructed to deliver water for irrigation (see also "canal")[2]
Efficiency: Quantity of water consumed by crops versus the amount of water delivered[3]
Flood irrigation: Water diverted from ditches and spread across the field or pasture[4]
Furrow irrigation: A type of flood irrigation that applies water into shallow, evenly spaced channels that convey water through a field to the crops[5]
Irrigation canal: A channel constructed to deliver water for irrigation (see also "ditch")[6]
Micro sprinklers: Small sprinklers that deliver water just above the soil surface[7]
Reservoir: An artificial lake built to store water
Side roll: A type of automated sprinkler irrigation that moves in a line across a field
Sprinkler irrigation: A form of irrigation typically higher in efficiency than flood; includes such technology as side rolls and center pivots[8]
Surface drip irrigation: Pipes or hoses that deliver water directly to the soil surface through small emitters[9]
Subsurface drip irrigation: Pipes or hoses that deliver water below the soil surface through small emitters[10]

SOIL HEALTH

Conservation tillage: Any tillage system in which at least 30% of the previous crops' residue is left in the field to protect the soil
Cover crops: Non-cash crops that can provide multiple benefits including erosion prevention, nutrient availability, weed suppression, and water availability[11]
Holistic management: A whole farm planning system that helps farmers, ranchers and other land stewards better manage resources for environmental, economic, and social benefits[12]
No-till: Process of crop production that does not disturb the soil through tillage
Rotational grazing: Rotating livestock frequently throughout many small pastures to allow for pastures to regenerate[13]
Soil food web: Diverse soil community that includes bacteria, fungi, protozoa, nematodes, worms, insects, and more that work in tandem to create healthy soil
Soil health: The continued capacity of the soil to function as a vital living ecosystem that sustains plants, animals and humans[14]
Soil organic matter (SOM): The part of the soil that contains anything that once lived. It aids in crop growth, reduces erosion, retains nutrients, stores water, and sequesters carbon, among other benefits[15]
SOM: Short for "soil organic matter"
Tillage: Preparation of the soil for cultivation

WATER LAW

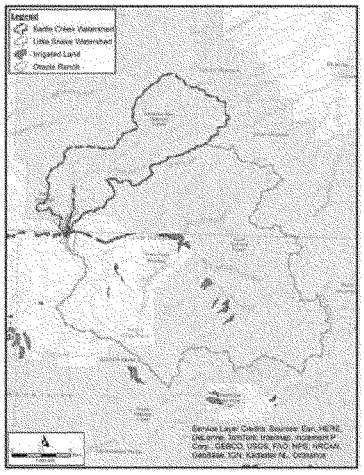
Beneficial use: The lawful use of water for a beneficial purpose which includes agricultural, industrial, and household use and may include environmental use
Call: In times of shortage senior water rights holders may "call" for water, thus curtailing deliveries to undecreed or junior water users in order to fulfill the beneficial use need of the decreed senior use right[16]
Consumptive use: Water use that permanently withdraws water from its source; water that is no longer available because it has evaporated, been transpired by plants, incorporated into products or crops, consumed by people or livestock, or otherwise removed from the immediate water environment[17]
Diversion: Removing water from its natural course or location, or controlling water in its natural course or location, by means of a water structure such as a ditch, pipeline, pump, reservoir, or well[18]
Return flow: Water that returns to streams, rivers or aquifers after it has been applied to a beneficial use[19]
Water right: Considered a property right; the right to use a portion of the public's surface or groundwater resource under applicable legal procedures[20]

Definitions #1, 3, 4, 7-10, 16-20 courtesy of Colorado Foundation for Water Education (CFWE) from their publications *Citizen's Guide to Colorado Water Conservation* and *Citizen's Guide to Colorado Water Law*. Visit yourwatercolorado.org
Definitions #5, 11, 13-15 courtesy of the Natural Resources Conservation Service (NRCS), visit nrcs.usda.gov; #2 and #6 courtesy of the Bureau of Reclamation (BOR), visit usbr.gov; #12 courtesy of Holistic Management International, visit holisticmanagement.org

APPENDIX I: LADDER RANCH WATER BALANCE

Background

Ladder Ranch is located at the confluence of Battle Creek and the Little Snake River and straddles the Colorado-Wyoming border. The ranch draws water from Battle Creek and the Little Snake at multiple points for the irrigation of over 600 acres of hay pasture. Approximately 400 acres of flood irrigated pastures lie within a quarter mile of the two streams. Pressurized side roll sprinklers are used to irrigate approximately 175 acres on higher ground on the west side of Battle Creek.

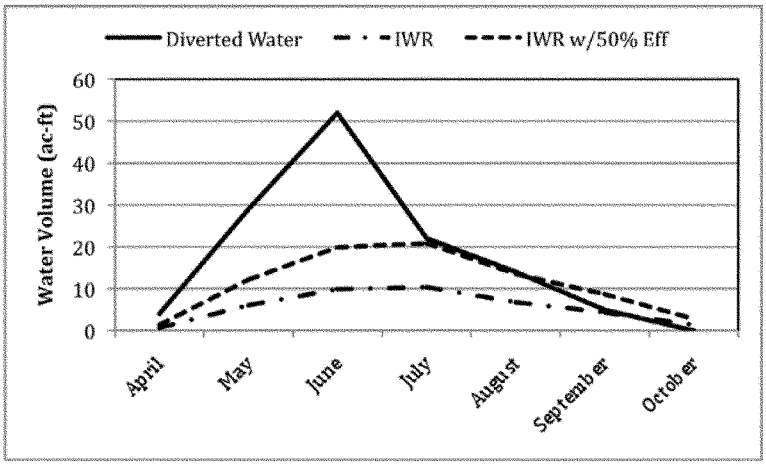


Water Rights

There is no irrigation and very little water use located above the ranch on Battle Creek, while there are approximately 2,200 acres of irrigated land above the ranch on the Little Snake. There is very little reservoir storage in the basin, which results in high peak flows that quickly taper off once the snowmelt is over. The ranch holds very senior water rights in Wyoming and Colorado, and these rights have never been called out or subject to administration during historical calls on the Little Snake in 2002 and 2004. Pat O'Toole stated that the ranch does reduce their irrigation diversions during low flow periods in order to leave sufficient water in both streams to maintain the fisheries there.

According to a recent study by CDM entitled "Agricultural Water Needs Study," hay pasture in this area requires approximately 2.28 acre-feet of supplemental irrigation water per acre to adequately meet the annual crop water demand. This means that crops on the ranch consume approximately 1,350 acre-feet of water annually (one acre-foot can cover a football field with one foot of water). Supplying a maximum crop demand of approximately 0.30 inches per day would require a total peak diversion flowrate of 15 cubic feet per second (cfs) assuming a system efficiency of 50 percent. Some diversion records are available from the Colorado Water Conservation Board for water rights filed with the state. One water right with fairly complete records is the Porter Salisbury Pump 1 & 2. The diversion records are compared to the irrigation water requirement (IWR) for this right in the figure on the next page.

LADDER RANCH WATER BALANCE, CONTINUED



This figure confirms comments by Pat O'Toole that when excess water is available, it is diverted, but once runoff tapers off, diversions are reduced to better match needs.

Irrigation Practices

The potential conversion of additional lands to sprinkler irrigation has helped many farmers and ranchers better manage their limited water supply. The impacts, however, of making such a change has both pros and cons that must be evaluated on a case by case basis. As mentioned previously, most of the irrigated lands on this ranch are located close to the creek. When excess water is applied in the spring, some of it would quickly return to the stream via surface return flows and be available by the next diverter downstream. In many cases, on this ranch the water is diverted from the stream and return flows accrue to the stream all within the ranch property, which implies that the only potential beneficiary of reduced diversions would be the stream in between. Some water would also penetrate below the root zone of the crops and travel through the soil back to the creek. This practice would tend to build up the amount of water stored in the soil and delay its release back to the stream system, thereby acting as an uncontrolled reservoir.

Future Water Conservation Measures

The "Agricultural Water Needs Study" mentioned earlier estimated that 72 percent of return flows in this area return to the stream within the same month that they are diverted, while most of the remainder returns over the following 4 months. This implies that most of the excess water diverted in May and June would return during those months; however, stream flows would continue to benefit from this return water through October. Based on our analysis of available data it appears that the current practices on the ranch are reasonable. While converting more areas to sprinklers would reduce the amount of flow diverted during the runoff season, it could negatively impact stream flows during the late summer and fall periods. Additional data would need to be collected to better predict the potential impacts of any large scale irrigation changes on the ranch.

Water balance researched and written by Applegate Group

APPENDIX II: ELA FAMILY FARM WATER BALANCE

Background

The Ela Family Farm is located on the upper portion of Rogers Mesa at an elevation of 5,850 feet near Hotchkiss, Colorado. The farm primarily grows a variety of fruits including apples, pears, cherries, peaches, and plums. The growing season extends from a blooming of the trees in mid-April to mid-May and concludes with harvest primarily in late August and September. The climate in this area is semi-arid with rainfall only contributing a small percentage of the annual crop water requirements. Crop production is heavily reliant on irrigation water. The soils consist of up to 20-24 inches of stony clay loam with an organic content of 3-4 percent.

Water Rights

The farm owns a wide variety of water rights that are used on the property, all of which are delivered through a combined ditch system off of Leroux Creek. Direct flow decrees include shares in the Allen Mesa, Highline, and Ellington Ditches, which have been physically combined into one ditch system. Their most senior decree includes 0.5 cubic feet per second out of Leroux Creek, which is typically in priority until August. After all the direct flow decrees are out of priority, the farm utilizes 250 shares it owns in the Leroux Creek Water Users Association, which operates numerous small reservoirs in the Leroux Creek Drainage.

The amount of water available from these shares varies depending on the snowpack. On average years, these shares will net about 190 acre-feet of water, but the volume can range from 100 acre-feet in dry years up to 225 acre-feet in wet years (one acre-foot can cover a football field in one foot of water). In order to have a firm water supply during dry years, Ela leases an adjoining parcel of land to the south and fallows the majority of that land in order to focus the water supply on the orchards. Ela also owns 200 shares in the Fire Mountain Canal, which equates to approximately 0.13 cubic feet per second (cfs). However, that water is leased to other users and is not used on Ela's property.

Irrigation Practices

Information regarding the property and associated irrigation practices were obtained from a meeting with Steve Ela on January 8, 2015. The property was originally purchased by the Ela family in 1987. At that time the entire orchard was irrigated with flood irrigation in furrows between the rows of trees. The family immediately started installing the backbone of infrastructure that would be required to convert over to micro-sprinklers in 1989. This included an NRCS Yak screen, main pipeline, and filtration system. Water would pass through the yak screen at the pipeline entrance and pressurize using the gravity fall from that point to the filter location. Pressures in the northeast corner of the property were not sufficient, so a 2 horsepower pump was added to increase the pressure there. Overflow from the Yak screen is conveyed to the alfalfa pastures for irrigation there. No flow measurement device is in place to determine the amount of overflow water, but according to Ela, during dry years there is very little overflow once spring runoff is over.

The first micro sprinklers were installed in 1990 and all orchards on the property were converted by 2000. Around 2002, the Ela family started to install buried drip lines in some orchards. After experimenting with multiple arrangements they determined that three drip lines per tree row is most effective. The drip lines contain pressure compensating drippers spaced 2 feet apart with flowrates of 0.25 gallons per hour. Once buried, the drip lines have assisted with controlling the ground cover near the tree trunks since that area is drier than between the rows where the cover crop can be managed easier. The drip system currently covers approximately 30 acres of the farm in 1-acre zones with the rest remaining on micro sprinklers. One distinct advantage to the drip system is that it is set up so that the user can adjust the application rate by simply entering the percentage of a full irrigation that is required. This makes seasonal adjustments much simpler than the micro sprinklers.

Installing the drip system necessitated increased water filtration in order to avoid plugging the drippers. After experimenting with numerous filtration options, the farm determined that sand media filters were the most effective. There are currently six of these filters in the system, and they are automatically backwashed as necessary. The frequency of backwash cycles depends greatly on the time of year.

Irrigation Demand vs. Supply

Aerial photography obtained from the National Aerial Imagery Program (NAIP) was used to determine the number of irrigated acres. The farm has 83.3 acres of orchards on the sprinkler and drip system and 6.4 acres of alfalfa/hay that are currently irrigated. Another 5.4 acres of potential orchard exists between older remaining rows of some crops. Evapotranspiration (ET) data was obtained from Colorado Agricultural Meteorological Network

ELA FAMILY FARM WATER BALANCE, CONTINUED

(CoAgMet) from their nearby station on Rogers Mesa. The station is located about 1 mile to the south and about 200 feet lower in elevation. The ET data is for a reference crop of alfalfa, which can be converted to other crops such as orchards by applying a crop coefficient to the data.

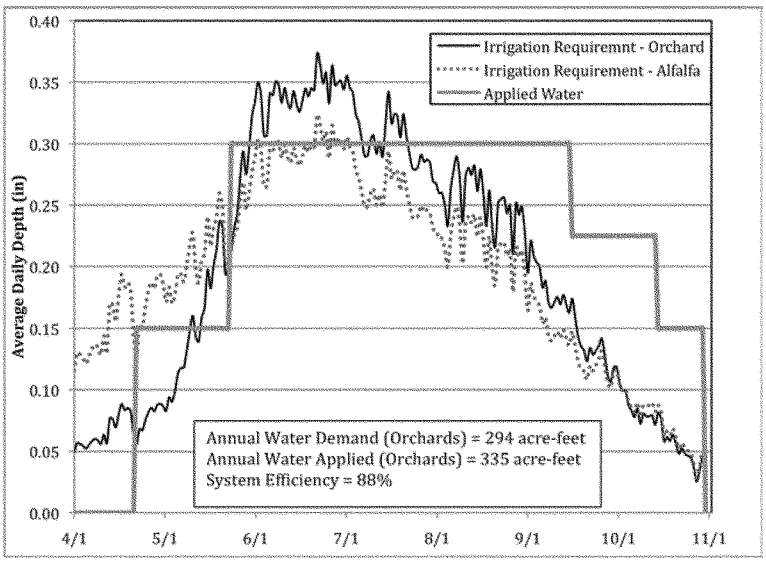
The Food and Agricultural Organization (FAO) published crop coefficients for a wide range of crops including orchards. These values were used to estimate the ET demand for the crops. Average precipitation data was also obtained from CoAgMet and to the ET demand at an 80% efficiency rate in order to calculate the Irrigation Requirement (IR) for the orchards. The amount of irrigation water supplied to the orchards was calculated by applying the dripper/micro sprinkler spacing and flowrate to the average irrigation schedule described by Ela. The figure below depicts a comparison between the irrigation supply and demand for an average year.

This analysis shows that the orchard irrigation system is achieving an efficiency of approximately 88%, which is very close to accepted values of 90% for drip systems and 80-90% for micro sprinklers.

Future Water Conservation Measures

There does not appear to be a significant amount of additional water that could be saved by increasing water conservation practices on the orchard portion of the farm. Converting more land to drip would allow the system to be managed so that the supply can even more closely follow the demand, but this will not likely result in a significant amount of conserved water. Rather it would allow the user to easily adjust the system to better match daily demand and maintain more consistent soil moisture. Backwash water could be used if a larger settling pond was provided to store backwash sediment and water, but another pump would be required to inject this water back into the system. This would also increase the complexity of operations while not resulting in a significant amount of water savings. Ela's willingness to experiment with various technologies and his efforts to continuously improve the system have resulted in a very efficient system overall.

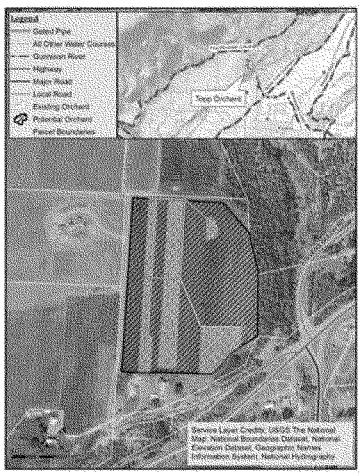
Water balance researched and written by Applegate Group



APPENDIX III: TOPP FRUIT WATER BALANCE

Background

The orchard owned by Harrison Topp is located on the upper portion of Rogers Mesa at an elevation of 5,850 feet near Paonia Colorado. The orchard has not been intensively managed in the past and only 14 acres of the site remains planted. The growing season extends from a blooming of the trees in mid-April to mid-May and concludes with harvest, primarily in late August and September. The climate in this area is semi-arid with rainfall only contributing a small percentage of the annual crop water requirements. Thus crop production is heavily reliant on irrigation water. The soils consist of up to 20-24 inches of stony clay loam.



Water Rights

The orchard owns 480 shares of water in the Fire Mountain canal, which is the only irrigation water supply on the property. These shares equate to 0.33 cubic feet per second (cfs) of water according to the Fire Mountain Ditch Company. Water is diverted from the Fire Mountain Canal in conjunction with the neighbors' shares on the north side of the property. The entire amount diverted at this point is routed to the Topp Orchard 4.5 days per week, while the northern neighbor takes the water the remaining 2.5 days a week.

The Fire Mountain Canal has a relatively junior water right on the North Fork of the Gunnison River, and it is called out every summer. When direct flows are not available, water is released from Paonia Reservoir in order to achieve a full decreed flow of approximately 175 cubic feet per second (cfs). The canal typically turns on around mid to late April and runs at a full canal flow until the reservoir is drained. After the reservoir is drained the canal typically has to shut down for the season. The average shutdown date is September 24th; however it varies greatly from late July to late October. The figure on the next page shows the frequency of start and stop dates for the canal.

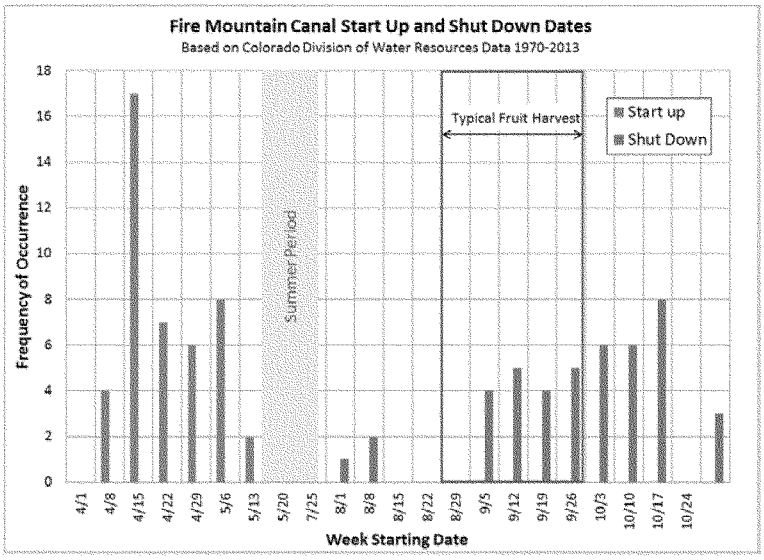
Irrigation Practices

Information regarding the property and associated irrigation practices were obtained from a meeting with Harrison Topp on January 8, 2015. The property was originally irrigated with flood irrigation in furrows between the rows of trees. The farm has 14.4 acres of potential orchard; however, many of the trees were recently removed and there is currently only 4.4 acres of orchard under irrigation. Gated pipe has been installed along the top and middle of the remaining orchard blocks as shown in the attached map. The remaining land is irrigated on a very limited basis.

Irrigation Demand vs Supply

Aerial photography obtained from the National Aerial Imagery Program (NAIP) was used to determine the number of irrigated acres. Evapotranspiration (ET) data was obtained from Colorado Agricultural Meteorological Network (CoAgMet) for their nearby station on Rogers Mesa. The station is located about 12 miles to the southwest and about 200 feet lower than the orchard. The ET data is for a reference crop of alfalfa, which can be converted to other crops such as orchards by applying a crop coefficient to the data. The Food and Agricultural Organization (FAO) published crop coefficients for a wide range of crops including orchards and these values were used to estimate the ET demand for the crops. Average precipitation data was also obtained from CoAgMet and to the ET demand at an 80% efficiency rate in order to calculate the Irrigation Requirement (IR) for the orchards. The amount of irrigation water available for the orchards was assumed to be constant since flows in the Fire Mountain Canal are typically constant when the canal is in operation. The figure on the next page depicts a comparison between the average demand, the average supply, and the supply in 1977.

TOPP FRUIT WATER BALANCE, CONTINUED



This analysis shows that on an average year the orchard irrigation system has surplus water when water is available. The largest potential hindrance to a productive orchard at this location is the uncertainty of late season water, which is critical as the fruit is ripening. Data from the Colorado Division of Water Resources shows that the canal is typically turned on in mid to late April but turns off as early as late July in extreme drought years. The driest year on record was 1977. During that season, approximately 47.7 acre-feet of water was available, which is nearly enough to meet the annual demand of the orchard. The timing of the water, however, would not have been sufficient to produce a crop and may have even resulted in tree mortality.

Harrison Topp indicated that he estimates he applied 18 acre-feet to the remaining orchards in 2014. Based on the irrigation requirement estimated from CoAgMet, the 4.4 acres would have required 15.5 acre-feet. This results in an estimated efficiency of 86 percent. This would be very high for gated pipe, which is typically around 60-70 percent efficient.

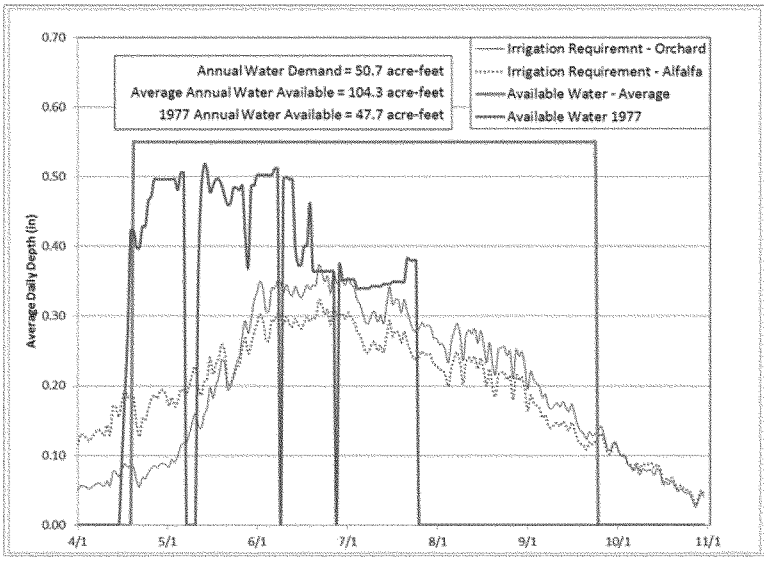
Future Water Conservation Measures

In order for this property to reach its full potential as an orchard, late season water would be required. In extreme drought years it would take approximately 18 acre-feet of storage to bank extra water in the spring for use in the fall. Constructing a reservoir of this size on the property would significantly reduce the amount of orchard acreage. Another option would be to seek out a supplemental water supply.

If a new supply was obtained through a well such diversions would require augmentation water to offset stream depletions when it was used. It is our understanding that augmentation water is difficult to find in the North Fork of the Gunnison due to the lack of storage available. A final option to address this shortage would involve operating the Fire Mountain canal at lower flowrates in late summer and fall when the canal is relying on storage water. This would require a major organizational change for the Ditch Company but the benefits to the users could be substantial.

Under the current method of canal operation, converting to micro sprinklers or a drip system would not help solve

TOPP FRUIT WATER BALANCE, CONTINUED



the potential water shortage late in the season and it could, in fact, negatively impact the orchard. Under flood irrigation, while the canal is on the entire soil profile could be irrigated to the field capacity. Then when the canal is shut down, there will be a sufficient amount of water stored in the soil column for use by the trees. If micro sprinkler or drip irrigation was installed it could limit the amount of soil moisture that could be built up and stored in the soil for later use. These systems would conserve water while the canal is on, but without the benefit of a local storage vessel the water supply for the property would remain unchanged.

If the orchard was completely replanted and irrigated with all 480 shares of water, on an average year about 53.6 acre-feet of water would return to the stream system through seepage or surface runoff. Some of this water might be intercepted by the North Fork Farmers Ditch and incorporated into their system for use by downstream users. The remaining water would enter the North Fork of the Gunnison upstream of a couple of very senior ditch diversions. This water would help fulfill their water decrees and be diverted into their system.

Another option would involve buying additional land that does not have a sufficient water supply and using some of the excess shares from this property to bolster irrigation there. Assuming the Fire Mountain Canal continues to operate the canal at a constant flow, we estimate that the 480 shares would be sufficient to irrigate approximately 6 additional acres. This estimate also assumes that drip or micro sprinkler irrigation systems were installed and managed to achieve 90% efficiency, similar to other local orchards. This option would actually increase the consumption of water since only 10% of diverted flows would then be returning to the stream system.

In summary, the best alternative for this property would involve changing the diversion patterns of the Fire Mountain Canal. However, that is beyond the control of a single shareholder. The lack of late season water likely explains why there are not as many orchards on in the North Fork Valley that rely strictly on Fire Mountain Canal water.

Water balance researched and written by Applegate Group

youngfarmers.org

familyfarmalliance.org

The CHAIRMAN. Thank you, Mr. Keppen.

Mr. Frank, welcome.

STATEMENT OF RICHARD FRANK, PROFESSOR OF ENVIRONMENTAL PRACTICE & DIRECTOR, CALIFORNIA ENVIRONMENTAL LAW & POLICY CENTER, UNIVERSITY OF CALIFORNIA, DAVIS SCHOOL OF LAW

Mr. FRANK. Thank you, Chairman Murkowski, Senator Cantwell, members of the committee.

With the beginning of a new water year on October 1st, California has now officially entered into its fifth year of drought, which is, as has been mentioned by other speakers, the most pronounced and protracted and severe in the state's recorded history.

The good news is that the State of California, its political leaders, water managers from the Federal, State, regional, and local levels, and 39 million Californians have done a pretty darn good job in responding to the challenges of that drought.

The—perhaps counterintuitively, the economy of the State of California has surged and has a remarkable recovery over the same period when we have been experiencing this five-year drought. Urban water districts are managing and handling the drought especially well, due to the visionary leadership and foresight of folks like my friend and colleague, Jeff Kightlinger.

California agriculture overall has done pretty well in the face of these drought challenges as well. Senator Feinstein mentioned a study that had just been released by my faculty and research colleagues at the University of California at Davis, which concludes that California's $46 billion per year agricultural industry remains robust. That is really due to three factors: an increase in the number of water transfers among the agricultural community; a transition to higher-value crops in the Central Valley, primarily almonds, walnuts, and grapes; and third, and perhaps most important, an increased reliance on groundwater pumping and groundwater, which has replaced and offset approximately 70 percent of the reductions in surface water supplies from the Center Valley Project and the State Water Project.

That is not to say that there are no losers in this drought. As has been mentioned, some small rural communities in the Central Valley have been hit especially hard, some tragedies there. The biggest loser, in my view, has been the environment—the water birds that depend on the Pacific supply way and the water refuges of the Great Central Valley that are currently parched; our native fish species in California, which are in devastating crisis right now; and an unprecedented number of tinder-dry forests that are erupting into wildfires, a problem which, of course, is not limited to California but is being experienced this year throughout the American West.

I want to spend—turn my attention and spend the rest of my time talking about some common virtues of the two bills, several concerns I have with House bill 2898 and why I believe the Senate bill is a preferable option. In terms of the common virtues, both bills require the preparation and completion in the very near term of feasibility studies of surface water projects and other efforts. Those projects have been discussed in the abstract for a long time,

but getting down to basics and seeing if they pencil out economically and make environmental sense is welcome.

Both bills address the particular problems of invasive and predatory species, which has had a devastating economic and ecosystem effect, particularly in California's delta. Some, but not all, of the proposed steps in the bill is to expedite environmental review of proposed drought—emergency drought response efforts similarly make sense.

Let me turn to some concerns I have identified with respect to House bill 2898. At the end of the day, the bill is a straightforward reallocation of finite surface water supplies from environmental programs to agricultural purposes. And I would submit there are three thematic deficiencies with that approach.

A better approach, it seems to me, is to expand the pie to work to create additional water supplies through recycling, reuse, desalination, and conservation projects.

Second, what all water users want and need—agricultural users, urban, conservationists—is greater certainty. And I am concerned that several of the proposals in the House bill would undermine that certainty and create additional litigation and uncertainty.

Third and finally, and as you have heard from both Federal and State water managers, in the face of this drought, day-to-day, real-time coordination and operation by Federal and State water managers is critical. I am concerned that some of the provisions of the House bill will undermine those collaborative and successful efforts by Federal and State water managers.

Some specific concerns about the bill: legislative amendments to the biological opinions for delta smelt and salmon seem quite troublesome and set a disturbing and unfortunate precedent, as do a number of the bill's proposed amendments to the Endangered Species Act specific to California; some significant undercutting of the Central Valley Project Improvement Act of 1992, one of the most significant environmental pieces of legislation, at least to Californians, in the last quarter-century; and finally, the repeal of Federal participation in implementing the San Joaquin River settlement. I share Senator Cantwell's concerns that if that is passed, the parties will return to their litigation foxholes, and we will have more costly, expensive, perhaps unending litigation.

By contrast, the Senate bill doesn't contain any of the specific infirmities I have identified. It does expand the water supply pie, including not just new surface storage projects but also raising the height of the existing dams and reservoirs, critically important looking at groundwater storage as an additional alterative, which in many cases is going to be more cost-effective and can be undertaken more quickly than new surface storage projects, stormwater recapture, desalination, and the like; the Federal support for integrated regional water management strategies; and additional welcomed support for Federal and State water managers in California.

And last and finally, and again addressing what the Senator has mentioned before, the—some of the—Senator Feinstein, that is—addressing the drought-stricken rural communities that have paid a particular burden and are deprived of regular water sources in the drought. Those folks need immediate help, and the Senate bill does that.

Thank you very much for the opportunity to testify. I would be glad to answer any questions the committee may have.

[The prepared statement of Mr. Frank follows:]

Statement of Richard M. Frank
Professor of Environmental Practice &
Director, California Environmental Law & Policy Center
University of California, Davis School of Law
before the
Energy and Natural Resources Committee
United States Senate
Hearing on H.R. 2898 & S. 1894
October 8, 2015

Chairman Murkowski, Ranking Member Cantwell and members of the Committee, thank you for the opportunity to testify on the two "California drought relief" bills currently pending before this Committee: H.R. 2898 and S. 1894.

I am Richard Frank, Professor of Environmental Practice and the Director of the California Environmental Law & Policy Center at the University of California, Davis School of Law. Before I joined the U.C. Davis Law School faculty in 2011, I served as the Executive Director of the U.C. Berkeley School of Law's Center for Law, Energy and the Environment. At these law schools, I have taught courses on Water Law, California Environmental Law & Policy, Environmental Enforcement, Climate Change Law & Policy, Ocean & Coastal Law, the California Delta, Natural Resources Law and related topics. Much of my research and writing has focused on water law and policy in California and the American West, climate change mitigation and adaptation law and strategies, environmental regulatory policy and private property rights.

Before my academic appointments at U.C. Davis and U.C. Berkeley Schools of Law, I worked for 30 years as a practicing attorney at the California Department of Justice, where I represented the People of the State of California and various state agencies, departments, boards and commissions focused on environmental regulation and natural resources management. At the time of my retirement from the Department of Justice in 2006, I served as the California Attorney General's Chief Deputy Attorney General for Legal Affairs.

Since leaving state government in 2006, I have been appointed to and have served on various California state advisory boards and commissions. Most relevant to this testimony, in 2007 former California Governor Arnold Schwarzenegger appointed me to the Delta Vision Blue Ribbon Task Force. I served on that body from 2007 until it concluded its work and reported its findings to the Governor and California Legislature in late 2008.

General Comments & Overview

With the beginning of a new "water year" on October 1st, California has now officially entered its fifth consecutive year of drought. The length and intensity of that drought are unmatched in California's 165-year state history.

The current drought has severely tested California's people, economy, environment and political system. The good news is that California's political leaders, water managers and general citizenry have responded remarkably well, under exceptional circumstances, to the unprecedented challenges presented by the drought. With a few exceptions noted below, and through their own, unprecedented conservation efforts, the state's 39 million residents have been able to obtain the water necessary to meet their basic human needs. Perhaps counter-intuitively, the current drought has not impeded California's remarkable and steady recovery from a protracted economic recession. Indeed, the state's robust economic recovery began roughly at the same time the current drought began in 2011.[1] In contrast, however, California's environmental resources have not fared nearly as well in the face of the present drought.

A key factor in ameliorating some of the potential adverse effects of the current, protracted drought is the work of federal, state, regional and local water managers in California. Most relevant to this hearing, federal and state water managers have collaborated closely and well in managing the Central Valley Project and the State Water Project under daunting circumstances and chronic, multiyear shortages. This, in turn, is due in no small measure to their ability to manage and coordinate the operation of those systems in real-time, on a day-by-day basis. (California Secretary of Natural Resources John Laird has made the same point in recent written communications with Congress.) That's an important, overarching principle—one that any new federal drought response legislation should promote, rather than impede.

At the same time, the rather impressive record of California drought response to date should not lead to a false sense of complacency. Nor should reports of an El Nino winter that could conceivably end—or at least put a significant dent in—California's current drought. That's because most climate scientists, meteorologists and climate modelers warn that a pattern of future droughts is likely to occur. Further, they caution that the *severity* of the state's current and protracted drought may actually be replicated in future years. I.e., California's present drought may well not be an aberration but, instead, a harbinger of a more water-challenged future--not only for California, but also for other portions of the American West.

Accordingly, it seems appropriate for Congress to consider any proposed federal drought legislation not simply as a one-time response to California's current drought but, rather, with an

[1] Several of my U.C. Davis faculty and research colleagues recently published an academic study concluding that California agriculture has shared in this recent economic prosperity. That August 2015 report, prepared for the California Department of Food and Agriculture, indicates that the state's $46 billion-a-year agricultural output remained robust through a fourth year of drought, even in the face of significant surface water delivery cutbacks from the CVP and SWP. *See*, http://californiawaterblog.com/2015/08/18/drought-bites-harder-but-agriculture-remains-robust/

eye toward the "new normal" of *recurrent* droughts exacerbated by projected climate change.

H.R. 2898

Several features contained in H.R. 2898 appear to have merit. For example, the bill's requirement that the feasibility of various new surface storage facilities be studied, and that those feasibility studies be concluded and published in the near future, makes considerable sense. Several of these proposals have been hotly debated in the abstract, without focusing on their cost, engineering feasibility, etc. It's high time for an objective review of those projects' relative merits, so that federal and state policymakers can determine whether they "pencil out" and make environmental sense.

Similarly, the bill's proposed sections 203 and 204, which would undertake studies of invasive species and predator control, represent worthwhile initiatives. Invasive species present a clear and present ecological danger to the California Delta's native species and ecosystem. They have also resulted in economic hardship to many people and businesses in the Delta. Federal research, pilot projects and monetary support to combat that problem would be most welcome.

Finally, environmental review of proposed emergency response efforts to address the drought can and should be expedited when it is reasonably possible to do so. The National Environmental Policy Act (NEPA) and implementing regulations promulgated by the President's Council on Environmental Quality provide the flexibility to shorten the time periods to complete NEPA review in emergency circumstances. Many of H.R. 2898's proposed "fast-tracking" and disclosure provisions in this regard—when invoked in connection with the federal government's emergency drought response efforts—seem appropriate. One particularly welcome feature of proposed section 805 requires the Secretary of the Interior to adopt "Transparency Reporting" via creation of an electronic database to make publicly available documents associated with the government's NEPA compliance efforts. Such a reform is overdue.

On the other hand, H.R. 2898's proposal to reduce the public comment period under NEPA for drought response projects to 60 days—or, in some cases, as little as 30 days--is unwise. One of the overarching purposes of NEPA is to allow the interested public a meaningful opportunity to participate in the environmental decision-making process. Given the cost, complexity and magnitude of many potential federal drought response projects, these abbreviated comment periods seem unreasonably short. Similarly, proposed section 305 would authorize the Secretary to "deem a project in compliance with all necessary environmental regulations and reviews" if s/he determines that immediate project implementation is required to address "a specific and imminent loss of agriculture production upon which an identifiable region depends…" That provision would create a new statutory exemption from otherwise-applicable NEPA, ESA and related environmental review that appears both unprecedented and ill conceived.

Other provisions of H.R. 2898 seem equally problematic. Perhaps of greatest concern are the bill's significant modifications to the Biological Opinions that federal wildlife experts have fashioned for listed Delta smelt and salmonids adversely affected by operation of the Central

Valley Project and State Water Project. Those Biological Opinions were developed over a period of years by those experts, pursuant to the mandates of the Endangered Species Act. The Bi-Ops were challenged in protracted litigation brought by agricultural interests and Central Valley water districts against federal wildlife agencies. They were ultimately upheld in now-final decisions of the U.S. Court of Appeals for the Ninth Circuit. With respect, permanent federal legislation is not the appropriate means of making changes to the Biological Opinions—certainly not the substantial revisions contemplated by H.R. 2898. These provisions of the bill would set a most unfortunate precedent and further politicize implementation of the ESA's legal mandates.

More specifically, H.R. 2898's provisions would require a level of precision in sampling of fish and water quality (.e.g., turbidity) that doesn't currently exists and may well be unavailable in the future, given the present resources federal wildlife agencies have available. And by specifying the actions which they must take, the bill eliminates the ability of those wildlife agencies to utilize adaptive management strategies—or perform much management of listed species at all.

A related, major concern is H.R. 2898's proposed section 313, which would repeal the federal government's previous approval of the so-called San Joaquin River Settlement. That settlement resolved 18 years of protracted litigation over restoring flows to the dewatered San Joaquin River and—as approved by Congress—forged a legal and political compromise that promised to restore California's second largest river to some modicum of environmental health. Repealing federal approval of that settlement would undoubtedly result in the parties returning to their litigation foxholes, recommencing the litigation, and thus resulting in additional expense, delay and uncertainty. Such a course will ultimately benefit no one. It will instead open a renewed front in California's "water wars" that is contrary to the broader public interest—not to mention the environmental health of a vital state waterway and extensive riparian corridor.

Proposed section 602 would amend the Central Valley Improvement Act of 1992 (CVPIA) by creating a new Restoration Fund Advisory Board. In principle, convening a group of stakeholders for this purpose would seem uncontroversial. But the makeup of the proposed advisory board is extremely unbalanced, heavily dominated by CVP agricultural users, power contractors and municipal and industrial users, rather than reflecting a balanced representation of all relevant stakeholders. That imbalance is especially troubling given the CVPIA's environmental objectives, as clearly articulated by Congress over two decades ago.

There are numerous other, specific flaws contained in H.R. 2898. Let me nevertheless focus on three thematic deficiencies of the bill. First, this proposed legislation reflects a "top-down" federal drought response strategy—one that would override Endangered Species Act protections for threatened and endangered species and one that runs counter to principles of cooperative federalism. There is perhaps no aspect of American environmental and natural resources policy that requires a more collaborative federal-state relationship than water management in the American West. In recent years, federal and California state water managers have developed a strong partnership designed to jointly manage an extreme drought in real-time. H.R. 2898 threatens that model of cooperative federalism in a way that, if enacted, will prove counterproductive and undermine the state-federal relationship in water management.

Second, H.R. 2898 represents a legislative effort to re-allocate finite water resources by taking water from environmental programs and transferring them to agricultural purposes. Whatever the wisdom or folly of that policy choice, a preferable strategy would be to "expand the pie" by creating *additional* water resources in the form of recycling, re-use, desalination and conservation projects, among other strategies. That approach is notably absent from H.R. 2898.

Third and finally, one thing all relevant stakeholders in California water policy—including agricultural interests--desire and need is greater certainty. H.R. 2898, by contrast, would appear to inject greater uncertainty into the operation of California's federal and state-operated water systems at a time when the drought is already creating unprecedented strains on those systems.

S. 1894

S. 1894 builds on and improves upon some of the above-described, positive aspects of H.R. 2898. At the same time, S. 1894 lacks many of the deficiencies of the House bill. As a threshold matter, S. 1894 is by its terms a temporary measure, which seems appropriate under the present circumstances. H.R. 2898, by contrast, represents permanent legislation.

The Senate bill, unlike its House counterpart, embodies the "expand the pie" policy noted and endorsed immediately above. Title III of S. 1894, dealing with "Long-Term Water Supply Projects," quite appropriately focuses on desalination and water reuse. Section 301 of the bill declares that "climate change and drought resiliency require additional water supply projects to cope with higher probabilities of longer more intense droughts." Those contemplated water projects are not limited to surface water storage facilities, but also include water recycling, desalination, storm water capture, agricultural and urban water conservation strategies, etc. S. 1894 incorporates an ambitious program of federal grants to promote and facilitate such projects, thereby "expanding the pie" of available water supplies rather than simply reallocating a portion of finite surface water resources from one important use (environmental purposes) to another (agriculture).

Similarly, and like H.R. 2898, S.1894 seeks to "jump start" and ensure timely completion of several hotly debated surface storage proposals. But the Senate bill improves upon the House version by expanding the scope of the prescribed feasibility studies to include such additional/alternative water storage strategies as raising existing dam and reservoir systems, increasing groundwater storage, and expanded water conservation initiatives.

Increasing existing surface reservoir capacity when it is feasible to do so makes sense—especially given the fact that climate scientists warn that future reductions of the Sierra Nevada snowpack (California's largest, natural "reservoir") are a virtual certainty. And cutbacks in available surface water deliveries from the CVP and SWP have led many agricultural water users to replace that supply through expanded groundwater pumping. These unprecedented levels of groundwater pumping—especially in California's San Joaquin Valley--have resulted in chronic overdraft of many of California's already-overtaxed groundwater basins. Therefore, groundwater basin replenishment feasibility studies, as envisioned in S. 1894, provide another

type of water storage strategy that can in many cases be achieved at far lesser cost and with fewer adverse environmental impacts than new surface water storage projects. Such groundwater replenishment projects have the additional, salutary effect of helping to remedy some of the adverse effects of current groundwater overdraft practices, such as subsidence.[2]

Another positive feature of S. 1894 is its focus on California "drought-stricken communities." (See section 323.) While most Californians have enjoyed uninterrupted water supplies for domestic uses despite the current drought, there are some notable and most unfortunate exceptions. In some of the most impoverished portions of the state—particularly in rural portions of the eastern San Joaquin Valley—small community water districts wholly dependent on groundwater have recently had their wells run dry. That is due in major part to the fact that larger agricultural and urban districts are drilling new, deeper wells that deplete the groundwater aquifers and render useless the shallower, pre-existing community water system-owned wells. S. 1894 notes that nearly 2000 community water service wells in California, which had previously served approximately 10,000 state residents, are now dry. The affected residents have been reduced to subsisting on delivered bottled water. S. 1894 appropriately includes as part of its federal drought response strategy financial assistance designed to remedy this economic hardship and environmental injustice.

Of critical importance, a key difference between the two bills is that S. 1894 does not legislate significant revisions to and partial repeals of the Endangered Species Act affecting California. I.e., the troublesome, ESA-related provisions in H.R. 2898 referenced above are notably absent from the Senate bill.

Finally, S. 1894 is superior to H.R. 2898 in that it better reflects the cooperative federalism model upon which successful federal-state water management and drought response depend. One prominent example is S. 1894's inclusion of federal financial support for California state and federal "drought resilience projects." Sections 401-412. The Senate bill similarly offers federal support—on a cost-sharing basis--for integrated water management strategies that California water districts are beginning to pursue and that need to be further incentivized. See section 421. And S. 1894 is careful to emphasize that it does not seek to displace or modify longstanding water rights protected under California state law. See, e.g., section 113. The bill affords similar comity to state water quality and related laws. *Ibid.*

[2] S. 1984 could actually be improved by more heavily and explicitly incorporating groundwater storage as an important, long-term drought response strategy for California. Many experts believe that groundwater storage strategies are more promising and cost-effective than new surface storage projects. Meanwhile, H.R. 2898 wholly ignores groundwater storage options, and focuses exclusively on surface water projects.

Conclusion

For the foregoing reasons, I believe the Committee should approve S. 1894 and decline to approve H.R. 2898.

I am grateful to the Committee for the opportunity to testify on this most important and timely subject. I would be pleased to respond to any questions members of the Committee may have.

The CHAIRMAN. Thank you, Mr. Frank.

Mr. Oglesby, your comments, please. Welcome.

STATEMENT OF ADRIAN OGLESBY, DIRECTOR, UNIVERSITY OF NEW MEXICO UTTON TRANSBOUNDARY RESOURCES CENTER, AND VICE-CHAIR, MIDDLE RIO GRANDE CONSERVANCY DISTRICT

Mr. OGLESBY. Good morning, Madam Chair, Senator Cantwell, members of the committee and staff.

I would like to actually start by introducing the Chairman of my Board at the Middle Rio Grande Conservancy District, Derrick Lente, and our new Chief Engineer and Chief Executive Officer, Mike Hamman.

The Middle Rio Grande Conservancy District, we irrigate approximately 65,000 acres in the Middle Valley around the Albuquerque area. I will start with a little bit of good news. New Mexico has emerged this year from the worst drought in history. Half of the state is considered to be out of abnormally dry conditions, although half of the state still is in abnormally dry conditions.

I am very pleased to be here talking about the New Mexico Drought Preparedness Act, and I am very grateful to Senator Heinrich and Senator Udall for sponsoring this bill. It has a lot of good ideas in it that we have been talking about for a long time.

The first that I will touch upon is the Water Leasing Program. This is a voluntary program that we contemplate establishing in our district. And we have been talking about this for about 15 years in our valley, and to be quite frank, our Conservancy District has opposed a voluntary leasing program because we saw it as a capitulation to the environmental community. We now realize that we need to give our farmers every tool in the toolbox so that they can survive times of drought and, frankly, just times of hardship.

If a farmer needs to take a year off to take care of his sick wife, a leasing program will give him an opportunity to make something come off of his water and return to farming rather than just sell out. And that is important to us, to keep these farms and production in the future after times of hardship.

It is also a matter of recognizing that these are private property rights, and it is not our business to tell our farmers what to do with their water. We think that they are smart enough and we certainly respect them enough to open the door to this program.

And we appreciate the help that this bill gives us in terms of technical assistance and in terms of financial assistance, although we have committed to taking the lead on this program. So we are not looking for a handout, we are just looking for a little guidance. Some examples from around the West could help us move this forward.

The bill also touches upon water conservation, primarily focusing on metering. You cannot manage what you do not meter, and we could be doing a lot more metering in the Middle Rio Grande and all across New Mexico. And this bill does affect all of New Mexico. Forgive me if my testimony is a little Middle Rio Grande-centric.

There are some other interesting aspects of it. We actually plan on realigning the Rio Grande itself, moving it out of its existing channel where it is awfully high and we are losing a lot of water

to seepage. There are sections that we need to move to lower parts of the valley. This is dramatic, but it has been done before, and we need to do it again. And we also need to do this because we have an odd situation where we have a National Wildlife Refuge that often is irrigating when the river right next to the refuge is dry. By doing some infrastructure changes and moving the river, we think we can help to alleviate that strange situation.

And again, the District is partnering closely with our Federal agencies on this, and in fact, we have committed $500,000 a year of our own money to doing metering and efficiency improvements. So we are walking hand-in-hand with the Federal Government on this one.

An interesting portion of this bill is the peak flow restoration. We have heavily modified the Middle Rio Grande. At the top of our valley, we have Cochiti Dam, and Cochiti has stopped the spring flows from coming down. The Rio Grande is a snowmelt-driven river, and those high-pulse flows used to trigger the spawning of our endangered silvery minnow, and the overbank flows would reinvigorate our Bosque. That is what we call the riparian forest in New Mexico that several endangered birds rely upon. Without those peak flows, I believe we will not be able to recover the silvery minnow, and we will lose our riparian forest, or at least the wonderful riparian forest we have today.

We need to operate pulse flows out of Cochiti. We have done this for the last few years. We have seen success from this, but we need the Corps of Engineers to have a reauthorization of Cochiti Reservoir. We have been doing this under deviations, and so we are asking for five years of deviations in the future and then a reauthorization of Cochiti. We do want to work very closely with Cochiti Pueblo and Santa Ana Pueblo, who are directly impacted by this, and so we are walking hand-in-hand with them as well.

Again, our District is not just looking for a handout here. We have committed $150,000 a year of our own money to look at the science behind these aspects.

The other very important—and if you will allow me just another moment, Madam Chair—a very important concept in this bill is the reservoir study. We have seven reservoirs in our Rio Grande system, each with independent authorizations and each with specific functions. So our hands are tied in how we can coordinate the management of those reservoirs.

We would like to analyze how we can use all these reservoirs in a conjunctive way, how we can maximize and optimize the operations of these reservoirs. We think that there are opportunities that we are missing because of the Federal legal restrictions on how we operate these reservoirs.

So I will just jump to the end and give you what I consider to be just a little bit more good news. We are working together in New Mexico, and that has not always been the case. And I will be honest. It is not always pretty, and it is not always fun, but we are working together.

I think we are moving away from what has been 15 years of fish-versus-farmer and are realizing that now is the time when it is the fish and the farmer versus changes in precipitation, urbanization. And so we are very pleased to see that our Senators are seizing

this opportunity, that we are taking advantage of the crisis of the drought so that we can survive this drought and that we can thrive through the next drought.

So thank you very much, and I look forward to our discussion.

[The prepared statement of Mr. Oglesby follows:]

Written Testimony
Submitted to the
United States Senate
Committee on Energy and Natural Resources

on

S. 1936
New Mexico Drought Preparedness Act of 2015

Respectfully Submitted By Adrian Oglesby
Middle Rio Grande Conservancy District, Vice-Chair
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Rio Grande Water Development in New Mexico

The Upper Rio Grande originates in the San Juan and Sangre de Cristo mountain ranges in southern Colorado and northern New Mexico. It bisects the San Luis Valley in Colorado and the entire state of New Mexico with this reach culminating at Fort Quitman, Texas. This portion of the Rio Grande is administered under the Rio Grande Compact by a federal appointee and three Commissioners from Colorado, New Mexico and Texas with support from the United States Geological Survey, the Bureau of Reclamation, and the Army Corps of Engineers. The annual mean flow as measured at the Otowi gage in New Mexico is 1 million acre-feet with wide variation, ranging from 250,000 to 2.5 million acre-feet. Irrigated agriculture consists of approximately 600,000 acres in Colorado, 200,000 acres in New Mexico, 100,000 acres in Texas. Additionally, up to 60,000 acre-feet is delivered to lands within the Republic of Mexico via the Rio Grande Project under the 1906 Convention between the United States and Mexico. The predominate crop due to climate, water supplies and labor considerations is alfalfa. Other crops include potatoes, chile, corn, fruit and pecans.

Due to rapid development in Colorado in the late 1800s, water shortages occurred in New Mexico and Texas on lands that had been irrigated dating back to the 1600s. Litigation and international concerns led to the development of Reclamation's Rio Grande Project that built Elephant Butte and Caballo dams as well as a federal embargo against water development in Colorado and New Mexico pending the negotiation of the 1939 Rio Grande Compact. Since that time, there have been significant legal challenges raised by the states during drought periods that led to amendments to the Compact. There is currently a Supreme Court case whereby Texas alleges that New Mexico's water administration rules within the Mesilla Bolson are allowing excessive groundwater pumping that limits surface water deliveries through the riverbed to Texas, and by extension, to the Republic of Mexico. This case has been assigned to a Special Master and is proceeding at significant cost to the litigants and the United States.

The upper Rio Grande differs significantly from the Colorado River Compact. On the Colorado River the Secretary is the river master and can mediate differences between the

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seven states given the United States' ownership of mainstem and tributary reservoirs serving all seven states. There are only two mainstem reservoirs on the upper Rio Grande, Elephant Butte/Caballo dams above Las Cruces and Cochiti Dam 60 miles north of Albuquerque, which is operated only as a flood control feature by the Corps of Engineers. Federal reservoirs were developed case-by-case for specific purposes with narrow authorities; they were not planned for use in administering the entire Rio Grande. This means that the upper states of Colorado and New Mexico have minimal storage options and must survive on the whims of the climate through a "run-of-the-river" type operation while meeting downstream delivery requirements as determined by the Compact. There have been a number of water short (drought) periods that have tested the resilience of the Compact. The 1950s was the worst, until the drought that began in the late 1990s and persists today. This has been the first period in recorded history where there has been far below average spring runoff for five consecutive years.

The Middle Rio Grande Valley and the Middle Rio Grande Conservancy District

The Middle Rio Grande Valley begins at the base of Cochiti Dam and extends some 160 miles south to Bosque del Apache National Wildlife Refuge. Approximately 65,000 acres are currently being irrigated in the Middle Rio Grande by the Middle Rio Grande Conservancy District (District). The District operates and maintains over 1,200 linear miles of canals, laterals, ditches and drains to meet the needs of its irrigators within six Native American Pueblos and four counties. The District serves the irrigation needs of the six middle Rio Grande Pueblos, which have 8,940 acres of lands with prior and paramount water rights and an additional 11,900 acres of reclaimed irrigated lands.

The District is a surface water management entity and does not hold any ground water permits for its operations. The middle valley water supply system is a "run-of-the-river" operation, meaning that the spring runoff and summer monsoons provide the predominant flows to four diversion dams in the middle valley. There is some upstream storage on the Rio Chama at El Vado Dam (maximum of 186,000 acre-feet) to supplement late summer base flows. El Vado storage is also limited by the terms of the Rio Grande Compact, making the middle valley subject to frequent shortages late in the season.

During the drought of the 1950s, the State Engineer "closed" the Middle Rio Grande basin to further unpermitted ground water appropriations. This required that new ground water wells be permitted and that their depletions be "offset" through the retirement of existing surface water associated with pre-1907 water rights. New Mexico and Colorado also incurred significant under deliveries to the Rio Grande Project during this period that severely restricted the District's use of El Vado Reservoir. This situation helped motivate completion of the San Juan-Chama Project to harness New Mexico's share of the Colorado River Compact, bringing an additional 96,000 acre-feet of water to the middle valley. This provided some relief but with shortages being experienced on the San Juan-Chama Project for the first time last year and likely this year, the climatic conditions and Compact restrictions are severely limiting the District's abilities to manage shortages during this prolonged drought.

Endangered Species Act litigation led to a 2003 Biological Opinion for Middle Rio Grande water operations. This solidified the Middle Rio Grande Endangered Species Collaborative Program that authorized Reclamation to acquire San Juan-Chama project water from "willing" lessors to address habitat needs and set up a scientifically based adaptive management approach to conserve endangered species. The District is a prominent member of the Collaborative Program along with three federal agencies and twelve other state, tribal and local entities. The District has made significant commitments

to off-set its actions and implemented conservation measures to advance the recovery of the silvery minnow, southwestern willow flycatcher, the yellow-billed cuckoo, and the meadow jumping mouse. The added conservation actions associated with the District's and Reclamation's operations have significantly enhanced the in-river conditions within the system but have reached their limitations based on water availability and the relative inflexibility of the federal reservoir system. The 2003 Biological Opinion is prescriptive and inflexible. The District is hopeful that the forthcoming 2016 Biological Opinion will move the Program in a new direction that addresses both the needs of the species and the water users in an objective scientifically-based adaptive management process within both the limits of available water, human and fiscal resources.

The New Mexico Drought Preparedness Act of 2015, sponsored by both Senators Udall and Heinrich, is principally designed to build upon and enhance the Secure Water Act of 2008. It will provide resources and flexibilities necessary to address changing climatic conditions in the desert southwest and help agencies, irrigation districts, and other water users to better cope with the wide variations in water supplies while meeting the requirements of the Endangered Species Act.

Section three of the New Mexico Drought Preparedness Act proposes the establishment of a water acquisition program that is designed to assist in providing voluntary leasing options for farmers and other water right holders. This will allow for additional water to remain to support endangered species and to assist the District with water management and efficiency improvements. The District generally supports this effort with the understanding that leasing actions are only useful if there is actual water available for the purpose identified. Taken in concert with other sections of the bill, this water-leasing program can be a useful but limited tool for promoting agricultural and ecological resiliency. The District is uniquely positioned to sponsor a "pilot" leasing program for assuring that pre-1907 water rights remained tied to the land, while affording an opportunity for a targeted water supply to be available to sustain important habitat areas located south of Isleta Diversion Dam.

Section four of the New Mexico Drought Preparedness Act provides funding to address areas the District believes are necessary for water management in the long-term, particularly in reaches of the river where summer drying is a common occurrence even in "good" water years. Actions already taken by the District to strategically deliver water to the river can be significantly enhanced by investments in efficiency measures focused on enhancing habitat where water is consistently available.

Section five of the New Mexico Drought Preparedness Act addresses the need to provide critical flexibility within the federal reservoir system, with a particular emphasis on Cochiti Dam and Reservoir given that it is on the mainstem at the top of the Middle Rio Grande. Having the appropriate degree of authority provided to the Corps and/or Reclamation for managing a "conservation" pool for operational purposes will allow for spring pulse re-regulation to more accurately meet fish spawn and recruitment flows, preserve in-system flows during monsoon events, and generally assist with Compact delivery needs (assuming the three states can agree on needed adjustments to the Compact). If the Army Corps of Engineers cannot deviate from current operations and retain the ability to modify operations in the long-term, spawning of the silver minnow will be difficult and the species may not be recovered. We fully recognize the potential impacts that any changes to Cochiti authorization may have to Cochiti Pueblo and we fully support any action necessary to address their concerns. This is especially important given the physical and social damage that the construction of Cochiti Dam inflicted on Cochiti Pueblo.

Section six of the New Mexico Drought Preparedness Act addresses the need for a comprehensive review of the upper Rio Grande that includes federal reservoir authorities, the Rio Grande Compact, and water management practices within the basin. We support such a study and have become a primary local partner with Reclamation in the development and completion of such a basin-wide study that is already funded. The District recommends that funding from this bill be dedicated to an independent science panel to provide a peer view process to help guide the Upper Rio Grande Basin Study process and provide assurance that it will have a scientifically-based focus with a sound and comprehensive review of policy matters with meaningful participation by agencies, Pueblos and other interests.

The District supports sections seven through thirteen of the Act as they mirror much of what is in other drought resiliency bills, specifically Senator Feinstein's bill to assist California with its challenging water supply problems. We hope that there is relief in the near term as climatic conditions shift in the direction of a strong El Niño for the severely dry southwest - but hope is not a plan. These bills are designed to provide resiliency in times of drought. The Middle Rio Grande Conservancy District will continue to do its part within its capabilities to achieve long-term and continuous improvements to preserve the agricultural and cultural uses of water while preserving the outstanding natural resources of the Middle Rio Grande Valley.

The CHAIRMAN. Thank you, Mr. Oglesby. It is always nice to end the panel on a little bit of good news, so I appreciate you sharing that with us.

As I listen to the six of you and the comments on the various pieces of legislation that we have in front of us, I think it is very clear we do have a different approach that is reflected through the Senate bill and then the House bill. There are some areas of clear agreement, and I think it is always good to recognize that if we are going to build the legislation that is going to be necessary to address the challenges—and I believe very firmly that we must define this legislation and work to advance it—that we have got some things that we can be building on.

Clearly there is a role for technology to play here. We have heard that from just about everyone. I have had an opportunity to see at least from the agriculture perspective and visiting with some of the farmers out there, to see what they have done to cut back on their water use. It is really quite dramatic and very, very impressive.

When we think about the technologies, desalination I think we all recognize is going to allow for a game-changing approach to how we deal with water and water supply. Recycling, again, another area where our technologies will allow us to do more with, unfortunately, what we continue to see is much less coming from Mother Nature herself. So this is an area where I would hope that we can be working to enhance.

The storage issue I think is, again, an area where we recognize that when we have the ability to provide for that storage, it allows us to make it through some of the highs and the lows and kind of softens some of the impact at a time of shortage. So how we can work to build out that is also key.

I want to ask you, Mr. Connor, because clearly we have some real differences, and I appreciate that. I am pretty sure that I heard from each and every one of you that the way we are going to figure this out in terms of legislation is by working together, that it will require collaboration, and what you spoke to, Mr. Oglesby, about what you have seen in New Mexico can be something for us to look to.

So I have cited a couple of areas where I think we have some room to work here. You have indicated that you are happy to be working with the bills' sponsors, with the committee on some of the concerns that have been raised with key aspects of both bills.

Can you cite to some additional areas, Mr. Connor, where we can be working together on some of the common areas and how we can start from a good position of agreement rather than starting this off with arguing about what we do not like in it? Where else can we be building together?

Mr. CONNOR. Thank you, Madam Chairman.

You mentioned a couple on the expanding water supply front, which I do think are very key areas, important tools that we can apply. So I just want to double-down on your indication that you thought you heard that those are areas you can work on. Desalination, a new approach to storage I think is appropriate to look at at this point in time, and so we do endorse those with respect to our testimony.

Other areas: expanded reuse and conservation activities we are strongly supportive of within those bills. The provisions that would also reflect a need to restore habitat in conjunction with those programs, I think, are very supportable.

I think where we have the most stark differences are legislatively how do you deal with water operations and how do you reconcile the environmental laws and our operational plans and deal with that in the context of drought?

The CHAIRMAN. Do you think that that is reconcilable? I mean, you point out that it is hard. I agree it is hard.

Mr. CONNOR. It is——

The CHAIRMAN. Can we work through this?

Mr. CONNOR. It is a tough area to deal with because we think—and I think you heard from Mr. Kightlinger here, and I very much agree—we have gone kind of through an evolution here over the last few years in our operations in the Bay Delta. In '09–'10 when we were in a drought situation, we were litigating about the biological opinions. We were not talking on a daily basis, a weekly basis about operations. We were operating, and we were preparing for depositions. It was not a good dynamic.

In late '12–'13 when we started getting hit with this new drought situation, we had kind of been on the waning side of that litigation, and we had the situation that Jeff referenced, which was loss of pumping because of locations of smelt, and we, under biological opinions, ratcheted down.

I think we did lose more water in that situation than we should have if we had been communicating and working and looking at the data closely. I think we have come a long way in '14 and '15 in increasing the science, the data that we make our decisions on, communicating better, and, as Jeff pointed out, wringing every drop out of the system while maintaining our compliance with the environmental laws.

So my point is we don't want to go back to a situation where we are creating opportunities to litigate. We think the House bill does that. We have some concerns with the Senate bill, which I think can be worked through on that front.

And we have got to try and memorialize this process because the biggest change has been the Federal Government and the State Government working hand-in-hand on a daily basis and then extending that with the water user community and other folks interested in the environmental issues. How can we make sure that process continues? I think that is what we need to look at from an operational standpoint.

The CHAIRMAN. I am going to have more questions, but I will turn to colleagues.

Senator Cantwell.

Senator CANTWELL. Well, thank you, Madam Chair.

I think continuing on that same point because it is so good, Mr. Connor, to hear you talk about the things that we do agree on. And I want to thank all the witnesses because I know what a challenging situation this is for California and for the whole West in dealing with this.

I think that expanding the pie and modernizating storage is one of the biggest opportunities. We are kind of stuck in a 1960s con-

cept of storage, and I think the innovation that can come in new methods of storage is very, very helpful. Definitely reuse and conservation, habitat, all of those things are important.

But following up on this question because I do, like many of the aspects of 1894, have concerns that Mr. Frank mentioned and you mentioned about the House bill. It is my understanding that delivery has been curtailed due to the delta smelt biological opinion since 2013 and that water diversion for salmon only accounted for less than two percent of the water restrictions.

So what I am trying to get at here is that I think some people would like to come here and promulgate this notion that this is all about the ESA when, in reality, it is about the fact that we are in a drought and what we are going to do about it, and the fact that we want to stay out of the litigation process because it might make everybody feel good to pass a bill like that, but the end result of litigation will just put us into the do-nothing category, which will put us further and further and further behind.

So if you could comment on that, either Mr. Connor or Mr. Frank.

Mr. CONNOR. Absolutely. I think the litigation is a path that is never-ending. I think even if—when it results in a decision, it results in a single decision on a single point that leaves the rest of the issues to be continually litigated. And so from that standpoint, I do agree 100 percent that we want to avoid that path in whatever situation, whether it is California, whether it is New Mexico. And we are seeing progress when we do that.

With respect to the Endangered Species Act, I think the two percent figure you referenced was from me in past statements, and I think it represents a little bit of bad math, but it is four percent with respect to 2014. What we looked at was—and the Bureau of Reclamation is accounting for this now. The operational adjustments that we make during the course of a water year, what are due to general permits that we have to operate under, what are due under the biological opinions?

In 2014, we reduced pumping in a manner that was about—amounted to about 62,000 acre-feet of water under the salmon biological opinion. Those were specific reductions that we made according to Bureau of Reclamation's calculations. That was the loss of pumping and supply to the Central Valley Project.

We estimate that—the Central Valley Project I think in 2014 pumped about half of what it normally does pump, and I think it was somewhere around—or less than half. It was a million acre-feet, where it pumps typically about 2.5 million acre-feet. Of that reduction in pumping that was lost because of hydrology because of the drought, it is about 1.5 million acre-feet. That 60,000 acre-feet represents about four percent.

Senator CANTWELL. And the smelt——

Mr. CONNOR. So it is a very small——

Senator CANTWELL. And the smelt was——

Mr. CONNOR. The smelt was not a factor for reduction of pumping in 2014. In 2013, the numbers were larger. It was a little over 300,000 acre-feet, and about half was due to the smelt biological opinion, about half was due to the salmon biological opinion.

Senator CANTWELL. Do you think that S. 1894 has the programs that, you know, we have implemented a lot at the state level in Washington with farmers and fishermen working together? Do you think there is a lot of flexibility in S. 1894 for that kind of creativity?

Mr. CONNOR. I do think it certainly leads us to more in the cooperative efforts that we have been doing over the last few years. It is trying to convene the parties through these processes to try to adaptively manage, trying to encourage us to make sure that our decisions are transparent and they are based on the best-available science, yes.

Senator CANTWELL. Well, I definitely, when it comes to Federal dollars, would rather put things on the table to get people to work together than spend money defending lawsuits. I think it is a better use of everybody's money.

Thank you.

The CHAIRMAN. Senator Flake.

Senator FLAKE. Thank you, Madam Chair.

While a lot of the media attention has been focused on specific worst-case scenarios related to the drought, I am pleased that the Chair is committed to move forward on a West-wide drought bill that addresses the water needs throughout the West.

In preparation for this and with an eye toward the present problems and the coming realities of water in the West, I have sought over the last 18 months to put together a consensus of Federal water policy provisions that would be beneficial to Arizona. In Arizona, we have benefited over the past several decades from many forward-looking leaders who have planned well and have prepared the state well for the droughts that are here and certainly to come.

Senator McCain and I have worked with the Governor's office and former Senator Kyl and other stakeholders in developing a series of ideas that I hope will be incorporated into bills that we are discussing today. Several of these ideas were built on portions of the drought bill that was passed in the Senate last year by unanimous consent, and others will expand concepts that are included in the California-focused bills that are currently before us.

We will seek to address water-intensive invasive species that plague a number of rivers in Arizona and throughout the Southwest. In addition, there are several items that will allow for targeted forest restoration in critical watersheds. There is also a provision for a pilot project to allow more efficient use of current water storage in reservoirs.

Now, fortunately, a wet May has made the shortage declaration in this year unlikely. I think we can all agree, however, that we could well see such a declaration in the near future. Arizona, along with the other basin states, is looking forward and looking for ways to avoid that shortage declaration.

Thus far, the most promising efforts have included states voluntarily leaving some of their water—some of their state's water entitlement storage in the Colorado River. The number-one priority in Arizona is to make sure that when Arizona or any other state voluntarily contributes their water to the health of the Colorado system, the contributed water actually stays in the system and does not disappear along somebody else's canals.

Now, without these assurances, obviously such preventive measures do not make sense. It would be like having a savings account and seeing your neighbor just being able to reach in and grab money from it.

While not all the lower-basin states are affected by the shortage declaration in the same way, I am hopeful that we can agree on a way to ensure that these voluntary contributions actually do what they are intended to do.

I appreciate the attention on this issue, the entire issue, of drought in the West, and I look forward to the process and looking for meaningful solutions.

Just as a question to Deputy Secretary Connor, as I mentioned, the number-one priority I have heard from Arizona is to protect the legal status of water left in Lake Mead through these voluntary arrangements that I referenced and with the MOU that you referenced during your testimony here on June 2nd.

There is, however, some concern that the Secretary has discretion to choose to reprioritize the so-called system water created under these arrangements or agreements. What assurances do the lower-basin states have that the Secretary would never agree to reprioritize system water for delivery in the same year instead of that water remaining in Lake Mead?

Mr. CONNOR. Thank you, Senator Flake, for the question.

I think the assurances are based on the practice that has come to be the custom in the Colorado River, and we have at the Department deferred in a number of situations going past—going back across Administrations in 2007 with the seven-state agreement that led to the Record of Decision on coordinated operations and shortage-sharing. We operate pursuant to that and have incorporated that into our decision-making guidelines.

So the state's agreement has been the model for us to operate, and we have not since 2007—the Secretary has not exercised any discretion to unilaterally allocate any unused allocation since that time.

So as we move forward and we very much appreciate the efforts of all the states, including Arizona, of looking at ways to create new water in Lake Mead for the benefit of the system, not any particular state, of how we lock in that by agreement amongst the states and the Federal Government and operating pursuant thereof, I think those discussions are going on right now.

It is the standard mode of practice that we would adhere to, and we would try and ensure that, you know, it is always going to be—I can give you my word, but as of January 2017, it is not going to mean much in the basin. So it is how we lock it in through agreements that can sustain itself across administrations.

Senator FLAKE. Right. You are right. That always has been the custom that has been followed to look at the agreements that are there, but is there a severe enough level of drought somewhere in the basin that would justify, in your view, the Secretary using that discretion to remove water that has been put there for storage?

Mr. CONNOR. In any situation, absent an agreement, the Secretary is going to consult very closely with the seven basin states, particularly the lower-basin states in the use of any unused allocation. I think that is the practice even before 2007. So I wouldn't

speculate right now that there is a situation where I say—where I would say we would override that consultation process and move unilaterally.

Senator FLAKE. All right. Thank you, Madam Chair.

The CHAIRMAN. Thank you.

Senator Heinrich.

Senator HEINRICH. Thank you, Madam Chair.

Mr. Oglesby, I want to touch on a couple of things. In New Mexico, as you know, we have often found that voluntary agreements and collaborative efforts are more effective at resolving these water conflicts than mandated management requirements. A great example is not in your basin but in the San Juan Basin. We have a very successful collaborative effort of Federal and State, tribal governments, utilities, water users, landowners, farmers, conservation groups, and others, and that collaborative group implements a recovery plan for four endangered fish in the Upper Colorado Basins.

Can you just talk from your perspective in the Middle Rio Grande Valley a little bit about the value of voluntary collaborative efforts as a solution to some of these direct water conflicts?

Mr. OGLESBY. Certainly. Thank you, Senator Heinrich.

I appreciate you using the San Juan recovery program as an example. I was pleased to serve on the executive committee there for a while.

And we actually are trying to convert our endangered species program in the Middle Rio Grande Valley into a recovery implementation program based on the success they have up there. We are making progress on that. I suspect in the next few years, we will be able to get there.

There are other great examples of collaboration, and as you know, we in New Mexico don't like being told what to do. We are a very independent people. And so I might raise the Collaborative Forest Restoration Program as an example. We are protecting our watersheds in cooperation with our traditional communities, with our land grants and our acequias and having good success at it.

Parallel to that at the state level, we have a piece of legislation that came out of our legislature with unanimous support last year to greatly expand the amount of forest restoration that we are doing in New Mexico. Our Governor did veto it based on some administrative concerns, but I think we can overcome that easily with some modifications to that legislation.

But, yes, you know, folks in New Mexico, we like to work together, we like to help our neighbors, but we like to do it on our own terms.

Senator HEINRICH. Thank you.

I want to turn to Deputy Secretary Connor real quickly, and obviously, we look forward to working with you on some of the technical concerns with the New Mexico bill, and very much appreciate your feedback on that.

I want to switch real quickly to an issue of just how we best spend what are obviously very limited taxpayer dollars in resolving some of these shortage issues. Recently the Bureau of Reclamation conducted a value-planning study of the proposed diversion project on the Gila River in New Mexico. How much should we expect that

the proposed diversion project would cost according to that study? What is the range that it found?

Mr. CONNOR. Reclamation has looked at that at the appraisal level, which is a very, you know, preliminary level of analysis. But the range is somewhere in the neighborhood of, I believe, $600 million to over $1 billion for a new diversion project on the Gila River system.

Senator HEINRICH. At least in the initial report, it was, I believe, $685 million up to a billion and change. Now, of that, the available Federal funds under the settlement would be about $128 million. Is that correct?

Mr. CONNOR. Yes. Under the Arizona Water Settlement Act passed in 2004, there would be the opportunity for up to $128 million. That was dependent—that last $28 million was dependent upon return on investment in the Lower Basin Development Fund being at a certain level, which it has not been.

Senator HEINRICH. Right.

Mr. CONNOR. So I think we are looking more at the eligibility being $100 million——

Senator HEINRICH. Okay.

Mr. CONNOR.—as opposed to the 128 figure.

Senator HEINRICH. So if you take those figures, you take $685,000 up to a billion, you subtract out $100 million, and we are still talking about $500 million to almost $900 million in costs that are not covered. Where would the balance of that funding have to come from? Would it be from State and local contributions, or how would that——

Mr. CONNOR. Yes——

Senator HEINRICH.—enormous delta be covered?

Mr. CONNOR. I think given the Federal funds available already, that there is not a good expectation that there would be additional Federal funds available for this project. So, yes, it would be State and local funds that would be needed to finance that particular project. The balance, as you referenced——

Senator HEINRICH. And——

Mr. CONNOR.—over $500,000.

Senator HEINRICH. If I remember right, last year Reclamation also looked at the cost-benefit analysis of that. Did that report find that the benefits outweighed the costs for any of the proposed diversion configurations?

Mr. CONNOR. I believe that is correct. The preliminary work on feasibility did yield a questionable cost-benefit where the costs were—greatly exceeded the benefits. That work would be shored up in more detail in an EIS process that is being contemplated, but that was the preliminary analysis.

Senator HEINRICH. Thank you.

The CHAIRMAN. Thank you, Senator Heinrich.

I believe it was Senator Gardner that was next. I just want to make sure. Yes, Senator Gardner?

Senator GARDNER. Thank you. Thank you, Madam Chair. I am happy to——

The CHAIRMAN. Oh, wait——

Senator GARDNER. I was going to say, I am happy to yield to Senator Daines.

The CHAIRMAN. Senator Daines.

Senator DAINES. Thank you, Madam Chair.

Our witnesses today testified about the challenges associated with inadequate water management in the West, and being a Montanan, we, too, have seen the effects of drought this year. If you look at the maps, certainly what has gone on in California and the Central Valley, you know, is very, very severe. But that drought pattern continues up certainly the North in Oregon, Washington, and then it really takes about the third of our northwest part of our state included in this current drought.

In June, this committee heard testimony on two bills, which I have cosponsored. One is Senate bill 1552, the Clean Water for Rural Communities Act; and Senate bill 15—or, excuse me, 1365, the Authorized Rural Water Projects Completion Act. Combined, these bills would facilitate water delivery to over 23 million acres in Montana and millions more acres across the West for rural communities that do not have good access to quality water supply today.

Now I do not have a question today but would just like to say that if we are going to address our droughts and water supply crisis West-wide, I believe these bills should be part of the solution. It solves the water challenges. It may also be part of forging a bipartisan coalition and package here to get something done.

I understand some concerns from the Senators as well as the need for an offset. They do need to be addressed. But I would like to work with the committee and other colleagues on a path forward to these bills to ensure they remain part of the solution to our Western water challenges.

I yield back my time, Madam Chair.

The CHAIRMAN. Senator Gardner.

Senator GARDNER. Thank you, Madam Chair, and thank you to the witnesses for being here today.

I just wanted to talk again about Colorado's situation. By 2050, we are going to go to about 8.6 to 10 million people. Our population will double in the state by 2050.

At the same time as our population is doubling, at least according to the 2015 Colorado Water Plan, construction of new storage capacity is the lowest it has been since the 1930's. So we know in Colorado population is going to double by 2050, yet water storage construction at the lowest it has been in several decades.

Colorado is a state where all water flows out of Colorado, no water flows into Colorado, and I have a glass that is half full here. I would blame Kansas, but I do not want to impugn any of my fellow colleagues. But I think we have to do better when it comes to water storage to meet the need. We are looking at $12 billion to $15 billion worth of infrastructure costs in Colorado to meet the median needs of this 2050 demand.

To give you a couple of examples, one project in Colorado that was started in 2003 for additional water storage completed their NEPA process 11 years later in 2014, and they still have Federal regulatory hurdles to clear.

Northern Colorado Water District began the regulatory process for building two new reservoirs as part of the Northern Integrated Supply Project. This is a project that, if it is completed, will save

tens of thousands of acres of farmland from buy-up and dry-up in Colorado. They started this process in 2004, and they are several years away from a final decision.

Denver Water began the regulatory process for enlarging the existing Gross Reservoir in 2003, and they still do not have a decision.

We had a hearing earlier this year with the Western Governors' Association. I asked about what we could be doing to help lessen these times. They confirmed we still need regulatory streamlining and flexibility at the Federal level to move forward.

So to Mr. Connor, how can we improve and what can we be doing to stop talking about the need to streamline and actually start streamlining the regulatory process?

Mr. CONNOR. Thank you, Senator Gardner.

Two points that I would make: first of all, what we found even on the operations side—I was talking earlier about our operations in California—but it has transcended to the permitting side of things.

The—you know, we have been siloed as a Federal Government for far too long where Reclamation would move forward with projects in our particular circumstances, then engage the Fish and Wildlife Service or the National Marine Fisheries Service or EPA in a—serial processes instead of a parallel process or a collaborative process. That definitely is a killer with respect to permitting times because issues crop up. They are not dealt with early, designs get made, and they have to be undone. It is a very inefficient process.

What we have found where we have instituted new processes usually because of the magnitude of the issue where we have collaborated is that we can cut down on those issues, and we can cut down on permitting times.

On September 22nd, the White House and OMB issued guidance on permitting large infrastructure projects, and it is really intended to institutionalize a collaborative process and have somebody running point on those large projects.

Typically, we have a lot of examples, and I would even say that the Arkansas Valley Conduit is one where we fairly——

Senator GARDNER. I was going to let you off the hook on that today.

Mr. CONNOR. I thought I would beat you to the punch.

The permitting process was fairly efficient in that one with respect to the NEPA and Record of Decision. We got hung up on feasibility for a while, and we went back and redid that.

So my point is, on the positive side, we have more work to do in our way that we collaborate within the Federal Government and all our different regulatory roles to permit projects.

The second point I would just quickly make is we have got to understand sometimes what causes a delay. On the Windy Gap Firming Project, Reclamation was responsible for the Record of Decision and the NEPA work, working with Northern Colorado. We moved that process forward. The issues that took the longest to resolve at the end of that process were Reclamation using that process to resolve issues with Grand County with respect to water quality

issues and with the Colorado River District with respect to water rights issues.

We could have permitted and moved forward. My sense is that there would have been a significant amount of state litigation under state law with respect to that process, as opposed to us using the Federal process to resolve all the issues. Now we have got a Record of Decision as of December last year. Northern can move forward with the project.

Senator GARDNER. Well, I would just ask for your commitment to work with me on finding ways to continue to work through the regulatory process, the permitting process, to make sure that we can streamline this, what is, I think, taking too long. I would love your commitment on that.

Thank you.

Mr. CONNOR. Yes, Senator.

Senator GARDNER. Again, the Arkansas Valley Conduit, we will work on that, but it was authorized back in the 1960s so we have got to continue to speed it up.

I wanted to talk a little bit more about some drought issues on districts and utilities in Colorado that have told me that when they talk about steps they could take to transfer water through Federal reclamation facilities to store and deliver emergency water supplies, they have run into a little bit of a challenge. One of the things I think we need to do in times of drought is having more flexibility to move and store water where it is needed most on a timely basis.

But if there is a need for water transfer using excess capacity in existing Federal facilities, that can take extensive regulatory review and a time-consuming contracting process. So by the time, oftentimes, the approval and the contracting is through, the situation has changed and the proposed water transfer is out of date.

I just wanted to know what is the Bureau's current authority to authorize the storage and transmission of non-project water through existing reclamation facilities?

Mr. CONNOR. We do have broad authority to facilitate the water transfers through reclamation facilities under the Warren Act, the 1939 reclamation projects. But typically, what we—it is the decisionmaking process under NEPA that we typically have to pay the most attention to. If the issues are minimal—which in a lot of cases they are, and we do a lot of water transfers every year—it is a four to six-week process.

If—such as in California, where there is a need for large-scale transfers on an ongoing basis, we have looked and done programmatic environmental impact statements, which really establish the program itself, and then we can quickly, in the subsequent years, go through and process transfer requests a lot more efficiently, given the fact that we have done a programmatic NEPA. And we ought to be looking at that in places in Colorado, I assume.

Senator GARDNER. Okay, and thank you. I know I am out of time. I have got more questions. We will follow up through the record.

Thank you.

The CHAIRMAN. Thank you, Senator Gardner.

Mr. Connor, you mentioned that you have broad authority in certain areas. Do you think that the Department is maximizing the existing authority that you have in certain areas? Do you believe that additional authorities would be needed to address some of what we are talking about here this morning?

Mr. CONNOR. We do have broad authority. I think that is one that I would like to think on and get back more—in more detail in the record. The issue Senator Gardner raised was particularly excess capacity——

The CHAIRMAN. Right.

Mr. CONNOR.—in our facilities and whether we are set up to really permit the use of that excess capacity in an efficient way. I think it bears a little bit more looking into.

The CHAIRMAN. Well, I think it is something that we should be exploring because if we are really going to be looking beyond the current situation in California and, quite honestly, the current situation around the West, I think we want to be putting in place a policy that extends a lot longer than where we are in the here and now. If the existing authorities are not sufficient, I think we do need to look to that.

But again, I would also challenge you to look to what you have currently and whether or not you are maximizing the use to the benefit of the users here. So it is something that I think as we are assessing legislation, we need to be looking at what we have on our books as well.

You mentioned the issue of permitting and streamlining, reduced delays, but one of the things, again, that I have heard that we really need to be working to address is how can we provide some level of certainty to the users out there, whether they are family farms such as Ms. Woolf represents, whether it is the urban-suburban user. It is how we achieve this certainty.

Mr. Kightlinger, let me ask, because when we talk about some of the ideas that are out there, some of the proposals, I think we recognize at the end of the day much of this is about competition for limited resources and we are sitting in a situation here where Federal Government has a tough budget right now.

One of the prime differences between the House bill and the Senate bill is the funding in the Senate bill or the authorization for funding in the Senate bill, which is currently not paid for. I appreciated Senator Feinstein's willingness to explore offsets, but that is going to be a real consideration for us.

So can you give me any suggestions herein in providing assistance to our drought-stricken areas, creative ways where we can be looking to partner with the Government within our local areas, between our states, how we can maximize these proposals without a big price tag? Because I think this is going to be one of the issues that we are going to be wrestling with here.

Again, I think something that you could suggest or, in the alternative, are there things that we have in place that are barriers to being more effective than we are right now where we could remove them and it does not cost us money, which is a good thing, but it allows you to be more effective and more efficient?

Mr. KIGHTLINGER. Thank you very much, Madam Chair.

A couple of suggestions, things to look at. Obviously, the money is tight, and it is always going to be a tremendous challenge, but there are some creative ideas in some of the legislative proposals out there building on what has been successful in the transportation industry, TIFIA. There is ideas to use that for reuse water, RIFIA, and there is also a WIFIA proposal out there. So these ideas are ways in which we can stretch dollars, use matching funds and not—and put burden on locals to come up with matching funds.

Loan guarantee programs have also been very successful in the rail industry, and I think there is some look at perhaps a loan guarantee program for large-scale projects throughout the West, not a huge hit. It would be paid back. But the idea is that, you know, there is some interest money and things that would be used obviously for the local projects.

Those are some creative ideas out there. I think all tools should be used. So to the extent RIFIA, WIFIA, these loan guarantee programs make sense and can be accepted, we think those are all valuable tools that can provide some help.

In terms of what other things that aren't costing, you know, Deputy Secretary Connor talked a bit about trying to streamline. In California, we have been looking at a new conveyance program that is a $15 billion proposal that our Governor has put on that would be entirely funded by us, the ratepayers, the water users, and yet we are in year eight of environmental permitting. We spent $240 million to date in developing an environmental document, and we are still minimum six months away from Record of Decision, Notice of Determination. We have generated about 80,000 pages of analysis to date.

The CHAIRMAN. Geez.

Mr. KIGHTLINGER. You know, this—it is a large, complicated project. We get it. But at some point, we are at paralysis by analysis, and we need to find more creative ways to speed up these processes.

The CHAIRMAN. It makes me feel like Alaska. [Laughter.]

Thank you. We will be exploring more creative ways to try to address some of the financial and funding issues.

Senator Cantwell.

Senator CANTWELL. Well, that makes me think of Washington.

I really don't have any more questions. On that last point, I think that is where we need to be. We just need to be on that level of creativity, and you get that when everybody comes to the table and is at the table together. That is when you get the creativity because what holds it up is the disagreement. So I just hope that we can look at S. 1894 and move it through the process and figure out ways to enhance whatever shortcomings there are.

I do think, Madam Chair, there is a role for us to think about how we are going to modernize our programs because I really do think that some of these smaller storage programs can get underway immediately, and that helps. And I think when figuring out what we can do at the Federal level, I really do think we can help save ourselves dollars by working creatively. I know Senator Feinstein said she is going to look at what are those revenue opportunities.

But clearly, this is an economic impact to the Federal economy, and we need to be smart about what we put in place so that we are minimizing that impact to us in the future. California's expenses will be our expenses as well, as will those of other Western drought situations.

I appreciate all the witnesses today and look forward to working with you to try to get this resolved hopefully very, very soon.

The CHAIRMAN. Senator Heinrich.

Senator HEINRICH. I appreciate the concern over pay-fors, and you know, these are real challenges. I would only make the point that we are going to need real dollars to fix these issues.

One of my concerns about the House bill is that the pay-fors referenced are really authorization pay-fors. They are not appropriations pay-fors. In my view, they are not real money, and we are going to need real money to fix these things.

I am going to end with one last question for Mr. Oglesby. I wanted to touch on something that I think piqued the interest of the Chair and is a big part of our challenges on a—you know, an arid basin with seven different storage structures and different authorizations by Congress for each of those structures that are not coordinated in any reasonable way except through deviations. That is a huge challenge.

So wearing your Conservancy District hat, can you talk a little bit more about what that means? For example, if you are dealing with a tight, dry summer and it is July and you release water as a Conservancy District from El Vado Reservoir, and then, suddenly, we get monsoon rains that negate the need to actually irrigate with the water that you have released into the river, can you capture that in Cochiti Reservoir downstream and hold it and use it for later irrigation or other uses, or do you have to just watch that water go by?

Mr. OGLESBY. Yeah, thank you, Senator Heinrich.

We watch that water go by. It is a three-day transit time from the reservoir where we store our agricultural water. And as you say, if it rains in the interim when that water is moving down and our farmers don't need it and they don't take it, that water moves on down to Texas, and we lose the advantage of that water.

Reauthorizing Cochiti, which is envisioned in Senate bill 1936, is critical. It is going to be complicated. Of course, any reservoir operation is complicated, but if we could move that water from El Vado and hold it in Abiquiu, for example, or if we could hold it in Cochiti just for a little bit.

And one other option that we are looking at within the conservancy district is can we do small-scale temporary storage within our own works? Can we capture these erratic, unexpected rainfalls that come in and perhaps hold them within our facilities just for a day or two and then wait for the farmers to need that water? We are looking at all of these options.

So it is not just our seven reservoirs that we would like to operate in a coordinated fashion, but it is how we can integrate our existing systems with those coordinated reservoir operations.

Senator HEINRICH. Well, I just used that example just to show that I know all of this is relatively complicated, but we are managing the entire basin in a way that is uncoordinated. So when you

have dramatically less input in terms of gross quantity of water and you have no flexibility to coordinate all of these structures, the seven reservoirs, your own works at the Conservancy District, we have seen very innovative things like Albuquerque doing storage underground in the aquifer.

We are going to have to be more nimble in the future, and we certainly ought to be coordinating the Federal infrastructure in a way that could potentially be a benefit for all of the users, irrespective of what perspective they come from.

Thank you, Madam Chair.

The CHAIRMAN. Senator Heinrich, thank you.

When you think about the situation in California, so much of the attention when we talk about the impact to the economy, we think about the agriculture sector and how that has been notably impacted.

I was really struck by this article that somebody referenced, one of the Senators that was testifying, but it was an article in the Post back in May. But when you look to the various sectors that would take the brunt of job losses in continuing, ongoing drought, if the Colorado River ran dry for a year—please, let us hope that that does not happen—but the job losses one would initially think is going to be all about the agriculture sector. But it is in real estate, it is in finance, it is retail trade, the professional, the tech sector.

But the sector that is impacted most dramatically is healthcare. I think it is a reminder to us all of the significance of available water supply and how it impacts everything that we do within our economies.

Again, when I was in California meeting with the farmers, I sat down and had a conversation with the rice growers. I was thinking, okay, it is really all about rice. With those rice growers, it was all about water fowl. It was all about the impact to the habitat for the birds and the geese that were coming south and that were snacking on the rice leftover in the fields there.

So it is a reminder to us that the impact here is so broad, it is so wide, that our failure to address it can have extraordinarily significant impact. I think you reminded us, Ms. Woolf, with your words. I think you said something about the weight being on all of us to come up with a solution.

Know that I certainly feel that weight, I think our colleagues do as well, that we have an obligation to try to work with you all not only in California but across the West, better understanding our water, our water sources. It is the West right now, but it will have impact far beyond the West of the United States and I think we appreciate the responsibility.

So I look forward to working with you all. I had asked Mr. Kightlinger for good out-of-the-box suggestions and would invite each of you to join us in that as well and submit what you can.

This is the end of the hearing right now, but it is really the beginning of very constructive work and a lot of hard work. So thank you for your willingness to join us in this.

And with this, the committee stands adjourned.

[Whereupon, at 11:32 a.m., the hearing was adjourned.]

APPENDIX MATERIAL SUBMITTED

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation

Questions for the Record Submitted to The Honorable Michael Connor

Questions from Chairman Lisa Murkowski

Question 1: The Administration has indicated that it believes H.R. 2898 likely violates the Endangered Species Act because the bill establishes a new standard regarding the adverse impacts on Smelt from Reclamation's operations, thus creating a conflict between existing law and H.R. 2898. If there were a lawsuit, it is likely the courts would give the Department the discretion to harmonize competing standards created by Congress so as to address the statutory conflict, correct?

Answer: HR 2898's use of a new standard - "negative impact on the long-term survival" of Delta smelt and other listed species - creates uncertainty that could limit water supplies by creating confusing conflicts with existing laws such as the Endangered Species Act, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility. While a court may ultimately grant the Department discretion in reconciling this new standard and the Endangered Species Act jeopardy standard, such an outcome is uncertain, and a resolution of such an ambiguity by the courts would likely be preceded by significant litigation, which could potentially interfere with water operations during drought conditions.

Question 2: On the spending front, you know as well as anyone that federal purse is limited. What is your view of the financial role of state, local and private entities in partnering with you on funding to meet critical needs such as increased storage?

Answer: The Department recognizes that securing non-federal cost-share partners is often essential to meet water supply project or program funding needs. Across the country, state, local, and Tribal governments are taking a greater leadership role in water resources investments, including financing projects the federal government would have financed in the past. Federal water resource investments continue to be important in effectively leveraging state, local, tribal, and private funds to meet critical needs, such as building drought resiliency.

A few examples of non-federal cost share arrangements include Reclamation's investment of more than $24 million in grants for 50 WaterSMART water and energy efficiency projects in 12 western states in 2015, which will be leveraged with at least 50 percent non-federal funding for a total of $133 million in improvements over the next two to three years. Since 2009, about $174 million worth of WaterSMART grants has enabled 274 projects to proceed, leveraging federal funding to implement more than $555 million in water management improvements across the West. Under Reclamation's Title XVI program, since 1992, approximately $649 million in Federal cost-share has been leveraged with more than $2.4 billion in non-Federal funding to design and construct water recycling projects. In 2014, an estimated 378,000 acre-feet of water was recycled through Title XVI projects. In 2015, Reclamation leveraged $3.4 million in Federal funding to implement over $36 million for 12 drought resiliency projects as a part of Reclamation's new Drought Response Program.

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In the Colorado River basin, Reclamation and four municipal entities have entered into an agreement to jointly fund $11 million for the Pilot System Conservation Program to conserve water in Lakes Powell and Mead to the benefit of the Colorado River System. Other programs contributing toward this the Department's goal of increasing partnerships with States, Indian Tribes, irrigation and water districts and other organizations include the Water Conservation Field Services Program, the Bay-Delta Restoration Program, the Yakima River Basin Water Enhancement Project, and the Upper Colorado River Recovery Implementation Program.

Question 3: Are there regulatory or statutory barriers to greater financial partnering between the federal government and others that we should be aware of? If so, what are these barriers and in what ways can Congress be helpful?

Answer: The Department has not identified any regulatory or statutory barriers to greater financial partnering. Every year, Reclamation acts pursuant to dozens of existing cooperative agreements for water and energy-conservation grant activities under the WaterSMART program, partnering with non-federal entities across the West. Under the Contributed Funds Act of 1921, Reclamation can undertake a diverse assortment of additional activities using non-federal funds provided by partners including state agencies, local governments and non-governmental entities.

Question 4: Is it true that the numbers of smelt that die annually during the course of Bureau of Reclamation operations in the Delta are consistently below the number the Fish and Wildlife Service allows under the incidental take permit the Service issued them?

Answer: Every December, the Service calculates the maximum anticipated incidental take that may result from operation of the Central Valley Project (CVP) and State Water Project (SWP) Federal and State facilities during the following December-June. Incidental take is measured by the number of Delta Smelt incidentally taken at the Tracy fish collection facility. It is assumed that none of these fish survives this process. This loss to the population is thought to be a small percentage of the total number of smelt that die prematurely (before spawning) because of CVP/SWP operations. This total loss rate, known as 'entrainment,' is not measured. Water operations are managed to the operational criteria described in Reclamation's project description in the 2008 Biological Assessment (BA), with the addition of the Fish and Wildlife Service and National Marine Fisheries Service's (NMFS) Reasonable and Prudent Alternatives (RPA) from both the 2008 and 2009 Biological Opinions. The anticipated incidental take that is calculated each year does not serve to limit operations nor should it be considered an operational target. Incidental take is merely an indicator of the number of Delta Smelt entrained as a result of project operations.

Many factors affect the CVP and SWP's observed incidental take each year, including operations management that changes throughout the water year depending on: water availability for export, drought-related actions, heavy debris load and power outages at the facilities that affect the CVP and SWP's ability to conduct fish counts, continued decline and rarity of Delta Smelt, State water quality standards, California Department of Fish and Wildlife's Incidental Take Permit for Longfin Smelt for the CVP and SWP, and implementation of the actions required by the NMFS

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2009 Biological Opinion Reasonable and Prudent Alternative. Because decisions related to water operations management depend on constantly changing conditions and operation factors, in some water years, the Service's anticipated incidental take may be an overestimate.

Question 5: Is it true the Fish and Wildlife Service has recognized this and begun to consider modifying its process?

Answer: In an effort to continue to use the best available science, in January 2015 the Service implemented a revised methodology to calculate anticipated incidental take for the CVP and SWP. We continue to use best available science to better estimate incidental take and population level effects to Delta Smelt. However, the factors we previously described will likely remain and continue to influence the overall observed incidental take of Delta Smelt at the CVP and SWP facilities each water year.

Question 6: Would you agree that the scientific data that was the basis for the biological opinions is now out of date and needs revision?

Answer: The Endangered Species Act requires that agencies use the best scientific and commercial data available during interagency consultation. While the most recent Service Biological Opinion (BiOp) on the Coordinated Operations of the Central Valley Project (CVP) and State Water Project (SWP) was signed in 2008, new scientific data have been incorporated continually into implementation of the BiOp. For example:

- During the winter of 2015, monthly trawl data collected by California Department of Fish and Game, daily early warning monitoring data collected by the Service, and daily turbidity monitoring data collected by the California Department of Water Resources (DWR) and the U.S. Geological Survey were used to enable the Service to help agencies (Reclamation and DWR) voluntarily reduce water exports in order to ensure that a significant Delta Smelt entrainment event would not occur. Had these voluntary reductions not been taken, additional Delta Smelt likely would have been drawn toward the export facilities where they likely would have resided and spawned, resulting in greatly reduced flexibilities later in the winter and through the spring to continue to export water.

- In January 2015, Reclamation requested reinitiation of Section 7 consultation on the 2008 BiOp and asked the FWS to adopt an alternative method for calculating the Cumulative Salvage Index used to establish anticipated annual Delta Smelt Incidental Take. The FWS concluded that the alternative method, with modification, would be a viable interim approach to addressing incidental take and used it to calculate the take limit for 2015.

- New scientific data have been incorporated into the implementation of the BiOp on a number of occasions in response to Reclamation and DWR's multiple Temporary Urgency Change Petitions (TUCP) to California's State Water Resources Control Board in which they requested operational flexibility in response to the drought. Each time a TUCP was submitted in WY2014 and WY2015, a Biological Review was developed by Reclamation

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that used best available science to assess the status of Delta Smelt, as well as the effects of the proposed operational modifications on the species.

Question 7: Could the agencies begin new data collection to do that now? Have they started that process?

Answer: As we previously described, new data are continually being collected and used to implement the Service's 2008 BiOp on the Coordinated Operations of the CVP and SWP. Data being collected include fish presence data in regularly scheduled trawls throughout the year, trawls specifically designed to detect smelt at times when they may be moving to areas where they are vulnerable to entrainment (early warning data), and turbidity monitoring data. Without doubt, a survey strategy specifically designed to use best methods to assess distribution and abundance of Delta Smelt would result in valuable information. The Service is working with the State and others to develop and implement this strategy.

In addition, the Service is a key participant in a process to develop and conduct collaborative science that will inform water operations management decisions in California's Delta. The Collaborative Science and Adaptive Management Program (CSAMP) was established, in part, to break the cycle of litigation on California water issues and work collaboratively on science and recommendations for adaptive management decisions as related to implementation of the current Biological Opinions associated with Operations of the CVP/SWP and the development of future Biological Opinions. Over the past three years, the CSAMP Policy Group and the Collaborative Adaptive Management Team (CAMT) have demonstrated that this collaborative process has the potential to yield better understanding and more broadly supported science relevant to water management actions.

Question 8: What has the Department done to date to address the west-wide drought? Please outline the steps that the Department has taken in detail.

Answer: The Department is taking a broad set of coordinated actions to provide meaningful relief to those affected by the drought situation in the western United States. The Department is taking short, medium, and long-term approaches toward marshalling all available resources to assist communities impacted by drought, many of which the Department outlined during the June 2, 2015 hearing on "Status of Drought Conditions Throughout the Western United States and Actions States and Others Are Taking to Address Them".

In the short term, the Bureau of Reclamation is taking actions to more effectively manage water and maximize supplies for human use while maintaining environmental conditions necessary to protect fish and wildlife, as well as interests of other water users, through a focus on the day-to-day operations of Reclamation facilities. The Department is making strategic investments designed to stretch limited supplies and minimize conflicts over water, through programs such as the WaterSMART Program. For instance, the Secretary recently announced $49.5 million in grant assistance to co-fund local water conservation projects. In FY 2015, Reclamation also invested $24 million in grants for 50 WaterSMART water and energy efficiency projects. In

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addition, seven water reclamation and reuse projects were awarded a total of $23 million in FY 2015 funding that will help create new drought resistant water supplies. Through its new Drought Response Program, Reclamation also provided $5.1 million in FY 2015 funding for 12 drought resiliency projects and 11 drought contingency plans in 9 Western States.

In California, Reclamation has under taken a series of extraordinary measures and new agreements with multiple parties to respond to the historic drought. A sampling of activities and operations that have been deployed by the Department over the last year include: facilitating agreements to reschedule when water is transferred and delivered; ensuring sufficient cold water is stored for the benefit of endangered salmon and other fish; working with the State Water Resources Control Board to help enforce laws prohibiting illegal diversions; and adjusting export pumping, fine-tuning reservoir releases, and controlling Delta salinity for the benefit of fish species and water users.

While these resources and activities will help, much of the western United States remains in the grips of an historic drought. The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought.

Question 9: Is the Department maximizing its existing authority to take action? Is more authority needed? If more authority is needed, please list and describe what additional authorities are needed to deal with the west-side drought.

Answer: While the Department is not seeking additional programmatic authorities to coordinate its drought response efforts, the Department supports an additional appropriations ceiling under the Secure Water Act (Section 9504 of PL 111-11) to enable the Department to continue providing funding through the WaterSMART Program. As we noted in our testimony, this additional funding authority was requested in Reclamation's FY 2016 Budget Request, and the Department appreciates inclusion of this language in S. 1894. In addition, we look forward to exploring with the Committee opportunities to create a mandatory fund for Indian water settlements that would foster certainty in water rights and boost economic growth in Indian Country.

Questions from Senator John Barrasso

Question 1: Are there proposals that you are developing or have developed that you can share with the committee to increase water delivery throughout the West?

Answer: The Department is taking a broad set of coordinated actions to provide meaningful relief to those affected by the drought situation in the western United States. The Department is taking short, medium, and long-term approaches toward marshalling all available resources to assist communities impacted by drought, many of which the Department outlined during the June

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In the short term, the Bureau of Reclamation is taking actions to more effectively manage water and maximize supplies for human use while maintaining environmental conditions necessary to protect fish and wildlife, as well as interests of other water users, through a focus on the day-to-day operations of Reclamation facilities. The Department is making strategic investments designed to stretch limited supplies and minimize conflicts of water through the WaterSMART Program. For instance, the Secretary recently announced $49.5 million in grant assistance to co-fund local water conservation projects. Reclamation is also investing $24 million in grants for 50 WaterSMART water and energy efficiency projects, and $23 million for ongoing construction of seven water reclamation and reuse projects. Through its new Drought Response Program, Reclamation also provided $5.2 million in FY 2015 funding for 12 drought resiliency projects and 11 drought contingency plans in 9 Western States.

In California, Reclamation has undertaken a series of extraordinary measures and new agreements with multiple parties to respond to the historic drought. A sampling of activities and operations that have been deployed by the Department over the last year include: facilitating agreements to reschedule when water is transferred and delivered; ensuring sufficient cold water is stored for the benefit of endangered salmon and other fish; working with the State Water Resources Control Board to help enforce laws prohibiting illegal diversions; and adjusting export pumping, fine-tuning reservoir releases, and controlling Delta salinity for the benefit of fish species and water users.

While these resources and activities will help, much of the western United States remains in the grips of an historic drought. The Department will continue to take a multi-faceted approach and to marshal every resource at its disposal to assist western communities impacted by drought.

Question 2: Dionne Thompson with the Bureau of Reclamation stated in her written testimony with regard to the Water Rights Protection Act on June 18th before this committee that-

"The BLM does not require the transfer or relinquishment of water rights as a condition of authorizations for public land use."

They may not require it, but my question is, does the BLM believe they have the authority to do so?

Answer: Federal land management agencies, including the Bureau of Land Management, retain the authority to reserve water necessary to fulfill the purposes of its land reservation. In addition, the Federal Land Policy and Management Act of 1975 authorizes the Secretary of the Interior to grant or renew rights-of-way across public lands for water storage and distribution facilities. The BLM issues permits for the use of rights-of-way across BLM lands for the purposes of constructing or maintaining water storage and distribution facilities. The permits are subject to conditions on use deemed necessary to comply with mandates in public lands laws. As such,

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federal land management agencies may, in certain circumstances, establish conditions on the use of water on federal lands. The Department is not aware of any authority that requires the transfer or relinquishment of water rights as a condition of authorizations for public land use.

Question 3: Dionne Thompson, representing the Bureau of Reclamation, stated in her written testimony on June 18th that-

"Originally expressed as the power to reserve water associated with an Indian reservation, over time, the Supreme Court and other courts have revisited and built on the doctrine in holding that reserved rights applied to all federal lands."

At the June 28th hearing I asked her-

"Does all federal land come with reserved federal water rights and do these rights trump state water rights, including privately held water."

Her response was-

"Reclamation follows the Reclamation Act. Section 8 of the 1902 Act says that state waters have primacy. State rights have primacy over water rights."

She also stated that states have primacy over ground water "for the most part." Do you agree with the Bureau's response to my question?

Answer: As stated in the Department's testimony, the federal government generally defers to the States in the allocation and regulation of water rights. However, the U.S. Supreme Court, as well as other federal and state courts, has recognized that the establishment of federal reservations impliedly reserved water rights necessary to fulfill the purposes of those reservations, in what is known as the doctrine of federal reserved water rights. A federal reserved water right is measured both by the amount necessary to meet the reservation's purposes and made up of water unappropriated at the time of the reservation's establishment.

Whether adjudicated by state or federal court – or settled in the context of federal legislation – federal reserved water rights typically fit within the "prior appropriation" system ("first in time is first in right") adopted in most Western states. Federal reserved water rights generally have a priority date as of the date of the reservation's establishment, although some Indian reservations may have even earlier priority dates based on the particular Indian tribe's aboriginal rights. In times of shortage, federal reserved water rights can be administered in light of the respective priorities of all water rights holders within the particular watershed – federal, private, or otherwise - as has been done by Wyoming through the Big Horn River adjudication and its implementation. Accordingly, if the federal reservation priority date is junior in time to a state water right, then the more senior state water right on that system prevails in administration.

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Numerous federal and state courts, as well as federal legislation, have recognized that federal reserved water rights can also apply to groundwater. Treatment of groundwater rights also varies widely by state, but the concept behind federal groundwater rights is based on the same concept – the date when the federal reservation was created provides the priority date vis-à-vis other state water rights users.

Finally, Section 8 of the 1902 Act provides that the Bureau of Reclamation will comply with state law relating to the control, appropriation, use or distribution of water used for its project purposes unless state laws are inconsistent with clear Congressional directives. Thus, while Reclamation generally defers to state water law, the existence of a federal reserved water right or direct Congressional authorization, such as in the case of water allocation in the Colorado River pursuant to the Boulder Canyon Project Act, requires a fact-specific determination as to the application of Section 8 of the 1902 Act in a particular situation.

Questions for the Record from Senator Ron Wyden

Question 1: Drought is a serious concern in states across the West, including in Oregon. And as we know all too well in Oregon, particularly in the Klamath Basin, finding a solution to the challenge of less water coupled with more water users is not easy. While the challenges of the California drought do not necessarily have a direct impact on water users in Oregon, the consequences of any drought legislation that walks back environmental or Endangered Species Act protections could be profound, and severely impact Oregon's fisheries and economy.

I've been hearing great concern that if the policies in H.R. 2898 were to become law, the Oregon salmon fisheries could experience a total shut down like we saw a few years ago, which would have profound impacts on Oregon's economy. I'm interested in hearing your view on a couple of key points: first, can you talk a little bit about how the drought management policies in the House bill would weaken Endangered Species Act and other environmental protections for river and species health? And that being the case, how does that impact the long-term health of salmon and steelhead runs, and what does that mean for Oregon fisheries?

First, can you talk a little bit about how the drought management policies in the House bill would weaken Endangered Species Act and other environmental protections for river and species health?

Answer: H.R. 2898 represents an unprecedented congressional amendment to existing biological opinions that have been upheld as scientifically and legally sound. Specifically, the newly defined term "negative impact on the long-term survival" of Delta smelt and other listed species is used throughout the bill -- often in combination with the undefined terms "imminent" and "significant" -- in provisions that would require operators to maintain certain operations unless doing so would cause such an impact. This new standard would conflict with the ESA's jeopardy standard, creating uncertainty that could limit water supplies by creating confusing

conflicts with existing laws, potentially slowing down decision-making, generating significant litigation, and limiting real-time operational flexibility.

Another provision in H.R. 2898 states that, "the Secretaries may continue to impose any requirements under the smelt and salmonid biological opinions during any period of temporary operational flexibility as they determine are reasonably necessary to avoid additional significant negative impacts on the long-term survival of a listed fish species beyond the range of those authorized under the Endangered Species Act of 1973, provided that the requirements imposed do not reduce water supplies available for the Central Valley Project and the State Water Project." This is inconsistent with the ESA as it applies to a standard that conflicts with the ESA's jeopardy standard.

Furthermore, H.R. 2898 will likely limit existing real-time operational flexibility that has proven critical to protecting the listed species and maximizing water delivery during the current drought. State and Federal managers have worked in concert since 2013 and taken extraordinary measures to adapt to dry hydrology and provide minimum protections to listed species while also providing as much water as possible amidst severe drought.

And that being the case, how does that impact the long-term health of salmon and steelhead runs, and what does that mean for Oregon fisheries?

Answer: H.R. 2898 as currently drafted reduces protections for ESA-listed species, including ESA-listed salmonids, and it will thus increase the risk of extinction of these species and otherwise delay or preclude their recovery. Ocean salmon fisheries are managed in direct response to the status and health of ESA-listed salmonids. If the status of listed salmonids is diminished, as would likely be the case under H.R.2898, it is reasonable to expect that ocean salmon fisheries would be further constrained and that those constraints would last longer into the future than would have otherwise occurred.

The loss of the long-term health of salmon and steelhead runs from the Klamath and Central Valley stocks would have a significant impact on Oregon fisheries. Genetic stock identification sampling of Oregon commercial troll catches during 2010-2014 showed that 42% of the Chinook salmon catch was from the Central Valley fall and the Klamath River stocks. However, the proportional contribution will change from year to year depending on the status of individual stocks. Chinook salmon produced in the Klamath-Trinity system primarily contribute to fisheries in northern California and Southern Oregon. In some years, the Klamath and Central Valley may make a much larger contribution to Oregon's fisheries if the Columbia and coastal fall Chinook stocks were depressed.

Question 2: Based on your assessment of the bill, would these provisions impact your ability to manage salmon restoration and other conservation programs?

Answer: H.R. 2898 is likely to negatively impact salmon and steelhead restoration. Specifically, H.R. 2898 provisions reduce existing protections or undermine conservation efforts

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for ESA-listed Sacramento River winter-run Chinook salmon, Central Valley spring-run Chinook salmon, California Central Valley steelhead, and non-ESA listed fall-run Chinook salmon. The Fish and Wildlife Service works in partnership with other State and Federal agencies to manage these species and loss of management discretion for any partners will have a negative impact. The greatest degree of impact is likely to be for NMFS due to their authorities for salmon harvest and ESA recovery. Managing under the rigid definitions and constraints of H.R. 2898 will require the modification of currently existing Reclamation service contracts, ESA biological opinions, and other longer standing agreements with State and Federal agencies. The loss of management flexibility could also impact flow augmentation releases that are designed to prevent recurring outbreaks of Ich (*Ichthyophthirius multifiliis)*, the fish disease thought primarily responsible for a historic 2002 die-off of Chinook salmon and ESA-listed coho salmon that return to spawn in both the Trinity and Klamath Rivers. Eliminating the flexibility needed to address fish health issues increases the risks of large scale die-off events in the Klamath Basin that could impact future fishing opportunities on the west coast and tribal trust resources of the Hoopa and Yurok Tribes, who rely on Chinook salmon migrating through the lower Klamath River for subsistence, ceremonial, and other purposes.

Question 3: I know you're familiar with the importance of collaboration when it comes to finding solutions to difficult water emergencies. And I know you're familiar with the collaborative work that's been taking place in Oregon's Klamath Basin to work toward a resolution of the decade's long water issues there. Can you tell us about the role that collaboration plays in these decisions and why it's critical to the success of any water solution?

Answer: Broad-based, consensus-driven cooperation is essential to successful modern water resources management. In every state where the Department owns and operates water infrastructure or upholds the federal trust responsibility to Native communities, the Department collaborates with state and federal wildlife agencies, water management agencies, water rights offices, and other entities involved in natural resources management at the state and federal levels. In the case of drought response in the West, the Department has maintained a rapid tempo of coordination with state and other parties to adapt the operation of existing water infrastructure in real-time as conditions dictate. In the Colorado River Basin, the Department works closely with the seven basin states, Mexico, Native American Tribes, and other federal agencies. This collaboration extends to our support for Indian water rights settlements that result from negotiations with all stakeholders, including the Federal government, and represent a good use of taxpayer dollars good cost share contributions from states and other benefitting parties. Finally, the value of the Department's collaboration can be seen in the in the Klamath Basin, where the Department has worked tirelessly on Klamath Agreements to provide a comprehensive solution for water, fishery, and power issues in the Klamath Basin.

Questions from Senator James Risch

Question 1: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide resources for the Corps (working with BOR) to complete new or "updated" reservoir hydrologic "Rule Curve" flood impact studies for given western reservoir states? If so, is there sufficient

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authorization language in either bill to "better manage new Rule Curve studies" to balance yearly flood control and mix-use (i.e. irrigation and ecosystem water) water resources for the western states?

Answer: Section 315 of S. 1894 directs the U.S. Army Corps of Engineers to prepare a report on Army Corps and non-federal flood control projects in any state with a drought declaration in place during 2015, the dates of their associated water control manuals, the timelines for the manuals' planned revision, and listing any external requests for the manuals' revision. The bill further directs that, 60 days after the report is provided to Congress, the Corps must identify any projects that have flood control rule curves older than 20 years, or where an updated rule curve might enhance existing authorized project purposes. Bureau of Reclamation facilities are explicitly excluded pursuant to subsection 315(h)(3). Subsection 315(g) provides that the Corps may accept non-federal funding to implement recommendations, but the legislation does not authorize nor appropriate any new federal funding or staffing resources to implement these directives. While the Department cannot authoritatively estimate the costs to USACE to comply with Section 315, the potential breadth of including Army Corps and non-federal facilities suggests that the timelines will be extremely difficult to meet, and the report itself will pose a significant challenge on existing agency resources. For the same reasons, implementing any of the reports' recommendations would be similarly challenging under the legislation as written. None of these provisions appear in the House-passed version of H.R. 2898 discussed at this hearing.

Question 2: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide authorization language for not only construction expansion for storage of a California dam (i.e. Shasta Dam), but authorization language for possible construction expansion dam for storage for all other western state dam projects? Specifically, would either legislative bill provide support language for a possible consideration of a construction expansion dam for any type of water storage in the future for the state of Idaho?

Answer: Subtitle B of Title III of S. 1894 authorizes $600 million for the facilitation of new water storage projects. Specifically, Sec. 312 of S. 1894 provides the Secretary of the Interior general authority to participate in the construction or expansion of any Federal storage project, which is not limited to storage in the State of California. Sec. 314 of S. 1894 authorizes additional reservoir storage to be developed at Reclamation Safety of Dams projects if certain conditions are met, including full financing by local project sponsors. Section 421 of S. 1894 would amend the SECURE Water Act to authorize federal assistance for planning, design, and construction of new non-federal permanent water storage and conveyance facilities, among other water storage and conservation projects. Section 1001 of HR 2898 contains language similar to that in Section 314 of S. 1894 amending the Safety of Dams Act (PL 95-578, as amended; 43 USC 509) to authorize additional project benefits in conjunction with a dam safety construction. However, the Department has made significant budgetary and legal observations for Congress to consider before these provisions could be implemented, and these were noted in the testimony on

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both bills, as well as on HR 2749 (Valadao)[1] this past June. Separate from the Safety of Dams amendments, HR 2898 does not provide the same authorization for the construction or expansion of surface storage projects outside of the State of California as is found in S. 1894.

Question 3: From the Dept. of Interior perspective, do S. 1894 and/or H.R. 2898 provide language for nontraditional supplies and conservation for re-charge (and/or water banking) projects for all western states - - not just authorization for the state of California only.

Answer: S. 1894 includes several provisions that have the potential to increase the use of nontraditional water supplies or enhance water conservation for all western states. Subtitle A of Title III of the bill authorizes feasibility studies and the construction of Reclamation funded water recycling and desalination projects, with such drought recovery and resiliency projects as groundwater recharge, stormwater capture, agriculture or urban water conservation and efficiency, or other innovative water supply projects. Section 301 would reauthorize and expand the Desalination Act and authorizes additional funding to support feasibility and design studies. Subtitle C of Title III would authorize the WaterSense Program at the Environmental Protection Agency to identify and promote water efficient products, buildings, landscapes, facilities, processes, and services. Title IV would provide federal support for state and local drought resiliency projects, through the authorization of the Reclamation Infrastructure Finance and Innovation Act, which would provide low-cost, long-term loans and loan guarantees for water infrastructure projects, including water recycling; expand the SECURE Water Act to authorize federal assistance for the planning, design and construction of new water infrastructure, including water reclamation and reuse; and eliminates the need for Congressional authorization for individual Title XVI projects. HR 2898 primarily focuses on addressing drought conditions in California, and does not contain corresponding authorities for nontraditional water supplies and conservation initiatives as does S. 1894.

If DOI or BOR have questions for clarification, please contact:
Tim Petty
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Questions from Senator Mazie K. Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

[1] http://www.usbr.gov/newsroom/testimony/detail.cfm?RecordID=2804

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We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Answer: As noted in the Department's Strategic Plan for FY 2014-2018, the American West is the nation's fastest growing region and faces serious water challenges. Competition for finite water supplies is increasing as a result of persistent drought, population growth, agricultural demands, and water for environmental needs. An increased emphasis on domestic energy development will place additional pressure on limited water supplies, as significant amounts of water may be required for unconventional and renewable energy development. Impacts of climate change, as evidenced by increases in temperature, decreases in precipitation and snowpack, extended droughts, and depleted aquifers and stream flow in several Reclamation river basins are reducing water supplies. Water is vital for the environment and the economies of rural and urban communities in the West.

The Department has made considerable progress toward its Priority Goal for Water Conservation, which is to facilitate an increase in the available water supply for agricultural, municipal, industrial, and environmental uses. Through WaterSMART and other conservation activities, Reclamation has exceeded the goal of 840,000 acre-feet annually by the end of FY 2015 (since FY 2009) by partnering with states, Indian tribes, irrigation and water districts and other organizations with water or power delivery authority to implement programs that will result in water conservation once completed. Together, projects funded through WaterSMART and other conservation activities from 2010-2015 have contributed over 977,000 acre-feet of water savings toward the goal.

Question 2: I look forward to working with the Administration in making sure that Hawaii can take advantage of some of the water conservation and innovation provisions in S. 1894 as we prepare for future drought conditions in our state.

As I'm sure you know, we are the endangered species capital of the world and as such, folks back home are very aware of any activities that could negatively impact our environment.

Can you describe in more detail how your Department would implement some of the programs within S. 1894 that are made available to Hawaii? Would the Department engage collaboratively with stakeholders to ensure our unique local concerns are addressed and if this bill were to pass, what should I tell our state and local officials about how to engage the Department?

Answer: While it would be premature to set forth how the Department would implement water conservation and innovation provisions in S. 1894, especially in light of the potential changes to the bill as it works its way through Congress, the Department has similar programs and activities that would provide a good starting point in a discussion surrounding implementation. For

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example, Section 301 of the bill would reauthorize and expand the Desalination Act and authorizes additional funding to support feasibility and design studies. Through the Desalination and Water Purification Research and Development Program, Reclamation enters into cost-share agreements with a broad range of participants: individuals, institutions of higher education, commercial or industrial organizations, private entities, public entities (including state and local), and Indian Tribal Governments. Section 421(b) would amend the SECURE Water Act to authorize federal assistance for the planning, design and construction of new water infrastructure, including water reclamation and reuse, and provide for an additional appropriations ceiling under the SECURE Water Act as requested in the President's FY16 budget. The Department continues to engage in outreach efforts to ensure that funding opportunities are as inclusive as possible and that grant categories align with interest among applicants. Section 431 would eliminate the need for Congressional authorization for individual Title XVI projects and require the Department to establish new guidelines consistent with the criteria set forth in S. 1894. On October 15th, Reclamation announced it was seeking applications from congressionally authorized sponsors of Title XVI projects, which provides funding for projects that reclaim and reuse municipal, industrial, domestic or agricultural wastewater. The deadline for applications for this funding announcement, which applies to all 17 western states and the State of Hawaii, is December 10th.

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Questions from Chairman Lisa Murkowski

Question 1: *Can you describe the concepts that S.1894 shares with H.R. 2898?*

Response: Both bills attempt to enhance flexibility of operations in a variety of ways that could benefit state water supplies and deliveries for California. The State Water Project (SWP) and the Central Valley Project (CVP) face operational restrictions that threaten the ability to capture peak storm flows when they pass through the Delta. While Metropolitan supports water supply restrictions when they are scientifically demonstrated to be necessary to protect endangered species, we firmly believe there are missed opportunities to safely capture water supplies within the confines of the existing biological opinions that could be regained if the agencies had better information. Both bills are designed to support water system operational flexibility, addressing these types of operational restrictions of the SWP and CVP.

Both bills seek to improve the monitoring and scientific understanding of species in the Sacramento-San Joaquin Delta and the Suisun Marsh. For example, there are provisions in both bills directing the Secretary to conduct daily monitoring of turbidity levels and use the results to inform real-time operations of the SWP and CCVP.

Both bills also direct the Secretaries to undertake certain actions to control predation and invasive species. In addition, in order to improve the supplies available to the SWP and CVP, both bills direct the Secretaries to undertake actions, including timing operation of the Cross Channel Gates in the Delta with peak flood tide periods and operating the SWP and CVP based on real-time data and survey results.

Both bills seek to facilitate transfers among users and encourage the federal agencies to expedite transfer applications. Both bills also seek to facilitate the development of additional water storage projects. Among other concepts, both bills include changes to the Safety of Dams Act to allow the development of additional project benefits through the construction of new or supplementary works on a project. This language may assist in ensuring that the infrastructure in California is resilient and able to capture supplies when they are available, although there are certain changes MWD would like to see to the language in both bills to protect SWP interests in key reservoirs in California.

Both bills also include important language to ensure that the implementation of any of the actions authorized by the legislation will not adversely impact SWP supplies by changing the requirements imposed on the SWP by the California Department of Fish and Wildlife.

Both bills also include provisions that specifically allow the Secretary to utilize the Council of Environmental Quality (CEQ) NEPA procedures applicable to emergencies in undertaking certain actions to deal with a drought emergency.

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Question 2: *What is the most significant provision in S. 1894 that will lead to more water reaching Southern California and why? HR 2898?*

Response: S. 1894 sets forth a suite of measures intended to assist California water agencies in addressing water shortages. As noted in our testimony and the Board letter attached to the testimony, we believe that there is no single solution to California's water challenges, and thus we embrace the multi-pronged approach embodied in S. 1894 that encompass both short-term and long-term strategies.

An important feature of S. 1894 that will benefit Southern California water supplies in the short term is its emphasis on better monitoring on a real-time basis to understand the abundance and location of important fish species in the Delta. With this information, operations of both the SWP and the CVP can be better managed to protect fish species while facilitating water supply deliveries under a variety of hydrologic conditions, including during drought. Without this flexibility, the ability of the SWP and CVP to capture and convey project water during wet periods may be further constrained by current operational restrictions that fail to recognize and manage around real-time conditions.

For the longer term, S. 1894 also authorizes significant appropriations for various actions to benefit listed fish species and to assist in implementing water supply, water conservation, water use efficiency and water recycling projects. Improving the information about listed species and improving their condition is unlikely to result in immediate water supply relief, but it can assist in relieving some of the regulatory pressures that have restricted the ability to flexibly operate the SWP and CVP.

S. 1894 also includes important support for water supply and demand-management projects that will facilitate Southern California's ability to respond to drought emergencies and meet customer demands.

As noted above, H.R. 2898 also includes many similar concepts to promote better monitoring and operational decision making on a real-time basis in the Delta and improve California's water storage infrastructure in ways that provide more water.

Question 3: *Given the financial constraints facing the federal government in providing assistance drought stricken areas, do you have suggestions, creative or otherwise, for ways the government can be an effective partner? Are there barriers to being more effective we should be aware of?*

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Response: Water agencies regularly update their planning models and resource management strategies to adjust to changed conditions and prepare for drought cycles. This current drought however is testing those models. Drier conditions, longer drought periods, increased temperatures and reduced snowpack are forcing water providers to re-examine their infrastructure and invest in new water supply strategies.

Federal assistance can make a significant difference in the ability of water agencies to adjust to these changing conditions by leveraging local and state dollars with limited federal funding. Since various agency needs are different, depending on their size and scope of services, a range of financing strategies may be more responsive to both urban and rural needs in the West.

For larger municipal providers, the Bureau of Reclamation's Title XVI program has a demonstrated record of success in developing new, safe and reliable water supplies throughout the West, including groundwater reclamation, water recycling and brackish and ocean water desalination projects. Authorized in 1992, Title XVI has helped advance more than 50 projects adding hundreds of thousands of acre-feet annually to local water supplies. In 2014 alone, Title XVI projects added nearly 400,000 acre-feet of valuable new water to the dwindling supplies in the West.

While successful, Title XVI can no longer authorize or fund new projects given the Congressional "earmark" ban. If the Title XVI program was instead converted to a competitive grant program with Congressional oversight, it could provide vital funding for new water supply projects in the West.

Perhaps more important than financial assistance would be steps the federal government could take to streamline and accelerate the permitting and review process for large projects. When multiple federal agencies have oversight and permitting functions with overlapping jurisdiction, our experience has been that the review and process timeline becomes extremely burdensome. We believe appointing a federal lead agency to take the point on the review process would be helpful. A requirement that all federal agency comments on a single project be coordinated and submitted as a single package would also be beneficial. Finally, a true commitment to set and stick to aggressive review timelines would save millions of dollars on large projects, as delays in the regulatory process is the single largest factor contributing to failed projects.

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Question 4: *In your testimony you reference a set of benchmarks that the Board has put together to help guide its position on legislation. Can you describe which of the Board's benchmarks are met by S. 1984? What benchmarks are not met by S. 1984?*

Response: In December 2014, the MWD Board of Directors adopted legislative priorities for fiscal year 2015/16. In August 2015, the board adopted additional priorities specific to federal drought. These were attached to our written testimony. S. 1894 represents legislative progress on a number of these priorities.

Listed by category, these priorities advanced by S. 1894 include:

Federal Drought Related Legislation

- Provide funding and regulatory assistance for regions affected by the drought for both immediate and long-term water projects that aid in the development, storage, treatment and delivery of water.
- Provide funding and regulatory incentives for conservation and water use efficiency measures.
- Protect SWP and local water supplies and ensure SWP and local water supply reliability.
- Support funding for Colorado River drought resilience projects.
- Work within the current federal and state Endangered Species Acts to increase operational flexibility while not weakening protections for listed species.
- Provide direction and funding to improve information about listed fish and wildlife species and water project operations in the Delta, including data collection, scientific understanding, and real-time monitoring of listed Delta species.
- Encourage use of the most current scientific data and analysis to provide enhanced flexibility for water project operations.

Bay-Delta and State Water Project Improvements

- Support administrative or legislative action and funding to advance emergency response and near-term Delta improvements, consistent with coequal goals.

Drought Related Legislation

- Support administrative or legislative actions to respond to drought, including funding for immediate water supply improvements, while maintaining environmental protections.

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Regional Water Resource Management

- Support legislation authorizing the U.S. Environmental Protection Agency (EPA) to provide grant funding for programs such as the Water Research Foundation to conduct research enabling water agencies to adapt to hydrologic changes.
- Support legislation authorizing EPA's *WaterSense* program and other federal incentive programs that promote water use efficiency and energy efficiency.

Invasive Species

- Support administrative or legislative actions and funding for biological controls, mitigation management, and elimination of invasive species, including, but not limited to, quagga mussels and striped bass.

Infrastructure and Public Finance

- Support measures to reduce the cost of financing water infrastructure planning and construction, such as tax-credit financing, tax-exempt municipal bonds, an expanded Water Infrastructure Finance Innovation Act, or similar financing mechanisms that fund new water supply infrastructure, including water conduits, pipeline, canals, pumping, power and associated facilities, the Environmental Infrastructure Accounts, and other funding mechanisms.
- Support Bureau of Reclamation's Title XVI and WaterSMART programs.

Appropriations Priorities

- Farm Bill/USDA programs to support habitat projects in the Delta and agricultural water use efficiency projects in the Delta or in the Colorado River basin
- Biological controls, mitigation management and elimination of invasive species
- Desalination and salinity management research
- Bureau of Reclamation Title XVI program
- Climate change adaptation and mitigation research

A few of the priorities that are not directly advanced by S. 1894 include:

Colorado River Initiatives

- Promote continued funding and coordination between states for the Colorado River Basin Salinity Control Program under the Departments of Agriculture and Interior.

Appropriations Priorities

- Colorado River Basin Salinity Control Program

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- Colorado River drought resiliency projects

One additional priority adopted by the MWD board of directors relative to federal drought legislation was that legislation "reflect broad, bipartisan agreement." We are hopeful that the Senate Energy and Natural Resources Committee will advance legislation that reflects collaboration and bipartisan agreement to provide federal assistance for drought stricken areas in the West that can pass both Houses of Congress this session and secure the President's signature.

Questions from Senator Mazie K. Hirono

Question 1: *I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.*

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Response: Water conservation is likely to continue to be an important part of the toolbox water managers will use throughout the nation in the coming decades. The degree to which conservation is the focus will be different based on regional needs. Each area is unique, but some common themes will prevail. There will always be a need for third party analysis of water efficient devices. The EPA's WaterSense program provides third party testing and analysis of water efficient products. This allows water agencies throughout the nation to reference these products in their incentive/rebate programs as having undergone a national review that validates the performance and quality of the devices. Funding and support for this program should continue. Without WaterSense, water agencies would have to find other ways to validate the water savings and performance of products, which could lead to competing analytical approaches and confusion among consumers.

It is also clear that the water industry will be focusing more on outdoor water use. Major gains have been made in increasing the water efficiency of products that are used inside homes, businesses, and within industry. However, in some areas, up to 70% of residential water use can be outdoors. Each region of the U.S. has different climate patterns, which will lead to different types of outdoor plantings and landscaping that are climate appropriate. Promoting landscapes

that are regionally climate appropriate will be of great importance. As such, it is important that individuals that wish to change their current landscapes to more climate-appropriate options are encouraged to do so. This can be promoted with policies that exempt these kinds of investments from taxable income, similar to policies that have been approved for energy efficiency. It is also important to ensure that requirements established to ensure a common look and feel to communities do not inhibit the ability for individual residents or business owners to pursue more climate-appropriate landscape options.

Question 2: *I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.*

I would like to hear from you, given your personal experience with the Metropolitan Water District of Southern California, about your advice on how folks in other states should be thinking about long-term water use and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

Response: Federal programs to provide financial incentives as a match to local or regional funding could be very helpful in the coming years. Helping homeowners and businesses transition away from more water intensive landscaping and devices to water efficient and climate appropriate options can be expensive. Local and regional water agencies may find it easier to generate funding for these kinds of incentive programs if their funds are matched with federal dollars for the same purpose. In this sense, federal funding can leverage local funding commitments to secure long-term water savings. However, federal matching programs of this sort are more powerful if they are long-term in nature. Federal funding sources that are available for only a short period of time may limit the kinds of local programs that can be developed. The transition in outdoor water use will take a long-term strategy that helps transform the market for outdoor landscaping. Federal incentive programs should recognize that local agencies will have to make long-term program commitments spanning multiple years in order to make this change.

Public education and awareness is an important part of ensuring a secure water future. New broad requirements on infrastructure projects that benefit from federal funding could be problematic if the cost of those requirements leads to reduced infrastructure maintenance and

development. However, should projects receiving federal funds have a consumptive water use requirement, it seems reasonable that those projects also promote efficient water use. Conceptually, a requirement that these projects have a public education component that underscores how the facility is utilizing water efficient devices and practices could serve a dual purpose. It could ensure that these infrastructure projects are efficient in their water use and that they provide a lasting educational benefit for the public that utilizes the facilities. An example of this requirement could be as simple as a plaque or visual display that explains how a given structure or facility was designed to be efficient in its water use. This type of requirement would carry minimal cost to implement, but would serve to heighten public awareness on the need for efficient water use as a broad ethic throughout the nation.

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Questions from Chairman Lisa Murkowski

Question 1: What have been the impacts from the drought on you farm's operations?

Response: Our family farm, Clark Bros., has been dealing with the impacts of limited water supply for multiple years. Since 2009, our farming practices have relied heavily, and most recently completely, on our ability to farm only with groundwater. This type of reliance limits our ability to employ people long-term, make sound environmental decisions for the land, and ultimately have a healthy, growing business that embraces innovation and change. Our farm has asked many employees to retire early or find work on other farms – many of these employees have worked for our family since our first days in farming-. Additionally, we have started to utilize farming practices that increase water efficiency; however, these practices are also very harmful to the soil. For example, we have been putting groundwater, which is naturally high in salts, in the same seedbed year after year. This results in decreased production and increased salt concentrations in our soils for future years and generations. These practices are not good for the people or the environment, and they are most definitely not sustainable.

The Central Valley Project, like so many Federal Water Projects, was built to provide a safe and reliable water supply to meet the needs of the residents and industries throughout our state. Today, we no longer utilize its incredible infrastructure for the people but rather for the benefit of selected environmental causes. As a result, the environmental harm done to the farmland of California is a casualty to both the earth and the people. Without a reliable water supply to California, our farm will not continue beyond our ability to pump groundwater. All indications show that the end is within a year or two. And while we have made it a little longer than others, that is only because our groundwater has sustained us. Many families can no longer wait for the solution.

Question 2: Why does the House bill give better direction to the agencies?

Response: As I suggested in my testimony, I believe the following concepts are helpful for bridging the differences between the House and Senate bill. I think legislation must:

- Provide congressional direction concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply reliability. The operators of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in a rational way.

- Extend the provisions of any legislation for a period of time that will allow communities to establish sound long term water supplies for their future;

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- Establish a process that could lead to increased storage in a reasonable timeframe;

- Ensure that additional burdens are not placed on the State Water Project as a result of congressional action; and

- Recognize that the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changed conditions since its authorization, including the reality of federal budget constraints.

Both bills address most of these issues, but the House proposal provides more specific and clearer direction to the agencies on how they should operate the projects. As Senator Cantwell emphasized in her opening statement at the hearing, "the worst thing to do, obviously, is to pass legislation that ends up in the courts and allows us not to move forward on anything." I believe Congress can direct the agencies to minimize the negative impacts of the decisions on these communities, while still requiring that they be thoughtful about the impacts their actions have on wildlife and other environmental values.

Question 3: What do you see as the deficiencies of S.1894?

Response: It is an extremely positive step that S. 1894, provides that the Secretary of the Interior "manage reverse flow in the Old and Middle Rivers, as prescribed by the smelt biological opinion and salmonid biological opinion, to minimize water supply reductions for the Central Valley Project and the State Water Project." However, from my perspective, this language could be strengthened to ensure that the intent of the legislation is actually carried out.

Question 4: What provisions of the two bills do you see having the most in common?

Response: From my perspective, both H.R. 2898, the Western Water and American Food Security Act of 2015, and S. 1894, the California Emergency Drought Relief Act of 2015, are efforts to address the problems we see in our communities. This agreement is very encouraging, but both bills take very different approaches to address the issues. I know the bill sponsors have the opinion that each of their bills represent a better solution to the situation, but from my perspective, unless Congress can bridge the differences between the two bills, nothing will be achieved.

Questions from Senator Mazie K. Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

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We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Response: From my perspective, water conservation is an important priority. To understand how important conservation efforts are in my community, I would like to invite you to spend a day with me on my family farm to see for yourself. In doing so, you would witness the dramatic efforts we have undertaken to conserve water for our farming operations. In my area, farmers have invested tremendous resources in water-saving techniques and technology. It is unquestionable that collectively, the farmers in my area, are among the most efficient users of irrigation water in the world.

Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.

I would like to hear from you, given your personal experience with farming and your work with Water Wise, about your advice on how folks in other states should be thinking about long-term water use and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

Response: Yes, I believe it would be helpful to have incentives available.

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Questions from Chairman Lisa Murkowski

Question 1: In your testimony, you reference your report, *Innovations in Agriculture Stewardship: Stories of Conservation and Drought Resilience in the Arid West*." Could you briefly describe how it came about, describe one of the case studies and the results?

Response: "*Innovations in Agricultural Stewardship: Stories of Conservation & Drought Resilience in the Arid West*," focuses on five case studies that profile producers across the Colorado River Basin and beyond who -- with curiosity, creativity and seasons of trial and error -- are conserving resources while enhancing productivity. The Alliance teamed up with the National Young Farmers Coalition (NYFC) on this report with the aim of elevating the voices of farmers and ranchers who are employing smart solutions to build drought resilience, steward water and grow good food. This effort – and an October 2014 tour of several of the ranches highlighted in our report – was funded with assistance from the Walton Family Foundation.

One of the case studies features Wyoming ranchers Pat and Sharon O'Toole, who have always managed their land with conservation in mind. Along the way, they've built strong partnerships with Trout Unlimited, Audubon Wyoming and The Nature Conservancy; organizations some ranchers once viewed as adversaries. The O'Tooles' Ladder Ranch, like many ranches in the interior West, relies on irrigation water derived from melting mountain snowpack. That water feeds a myriad of purposes. It grows hay and grass pasture, which supports the financial bottom line. It buffers soil against drought and fills creeks and streams. It supports trout fisheries and the anglers who seek them. It enhances biodiversity and provides water to wildlife that use Ladder Ranch as a migratory corridor. It draws in beneficial insects and pollinators and helps build a beautiful landscape. The O'Toole's holistic approach manages for all of these values simultaneously. Importantly, upper watershed surface water storage projects – developed locally and in collaboration with government agencies and conservation groups – play a critical role in providing multiple benefits to Ladder Ranch and the environment it supports.

As the pressures of climate variability and drought increase, farmers and ranchers are at the forefront of our national adaptation strategy. Producers are coming together to help one another, but they also need support from consumers, policy makers, scientists, and service providers. We hope that these case studies will provide policy makers and other stakeholders with a more nuanced understanding of the diversity and complexity of western agricultural water conservation and an appreciation of what continuing to take agricultural lands out of production might mean.

Question 2: What should be our key takeway from your report?

Response: Water resources challenges are unique and require unique, locally-driven solutions. Some of the farmers highlighted in the Alliance report are integrating efficient irrigation technology with soil health to increase both productivity and water savings. Others are

navigating conservation within constraints outside of their control, such as the operations of the ditches which deliver water to farms. To paint a fuller picture of the complexities and nuances of agricultural water conservation in the West, the Alliance and NYFC worked with the engineering firm Applegate Group to create a water balance for three of the case studies. These water balances utilize a technical, objective approach to assess the producers' water rights, current conservation efforts, and barriers or opportunities for future conservation. They underscore the reality that conservation practices are different on every operation and unique from farm to farm.

Question 3: In your testimony you say "federal agencies managing the competing demands for water in the West have in some cases failed to examine or pursue opportunities for more flexible water management that serves both economic and environmental goals". Can you give an example?

Response: I can provide four specific examples:

Example 1: Sacramento-San Joaquin River Delta - Despite record-breaking dry conditions in California in 2014, and the Governor's declaration of a state-wide drought emergency, the Bureau of Reclamation, the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service erred on the side of fish protected under the Endangered Species Act (ESA), failing to use common-sense discretion that would have provided increased operational flexibility for the Central Valley Project (CVP) and the State Water Project while still protecting listed species. When local water agencies pressed the federal agencies to use discretion, based on emergency conditions, they were told that it would likely result in the imposition of harsh "mitigation" measures. Specific examples include management decisions made relative to the cold-water pool temperature plan and the Coordinated Operations Agreement, and Temporary Urgency Change Petition orders issued by the State Water Resources Control Board. The Trinity River Division flow augmentation releases provide another example that is further detailed, below.

Any federal agency decision which may, now or in the future, have any implication or impact on a listed species must find agreement from those in government who are charged with implementing the ESA. The Act that guides them requires no balancing of interests, no concern for our food supply or food safety, and no consideration of the human impacts of their regulatory decisions. The agencies' powers are near boundless and the judicial system gives their decisions great deference.

There is considerable discretion in how the ESA can be implemented. Given the significant scientific uncertainty that exists with many of these species and the ecosystems in which they reside, and the failure of the ESA regulators to look at the broader set of stressors affecting them, the Alliance believes these agencies must step back and rethink the consequences of their actions. Even though the ESA does not require the human consequences of their decisions to be considered, it does not prohibit such consideration. Understanding the impacts on people that

come with ESA decisions is simply good public policy. To ignore how people are affected is simply bad public policy and an overreach of federal regulatory power.

Example 2: FERC Drought Emergency Authority - During drought emergencies the Federal Energy Regulatory Commission (FERC) has the authority to adjust licensing conditions for hydropower projects that affect water storage and fishery requirement. FERC has been pro-active in exercising that authority, but in some instances state and federal fishery agencies, which set the flows and fishery conditions on hydropower licenses, are reluctant or slow to cooperate, or they impose out-scaled demands for 'mitigation' of emergency actions. For example, a February 6, 2014 letter was sent from FERC to all hydropower license holders in California saying "staff of the Federal Energy Regulatory Commission is prepared to act swiftly to review requests to amend licenses on a temporary or longer-term basis, as appropriate, in order to conserve water resources at FERC-licensed hydroelectric projects." Since sending out its letter, FERC has received and acted upon several requests to adjust hydropower license conditions because of the drought. Fishery agencies, and California's State Water Resources Control Board, have in many cases cooperated promptly on such requests. In others, final decisions are pending or are being contested by environmental organizations.

Example 3: Trinity River Management - Throughout this severe drought, Reclamation has chosen to release over 120,000 acre-feet of stored water from Trinity Reservoir at the expense of the Central Valley Project, including its water users across California and endangered species in the Central Valley. While the specific justification for these "emergency" releases varies from year to year, the general intent is to prevent disease outbreak in migrating Chinook salmon, a fish species that is not protected by the ESA. After a decade of providing flow augmentation on the Lower Klamath River, we are unaware of any sound scientific evidence clearly showing that flow augmentation has prevented a disease outbreak. All of the decisions made to date appear to have been policy- (not science-) based, driven by fear and political pressure. Unfortunately, California and Oregon water and power customers have suffered enormous, quantifiable, and unmitigated losses (see response to Question 8, below).

Example 4: Outdated Reservoir Operating Criteria - The Corps of Engineers operates dozens of water projects throughout the West, and it regulates the operations of many non-federal dam and reservoir projects according to criteria that in many cases were established decades ago and have not been updated to reflect changed conditions or new technology. As a result, projects are sometimes forced to waste large amounts of water in order to adhere to the letter of a flood-control plan that no longer has a basis in reality. The Corps has existing authority to make short-term adjustments to operation criteria during droughts, but the agency rarely does so on a proactive basis.

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Question 4: What do you believe will be the most effective provisions of H.R. 2898 in maximizing water delivery?

Response: Relative to California Bay-Delta operations, H.R. 2898 directs the agencies to operate the state and federal water projects at the upper limits allowable within the biological opinions. The bill also contains provisions that require the agencies to move and capture water in early storm events if there is no harm caused to protected species. H.R. 2898 further requires the agencies to quickly issue transfer permits. All of these provisions are permanent, and will effectively maximize water delivery.

In addition to its California Delta-focused provisions, H.R. 2898 would enhance future water supplies throughout the West by streamlining permit decisions and authorizing expedited procedures to make final decisions on operations and water projects that can maximize water supplies. It also provides the Secretaries with new authority to approve projects that normally would require congressional authorization.

Question 5: In your testimony you suggest that we must invest in the Western Water infrastructure necessary to meet current and future needs and that our existing is aging and in need of repair. Given the limits of the federal budget, what is the most effective way the government can be a partner in that investment?

Response: More surface and groundwater storage is still a critical piece of the solution to water shortfalls. Congress should streamline regulatory hurdles to assist in developing new environmentally sensitive water storage projects and other necessary water infrastructure improvements. Congress should work to facilitate the construction of new surface storage facilities, providing a more effective process to move water storage projects forward.

Also, new tools to assist in financing major improvements to aging water infrastructure will be needed in the coming years to ensure that farmers and ranchers charged for these upgrades can afford repayment. Water infrastructure is a long-term investment, as are farms and ranches, and long repayment and low interest terms will be crucial in reinvesting in new and aging facilities to meet the challenges of tomorrow. Such improvements could include investments in everything from new water storage reservoirs (both on- and off-stream), regulating reservoirs, canal lining, computerized water management and delivery systems, real-time monitoring of ecosystem functions and river flows for both fish and people, and watershed-based integrated regional water management. With the advent of the Water Infrastructure Finance and Innovation Act (WIFIA) in the WRRDA 2014, the Alliance believes a similar affordable loan program could be instituted at Reclamation to assist in providing capital for such investments. Also, more flexibility may be needed to allow for private non-federal investments at Reclamation facilities in order to attract additional capital to meet future water supply needs.

Western irrigators need flexible, streamlined policies and new affordable financing tools that provide balance and certainty to support collaborative efforts and manage future water

infrastructure challenges. Solutions in all of these areas will be crucial to future enhanced agricultural production, conservation and community outcomes in the West.

Question 6: Can you summarize the key points of your recent article "*The 2014 drought and water management policy impacts on California's Central Valley food production*"?

Response: The Journal of Environmental Studies and Sciences recently published this peer-reviewed article, which I respectfully request be included in the hearing record. During 2014 and 2015, California experienced one of the worst droughts in 160 years of record keeping. The Bureau of Reclamation announced zero water allocation for Central Valley Project agricultural water service contractors—with a devastating impact on food producers.

The article explains why farmers perceive the collapse of their water allocation as, in part, a "regulatory drought" brought on by political decisions about who should have the water. The growing demands of other sectors have been met at the expense of agriculture. Uncertainties in the current political process not only undermine the reliability of the agricultural water supply but also diminish the industry's ability to make long-term adaptive decisions. The implementation of environmental laws and policies has been particularly distressing to farmers because of the large quantity of water designated for environmental use and the apparent weakness of scientific evidence to justify it. The realization of supposed benefits, such as restoration of endangered fish populations, has not been convincing. Moreover, information is lacking on alternative management options that might be more effective. Our published journal article presents two recommendations as a means to increase the resilience and reliability of the water supply for all user groups: (1) a mediated settlement generated by all stakeholders involved in water use sectors that bear upon the comprehensive and long-term management of the San Francisco Bay-Delta and threatened and endangered species that depend upon it and (2) an increase in water storage infrastructure to buffer future fluctuations in snowpack runoff.

Question 7: In your testimony, you stated that the role of the Federal Government should be from the "ground up" rather than a "top down" approach. Can you specify, in your opinion, what "ground up" approaches might the federal government play a role in advancing?

Response: The Family Farm Alliance has long advocated that the best decisions on water issues are made at the local level. Here are some specific approaches the federal government can play a role in advancing this philosophy:

Solutions to conflicts over the allocation and use of water resources must begin with a recognition of the traditional deference to state water allocation systems. Federal agencies must acknowledge that they are required to adjudicate water rights for federal purposes according to state law and abide by state decrees defining both federal and non-federal rights.

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The federal government needs to seriously consider adopting a policy of supporting new projects to enhance water supplies while encouraging state and local interests to take the lead in the planning and implementation of those projects. Local and state interests (such as the Sites Joint Powers Agreement in Northern California) have shown enormous creativity in designing innovative water development projects. Water agencies have at times obtained additional federal funding through the appropriations process; however, Reclamation could also supplement this effort by supporting local partnership agreements, especially where Reclamation and its water contractors are identified as potential beneficiaries.

The federal government should continue to support WaterSMART and/or other programs that provide incentive-driven cost share money for new, locally-driven water conservation projects. Small federal investments in cost-shared, competitive grants help irrigation districts make larger investments in water conservation and management technologies that can help stretch water supplies to meet unmet needs. The Secure Water Act should be reauthorized to extend these grant programs into the future.

The Endangered Species Act (ESA) can play an important role in species protection, but it can only successfully do so with increased public input, stakeholder cooperation and new "outside-the-box" thinking on transparency and accountability. Unfortunately, the manner in which the ESA is being implemented in its current form discourages this sort of an approach. But, there are encouraging templates for success that should be recognized. For example, one of the first applications of ESA section 10(j) in the United States by the National Marine Fisheries Service (NMFS) occurred in the Deschutes River Basin. This occurred because of the proactive water conservation and fisheries restoration work completed to date by local irrigation districts in partnership with cities, counties and other stakeholders in Central Oregon. These water users have received assurances from NMFS that their lawful use of water supplies will not be at risk due to the implementation of the ESA while this Sec. 10(j) designation is in effect. Many water users in other parts of the West have done much to conserve water, restore ecosystems, and take other actions to steward the environment, and have yet to receive the sort of regulatory "assurances" that the Deschutes Basin districts have. The relationship that exists between the local water users and federal regulatory agencies in the Deschutes Basin should serve as a model for other regions of the West. This remarkable success story also demonstrates that private landowners should be viewed as potential partners in species recovery, not adversaries.

If federal agencies are willing to take lessons from how farmers and ranchers are coping with the drought, the result would likely be better management of water for both economic purposes and environmental uses. The written testimony provided by Cannon Michael on behalf of the Alliance at your June 2015 ENR Committee drought hearing provides several other real-world examples that further demonstrate what we mean when we advocate for "ground up" solutions to address the current drought and water management for the future.

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Question 8: You mentioned how policies of strict or rigid regulatory standards have negatively impacted farmers. Can you expand on some of these impacts in terms of direct economic loss or damages?

Response: Western farmers and ranchers have witnessed first-hand the on-the-ground impacts associated with agency implementation of federal laws on farmers and their families. I'll provide below three examples to address your question.

Klamath River Basin (CALIFORNIA / OREGON) 2001. The Klamath River watershed covers a nearly 16,000 square-mile region comprising parts of southern Oregon and northern California. The Klamath Irrigation Project, under the oversight of the U.S. Bureau of Reclamation (Reclamation), provides water to about 240,000 acres of irrigable crop lands. In 2001, the federal government announced that, for the first time in 95 years, no water would be provided for Klamath Project irrigators from Upper Klamath Lake or the Klamath River. Instead, that water was wholly reallocated to meet the alleged needs of three fish species protected by the ESA.

Rural farmers and ranchers in Klamath Basin communities owe their very existence to the certainty of the water supply developed over 100 years ago for the purposes of irrigation. Those families were subjected to unbelievable levels of stress and anxiety in 2001 and during the troubling years that followed, experiencing a drain on their finances, a toll on their health and strained family relationships. These farmers were impacted in a multitude of almost unimaginable ways when their water supplies were curtailed in 2001.

The types of economic, human, and environmental suffering caused by the 2001 Klamath Project Operations Plan were catastrophic and well-documented. Hundreds of farm and ranch families, suddenly finding themselves without a farming income, experienced the hardship of trying to support themselves and their families. Their ability to pay bills and service debt was severely impaired. Contracts for their crops from regional and national food processors were cancelled, some never to be renewed. Similar types of impacts were felt by farm employees, and the owners and employees of the agriculture-related businesses in the community. The demand for social services increased. Some people simply moved out of the area. City parks, schoolyards, and cemeteries withered without water. Farm fields became fields of weeds and dust. Unrelenting wind-borne soil erosion occurred, impairing land productivity and causing air pollution.

Irrigated farmland provides tremendous food and habitat for the abundant waterfowl, deer, antelope, frogs and other species. That value was also lost. Tragically, two of the nation's premier national wildlife refuges were left without water for wetlands, food production and waterfowl habitat.

The Klamath Basin water crisis adversely impacted the financial position of the farmers of the basin. This was due to loss of income, loss of opportunity to grow crops in 2001 (a year of relatively high commodity prices), capital expenditures for wells and other adjustments to

irrigation systems, producers being forced to farm further from home, cash contributions to fight the water battle, and fewer buyers of commodities (i.e. some potato sheds shutting down after 2001). Farmers also experienced income tax impacts, an inability to establish credit, and were wracked by uncertainty about the future of their farms and their lives.

Central Valley (CALIFORNIA) 2009, 2014-2015. Similar impacts were felt on an even greater magnitude by irrigators and communities in the San Joaquin Valley in 2009 and 2014, and will be felt again this year throughout the Central Valley. Sacramento Valley CVP Ag Water Service Contractors within the Tehama-Colusa Canal Authority were hit hard, as well. I refer you to the Journal article discussed in the response to Question #6 above for more detail on how farmers, rural communities, the environment and the economy have been impacted by agency decisions associated with managing federally-protected fish in California's Bay-Delta.

In both the Klamath and San Joaquin Valley instances, tremendous impacts were felt by landowners, water users, their local communities, other species and the environment, while benefits to the "listed" species of concern were questionable at best, or even unknown.

Trinity River / Central Valley Project (CALIFORNIA) – The Bureau of Reclamation's recent management of Trinity River (CALIFORNIA) flows, which has been intended to protect non-listed Chinook salmon runs on the Lower Klamath River, which is fed by the Trinity River as a tributary to the Lower Klamath River, has generated tremendous concern with Central Valley Project water and power customers. Originally, Trinity Reservoir, located upstream on the Trinity River, was built as a storage reservoir for the Central Valley Project (CVP), with stored water delivered to the CVP through a trans-basin diversion. Throughout this severe drought, Reclamation has chosen to release over 120,000 acre-feet of stored water from Trinity Reservoir to the river at the expense of the CVP, including its water users across California and endangered species in the Central Valley. While there is no known measureable benefit of those releases to salmon in the Lower Klamath River, other listed species may have also been harmed, such as winter-run salmon on the Sacramento River (where the CVP Trinity water would have flowed). Other affected species include listed Coho salmon, Giant Garter Snake, and San Joaquin Kit Fox, migratory waterfowl and the once imperiled American Bald Eagle.

To CVP agricultural contractors, the loss of 123,000 acre-feet in today's drought-driven water market equates to nearly a $250,000,000 replacement value. This does not account for the other known socio-economic impacts resulting from fallowed farm acreage, lost crop production, lost sales, lost employment, and increased need for social services throughout Sacramento and San Joaquin Valley communities, many of which are disadvantaged, poor communities.

Question 9: Could you expand on losses experienced by stakeholders as a consequence of these drought years? Are they quantifiable at this time?

Response: The Family Farm Alliance represents farmers and ranchers and that is the sector we

best understand. Some preliminary estimates of drought-induced losses have been developed by academia in California and Washington State, but truly meaningful assessments likely cannot be generated until harvest operations wrap up in the coming weeks.

However, it is clear that farming, and farmers and ranchers in California and elsewhere in the West have been hit hard by the drought. I refer you to the written testimony of Cannon Michael, who represented the Alliance at your June 2, 2015 drought oversight hearing, for an overview of Western drought conditions and related impacts that were occurring at that time. For example, the Washington Department of Agriculture at that time projected a $1.2 billion crop loss this year as a result of the drought. In the Walla Walla and Yakima River regions, water was shifted from creek to creek, sometimes through existing irrigation canals, to keep water flowing for steelhead, Chinook and bull trout. Fish were even hauled farther upstream to cooler water.

California was hit especially hard, for the second year in a row. In most areas where surface water supplies have been severely reduced or eliminated, California farmers turned to groundwater to maintain their permanent crops – grapes, tree fruits, nuts, and citrus – that represent a lifetimes' investment. But groundwater supplies are not infinite and were severely depleted in 2014 in areas that received no surface water. Groundwater also is not cheap. Wells cost upwards of $200,000 each and they are expensive to run, so many farmers pump only enough water to keep their trees alive, without producing a harvestable crop. Often, farmers tear out mature, productive trees and vines and replace them with saplings that won't produce a crop for years, but require far less water to keep alive now. And in some places, mainly the citrus belt in the Friant Division of the CVP, there is no groundwater at all. The many small farms there, which produce most of the nation's navel oranges, had their surface water cut off for the first time in 60 years last year. Most of those farms received no surface supplies again this year, and as a result, decades-old orchards were bulldozed out of existence.

This year, many Central Valley farmers also fallowed large tracts of land that are normally highly productive. When one hears that land is "fallowed" it might only seem that the impact is to the farmer, but that is definitely not the case. Every acre of farmed land generates jobs, economic activity and products in mostly rural farming communities. That is why the drought is so devastating to the rural agricultural communities of the Central Valley. There is a huge interconnection between agriculture and many other industries. Some press reports earlier this year acknowledged that California agriculture is a $46 billion-dollar industry, but then tried to minimize this impact by suggesting that it is "only" 2% of the GDP of the state. The oft-reported $46 billion number is only the "farm-gate" value of the crops produced. It does not include all the other industries that benefit from the trucking, processing and sale of the agricultural products (and all the fuel, parts, etc., from the farming, packaging and processing activities). A recent report by the University of California shows that the food and beverage industry contributed $82 billion and 760,000 jobs that are directly and indirectly linked to agricultural

products grown in the State of California.[1]

With that said, we know that the impacts to our industry and to our communities are only part of the picture. Water shortages affect all sectors of the Western economy, creating problems for cities and towns, manufacturers, builders, service providers, and individual citizens that are just as challenging as the difficulties faced by farmers and ranchers. The environment, too, is stressed by drought. In many areas of the West, species both plentiful and endangered are struggling to adapt and survive in extremely harsh conditions. This past year has brought wildfires, shortages of electric power and drinking water, business failures, unemployment, and other drought-related consequences, including harm to fish and wildlife, that will linger far into the future.

Question 10: With regard to fallowing programs, given that any provisions on water rights have an associated economic impact, what should the role of the federal government be in minimizing these impacts?

Response: Transfers involving land fallowing must be carried out consistent with state water laws and regulations, and always have to meet the test of not damaging other state-based water rights. Such analysis should include any ancillary economic and social damages caused to agricultural communities dependent on crop production. Agricultural land provides many environmental benefits, regardless of how the water is used or what crops are grown. Federal agencies need to also recognize and take into account these environmental attributes whenever federal funds are used to support fallowing proposals. Competing environmental demands for water must be a part of the discussion just as competing agricultural demands are today.

There are other potential costs of water transfers for decision makers to consider when taking into account broader economic implications from Western irrigated agriculture. These could be termed externality benefits or, if foregone, the "silent opportunity costs" inherent to changes to Western irrigated agriculture indirectly tied to the consumer spending economy. Americans currently enjoy the benefit of the lowest percentage of disposable income spent on food in the world, which helps drives our consumer economy. And this fact is driven in no small part by the long history of food and fiber production from Western irrigated farms and ranches.

Interestingly, the Center for Irrigation Technology (CIT) at Fresno State released a report, "Agricultural Water Use in California: A 2011 Update"[2], which concluded that the only large potential for moving water from agriculture to other uses will come from fallowing large swaths of farmland. While there may be some financial benefits gained using this "buy and dry" approach, there is another price that will be paid, and that relates to the importance

[1] http://giannini.ucop.edu/media/are-update/files/articles/V18N4_3.pdf
[2] The full report is available at http://www.californiawater.org.

of maintaining America's access to low-cost, safe, high-quality food and fiber, made available in large part by Western irrigated agriculture.

Questions from Senator Mazie K. Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind. We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about. I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Response: The Family Farm Alliance has long advocated that a suite of demand management and supply enhancement activities are required to address the immediate and long-term water resource challenges in the Western U.S. Clearly, water conservation is a key component in the "demand management" part of this equation. However, while agricultural water conservation can help stretch water supplies, it also has its limits.

Conservation efforts for both urban and agricultural water users are not evenly distributed across the West; certain agricultural districts are some of the most efficient in the nation while others have significant room for improvement. Conservation opportunities may exist on-farm or within the water conveyance and delivery infrastructure, or perhaps both, but there are limited financial resources to fund such improvements. Funding partnerships have allowed for extensive system improvements and conservation programs to be implemented in some agricultural districts over the last twenty-five years in exchange for water supply benefits based on these increased efficiencies. Geographic location also plays an essential role in some water systems' efficiency as certain areas return a high rate of diverted water back to the river system, while other areas – either due to high water-use efficiencies or because of their distance from the river – provide minimal return flows to the river.

Agricultural water users know how to manage limited water supplies, and water conservation infrastructure has become a useful and effective water management tool. If farmers normally use 20-24 inches of water in a growing season, they sometimes have to make do during drought with only 16 inches, or less. Local irrigation districts often operate as an in-house water bank, and work with their farmers to manage the limited water supplies: some manage cropping patterns on land as part of rotational operations, put in more efficient field irrigations systems such as sprinklers or drip systems, plant less water-intensive crops, or apply deficit irrigation for certain crops such as wheat or alfalfa. In high valley meadows where ranchers are running cows and raising grass, smart operators ensure water demands for cattle are met by reducing herd numbers.

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While water conservation in irrigated agriculture has proven effective in reducing water diversions and saving water for other uses, in some instances it may have negative impacts. Reduced return flows back to rivers and streams, and less seepage to groundwater aquifers can result from water conservation techniques, resulting in unintended impacts to other users and the environment. However, one secret to successful water conservation has been found through using a more holistic approach to water management decision-making by integrating the management of water resources on a watershed or system-wide basis. Water conservation technologies have dramatically improved over the past decade and do have a place in integrated water management programs.

In summary, water conservation investments in all sectors can improve the long-term reliability and sustainability if the conserved water benefits the system.

Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing. I would like to hear from you, given your personal experience with Family Farm Alliance, about your advice on how folks in other states should be thinking about long-term water use and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

Response: Your question is a timely one. Our organization works closely with the National Young Farmers Coalition (NYFC) which earlier this year conducted a survey of hundreds of young farmers in the Colorado River Basin. The survey is notable for two key findings: 1) Water and climate variability are two of the top agricultural concerns of young farmers in the West; and 2) Young farmers prioritize water conservation and most of them are already conserving water. Conservation is not a choice for many farmers - it is embedded in the very way they do business.

Young farmers were also questioned about some of the very topics you raise in your question, and the answers are similar to what many farmers and ranchers of all ages believe. Most farmers and ranchers believe they are stewards of the land and are voluntarily undertaking conservation measures without prodding from the government. They believe the government has a role and a duty to: 1) reach out to these producers, educate them on funding and cost-share opportunities, and make it easier for them to conserve; 2) educate the public and policy makers on the importance of these endeavors; 3) prioritize and expand on existing conservation funding assistance programs, wherever possible; and 4) find ways to ensure that producers understand the

limitations, privileges and opportunities associated with their water rights.

There are also opportunities to improve water use efficiency and supply reliability through coordination of traditional Farm Bill on-farm programs and irrigation district access to Bureau of Reclamation programs like WaterSMART. The "Bridging the Headgates" of the past (i.e., improving coordination between on-farm (USDA) and irrigation district-wide (Department of the Interior) programs) is something for which we have long advocated.

Finally, water resources in the West are managed and allocated by the states themselves, and federal incentives to manage water differently sometimes come with federal strings attached, creating a disincentive for many states. The federal government must recognize and abide by state laws, regulations, court decrees and treaties in creating any incentives to value and manage water differently in the West.

November 6, 2015

Darla Ripchensky
Chief Clerk
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510
(Delivered via email)

Dear Ms. Ripchensky:

I am responding to the Committee's request, following the Committee's October 8th hearing, that I answer several follow-up questions posed by Chairman Murkowski and Senator Hirono.

My responses are set forth below. For ease of reference, I have included each question, followed by my answer to that question.

Questions from Chairman Lisa Murkowski

Question 1: From a legal perspective, what provisions of S. 1894 ensure maxim[um] delivery to those who need it as compared to current law and policy?

At the outset, it is important to observe that most of the provisions of S. 1894—like those of H.R. 2898—appear focused on achieving long- and medium-term relief to California water users. Quite simply, there are few "quick fixes" to be had. For example, new and/or expanded water storage projects—surface or groundwater—are necessary to compensate for both current and projected reductions in the Sierra snowpack—California's biggest natural reservoir. Such projects take time to design, fund and build, even though both bills propose some feasible reforms to environmental laws designed to expedite the environmental assessment process.

Nonetheless, there are several provisions in S. 1894 that would provide short-term relief to California water users. These include the following:

- Proposed section 101(a), directing the Secretaries of Commerce and Interior to provide the "maximum quantities of water supplies" to CVP, SWP and other contractors "to address the emergency [drought] conditions."
- Section 101(c), mandating a variety of DOI and Commerce operational actions to minimize water supply reductions, facilitate water transfers, expedite federal permit decisions and environmental reviews, etc.
- Section 102, directing applicable federal agencies to consult with the President's Council on Environmental Quality to develop alternative—and more expeditious—arrangements designed to comply with the requirements of the National Environmental Policy Act.

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- Section 103, directing the Administrator of USEPA to expedite issuance of federal Clean Water Act funding to California when state officials determine that such federal funding will provide additional water supplies to California water users.
- Sections 325 & 326, directing the Secretaries of Interior and Commerce to support efforts by California state water officials to curtail illegal water diversions by third parties (thus freeing up water for users with valid water rights).

I would also note that during the current drought the State Water Resources Control Board has been quite aggressive in maximizing water deliveries to water users. According to the Board, these efforts—which have involved relaxation of operational and environmental standards—have provided 1 MAF of additional water to California users over the past two years. Similarly, the Board has found that outflow requirements—beyond the salinity requirements needed to protect the quality of water in the Sacramento-San Joaquin Delta and for Delta exporters—represent only 2% of the runoff in the watershed in 2015. Stated differently, this year it would not have been possible to provide much more water by relaxing environmental standards without also relaxing the salinity standards that protect both agricultural and urban water quality.

It is also important to note that both the State Board and the federal agencies responsible for administering the Endangered Species Act have loosened environmental protections in order to increase water deliveries. They have done so by waiving implementation of portions of the biological opinions and other water quality standards designed to protect fish and wildlife, in order to increase water deliveries to agricultural and urban users. As a result of the protracted drought and these regulatory responses, Delta smelt and salmon species are moving steadily closer to extinction. (See, e.g., "Winter Salmon Runs Decimated," Sacramento Bee, p. A1 (October 29, 2015).)

Question 2: Given your experience, are the biological opinions the agencies are operating under using the most current and best available science? If not, can you describe to me why that might be? Can you make recommendations on what they should be doing to address the matter?

I should preface my response by noting that I am not a biologist and have no formal training in the biological sciences. So my observations and opinions are those of a layperson, albeit one whose work brings him into somewhat frequent contact with individuals who are experts in this field. (In that connection, should the Committee seek technical expertise on this particular subject, it could do no better than to obtain the views of my U.C. Davis faculty colleague, Professor Peter Moyle. Professor Moyle is generally recognized as California's foremost fisheries biologist.)

Subject to that important caveat, my belief is that the biological opinions prepared by the U.S. Fish and Wildlife Service and the National Marine Fisheries Service for the Delta smelt and salmon species do, in fact, reflect the most current and best available science. Indeed, of all the biological opinions prepared by the federal wildlife agencies under the ESA, perhaps none have been as closely scrutinized by the courts and third party experts as these two. Significantly, the U.S. Court of Appeals for the Ninth Circuit recently concluded in two lengthy decisions that those biological opinions are valid under the ESA and do reflect the best available science. (See *San Luis & Delta-Mendota Water Authority v.*

Jewell, 747 F.3d 581 (9th Cir. 2014) (Delta smelt); and *San Luis & Delta-Mendota Water Authority v. Locke*, 776 F.3d 971 (9th Cir. 2014) (salmon).)

Additionally, I understand that these two BiOps successfully underwent five independent scientific peer reviews, as well as an independent scientific review by the National Research Council of the National Academy of Sciences.

In addition, the evidence demonstrates that the ESA agencies are in fact working diligently to ensure that these biological opinions remain timely and do incorporate new scientific results as they become available. One example is the October 29, 2015, joint announcement by the Bureau of Reclamation and the National Oceanic and Atmospheric Administration of their "2015 Annual Science Review and Workshop for the Biological Opinions for the Long-term Operation of the CVP and SWP." This review was originally pledged in the 2009 NMFS' BiOp on the long-term operations of the CVP and SWP. This year's two-day Workshop was held yesterday and today in Sacramento, California, and included extensive outreach efforts to and participation by interested stakeholders.

Question 3: With regards to biological opinions, what are some examples of the "best" available science and are they being incorporated into management practices now?

Please see my response to Question 2, above. Again, I respectfully submit that fishery biology experts are better equipped to respond to this question than am I.

However, I do understand that recent scientific studies—including studies mandated by the Delta smelt and salmon BiOps—demonstrate that the protective measures required by those BiOps continue to be based on the best available science. For example, life cycle models for the endangered winter run Chinook salmon, spring run Chinook salmon and fall run Chinook salmon confirm that increasing water exports from the Delta will reduce salmon survival and subsequent abundance. Similarly, life cycle models for Delta smelt published in 2013 in peer-reviewed scientific journals found strong evidence that export mortality is a significant cause of the steady decline of Delta smelt populations.

Question 4: With regards to your testimony to "expand the pie" in terms of water resources for the West, what do you propose to be the role of the Federal Government in achieving this given your other testimony about the need for a "state-federal" partnership?

The federal government plays an enormous role in natural resource and water policy, both in California and throughout the American West. In California, the federal government owns nearly one-half of the state's land area. The federal government operates the Central Valley Project, the largest man-made water storage and transportation project in California. Additionally, federal wildlife agencies play a critical role in California water policy through their administration of the Endangered Species Act and a variety of other regulatory programs.

The need for an effective state-federal partnership is perhaps greatest with respect to the successful day-to-day operation of the State Water Project and Central Valley Project. While technically separate

water storage and delivery systems, the CVP and SWP in reality can be and are operated by federal and state water managers as part of a single, integrated system. Close coordination of the two projects is especially important in times of severe drought, such as California has experienced over the past four years. Fortunately, and as I indicated in my previous testimony before the Committee, federal and state water managers have done an excellent job of coordinating the operations of the two projects during the drought—an important if rare piece of positive news in the midst of California's unprecedented drought emergency.

My reference in earlier testimony to the need to "expand the pie" of available California water supplies was an attempt to focus on numerous provisions of S. 1894 designed to do just that. Those provisions included proposed regulatory reforms by various federal agencies. But the bill also includes important elements committing the federal government—via funding and other means—to support the State of California's efforts to pursue new surface and groundwater storage options, water conservation and reuse, stormwater capture and a variety of other strategies designed to create substantial amounts of "new water" for California water users and the environment alike. One key feature of S. 1894 is a requirement for state and regional cost-sharing, thus ensuring that the State of California and regional water districts have "skin in the game" and provide their fair share of the often-substantial costs of such projects.

I respectfully submit that the federal government acts in the finest tradition of cooperative federalism when it implements these types of programmatic reforms, as reflected in S. 1894.

Questions from Senator Mazie K. Hirono

Question 1: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Let me first share an observation and prediction I regularly make to my students: the severe water crisis currently facing California is a harbinger of water shortages that will eventually affect many other regions of the nation. In recent years, we have seen water shortages—and water conflicts—in parts of the United States not normally associated with such problems. The consensus among respected scientists is that climate change is going to reduce precipitation levels and increase ambient temperatures in many portions of the country. As a result, chronic water shortages are likely to plague substantial portions of the U.S. in future years.

(I know that most "Mainlanders" do not think of Hawaii as a water-challenged state. But my water law and policy research reveals something already well known to you and your constituents: that water shortages and conflicts do in fact already exist in Hawaii. For example, residents of Oahu have been fighting over finite Waiahole Ditch water supplies for over 15 years, with no resolution in sight.)

Accordingly, I strongly believe that water conservation needs to be an essential element of America's future water policy—not only for California and the rest of the traditionally arid American West, but throughout the nation.

I believe there is a great deal that Congress and the Executive Branch can do to help state and local governments to be more water resilient, starting with the promotion of effective water conservation strategies. Here are a few specific suggestions:

- Congress could enact legislation setting water conservation standards—either for the nation as a whole or, perhaps, for the more arid portions of the country. I would recommend that any such federal mandate take the form of water conservation *performance* standards—setting state or regional targets and leaving it to the respective states to devise the means of achieving those national standards. (This is similar to the federalism model currently reflected in, e.g., the federal Clean Air Act and Clean Water Act.)
- Increased federal funding for effective, technologically demonstrated water conservation projects undertaken by state and local governments would also be a most welcome development. As reflected in certain provisions of S. 1894, I believe that federal grants for state and local water conservation initiatives should be conditioned on cost-sharing agreements with those jurisdictions standing to benefit from those initiatives.
- Federal legislation could require installation of state-of-the-art water conservation devices in new commercial and residential buildings, and a requirement that existing buildings be retrofitted with such devices as a condition of their sale to third parties.
- Finally, the federal government can and should lead by example when it comes to water conservation. Through its procurement programs, in the construction and operation of federal facilities and through training of the federal workforce, the federal government can demonstrate its commitment to a broad spectrum of effective water conservation measures.

There are some who argue that conservation alone can solve the water supply crisis currently facing California--one that will ultimately confront many other states and regions in the United States. I do not agree with that premise. Rather, I believe that we must aggressively pursue a broad menu of strategies, including such promising technologies as stormwater capture, water reuse and water desalination. But the fact remains that water conservation is the single most cost-effective, easily implemented means of creating "new water," thereby averting water crises that have the potential for enormous human suffering and economic harm.

Question 2: I appreciate the discussion provoked by the hearing, as it is very timely and important and I think folks in other states have a lot to learn from the situation that California is currently experiencing.

I would like to hear from you, given your personal experience with Environmental Law and Policy at UC-Davis, about your advice on how folks in other states should be thinking about long-term water use

and conservation on an individual level. As we know from experience with the recycling and energy efficiency movements, it takes a while to change lifestyles.

Do you think it would be helpful if there was some kind of federal incentive available to individuals to conserve water and thus increase awareness of the impacts that our daily activities have on water sources? For example, changing federal programs to incentivize water conservation, efficiency, and reuse either when infrastructure is being built or retrofitted with federal money.

Please see my response to your Question 1, above.

Additionally, and in response to your inquiry, I believe the actions of California's political leaders in response to the current drought can and should serve as a model for public officials and residents of other states. Ever since he declared a "drought emergency" in January 2015, California Governor Jerry Brown has served as my state's "Educator-in-Chief" when it comes to the drought and the need for effective water conservation efforts. Governor Brown has been ably assisted in delivering this message by Felicia Marcus, Chair of California's State Water Resources Control Board. Governor Brown and Chair Marcus have truly been indefatigable in urging Californians to eliminate water waste and to make water conservation part of their daily lives.

Those efforts have been successful to a remarkable degree, according to recent polling results. County by county, community by community, California residents have responded to the state's political leaders by dramatically reducing their individual and aggregate water use. These impressive water conservation efforts by 39 million Californians have been a major reason that the public welfare and California's economy have remained strong in the face of the state's protracted drought.

Just as Californians have taken significant steps to become more water-conscious in their individual lives, so too can residents of other states begin to adopt similar reforms. It's not too soon for them and their political leaders to start.

I trust these responses will be helpful to the Committee as it continues its deliberations on this proposed legislation. Please let me know if you have additional questions, or if I can provide further information.

Sincerely,

Richard M. Frank
Professor of Environmental Practice
Director, California Environmental Law & Policy Center
School of Law
University of California, Davis

U.S. Senate Committee on Energy and Natural Resources
October 8, 2015 Hearing: Drought Legislation
Questions for the Record Submitted to Mr. Adrian Oglesby

Questions from Chairman Lisa Murkowski

Question 1: Can you describe the Middle Rio Grande Endangered Species Collaborative program, who the partners are, and your district's role in it?

Answer 1: Thank you again for the opportunity to provide input on proposed drought legislation for New Mexico. The proposed legislation will do much to assist with endangered species management and recovery in the Middle Rio Grande.

The Middle Rio Grande Endangered Species Collaborative Program (Collaborative Program) is a partnership of sixteen water managers and stakeholders in central New Mexico along the Rio Grande. The goal of this partnership is to preserve the endangered Rio Grande silvery minnow and Southwestern willow flycatcher, while protecting existing and future water uses. The Collaborative Program serves to provide Endangered Species Act compliance for water management actions in the Middle Rio Grande.

The Bureau of Reclamation receives funding to support the Collaborative Program pursuant to federal authorizing legislation. Availability of this federal funding is contingent on a 25% match from the non-federal participants in the Collaborative Program.

The membership is as follows: the Bureau of Reclamation, the Corps of Engineers, the Fish and Wildlife Service, four New Mexico state agencies led by the New Mexico Interstate Stream Commission, my own Middle Rio Grande Conservancy District, the City of Albuquerque, the Albuquerque Bernalillo County Water Utility Authority, the Pueblo of Santo Domingo, the Pueblo of Santa Ana, the Pueblo of Sandia, the Pueblo of Isleta, and one citizen oversight member.

The Middle Rio Grande Conservancy District is a prominent member of the Collaborative Program. We contribute significantly to the cost-share requirement and serve as a leader among the non-federal parties. We are able to use our irrigation works to deliver water to drying in-channel habitat, we use our lands to create more suitable floodplain habitat, and our staff provides hydrologic and engineering expertise in support of the Collaborative Program's objectives.

Question 2: Can you describe in more detail the conservation measures the district has implemented?

Answer 2: The primary conservation actions taken by the Middle Rio Grande Conservancy District has been to reduce its historic diversion rate of surface water from the Rio Grande by one third (from approximately 600,000 acre-feet per annum to less than 400,000 acre-feet per annum).

The District has also committed to implement the following major conservation actions:

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a) Manage water comprehensively to allow for more wet water to remain in the river as well as re-timing water deliveries to assist with pulse flows and fish recruitment while meeting water user demands.

b) Provide funding in the amount of a minimum of $150,000 annually for research and monitoring and a minimum of $500,000 annually for efficiency improvement projects that we hope can be leveraged with state and federal dollars to rapidly advance operational flexibility and conservation.

c) Work to create fish by-pass options at two of our diversion dams (this will require significant federal assistance).

d) Create a water leasing program for water right holders to help create small blocks of water for targeted habitat projects.

e). Work to re-authorize federal dams to create more flexibility and drought resiliency within the Rio Grande basin.

Question from Senator Mazie K. Hirono

Question: I am happy to see provisions in S. 1894 that extend eligibility of both the WaterSMART grants and RIFIA beyond Reclamation states to Hawaii and Alaska as well as other provisions that have national applicability. I appreciate Senators Feinstein and Boxer keeping my state, as well as others, in mind.

We all acknowledge that drought is something that Americans in all 50 states have experienced or should be concerned about.

I would like to receive your analysis of how high of a national priority water conservation will need to be in the coming decades and if possible, any key recommendations you have for Congress to consider in making sure U.S. communities can respond effectively.

Answer: Thank you Senator Hirono for your inquiry. I too am grateful for the attention being paid to drought across our nation. Small states with strong agricultural traditions, like Hawaii and New Mexico, are particular susceptible to the impacts of drought.

Conservation of water refers fundamentally to the preservation of water for future uses. This entails the preservation of water resources in their natural state where possible; the wise control of water that is extracted for use; incentivizing use of water resources for high value cultural, economic and ecological uses; and, the prevention of pollution and waste.

Conservation of water must be a top national priority for Congress; especially in light of the changes in temperature and precipitation we are experiencing across the country.

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The University of New Mexico's Utton Transboundary Resources Center, which I direct, recently issued a report with our recommendations for how New Mexico can become more resilient in the face of our increasingly uncertain water future. I provide a summary here of the more general governance recommendations that may assist Congress as it contemplates how to make our entire nation more "water resilient."

All water governance is polycentric governance. Recognizing the interdependence of our multiple levels of water governance and identifying effective means of communication and collaboration amongst them will make us more prepared to deal with our uncertain water future. Nobel Prize-winning political scientist Elinor Ostrom has taught us that recognizing the proper role of the multiple jurisdictions that govern water can provide advantages to water users and managers. Localized managers can conduct local monitoring, while large-scale system managers can pursue more complex funding opportunities and take advantage of economies of scale. Local communities may be able to respond more quickly to changed circumstances due to their comparative lack of bureaucracy, but larger governance systems can influence responses on a larger landscape. When acting in concert, nested levels of water governance can yield great benefits, as opposed to situations where water managers have conflict about their levels of authority and proper roles.

Water management institutions need to operate with integrity. To operate most effectively, our water management agencies must have the support of an engaged public. To acquire the support of the public, an agency must be perceived as working in an equitable manner and not being subject to improper influence by any particular interests. Acquiring the trust of the public can only be done if an agency is transparent in its decision-making process. Acquiring the confidence of the public requires an agency to be accountable for all its actions. Institutional integrity is bolstered by public participation in agency decision-making processes.

Water management institutions need to be flexible. Changing water supply conditions will require imaginative and timely actions from our water managers. However, there is a balance to be struck between the need for opportune responses to crises and the need for operational certainty among water users. We must consider how our water managers can respond quickly but with sufficient deliberateness to create confidence among users.

Relationships have value. Our nation will be more resilient in times of water crises if we establish and maintain wide and deep social networks among political leaders, water managers, and water users. Changing and adapting water management in times of drought or other stress can be greatly facilitated by existing positive working relationships.

Water planning should be an ongoing iterative process at both the state and federal level. This requires reliably consistent funding. Many states have approached water planning as a one-time exercise. However, as our water situation and our priorities for water us change frequently, we must constantly review our management practices. This does not mean that we must pour endless funds into water planning. It simply means we should maintain consistent funding for planning, even if the amount is modest.

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Our recent report contains additional recommendations regarding the administration of water rights, water banking, water storage, the preservation of agriculture, and protection of water for the environment, recreation and tourism. The complete report is available at: http://nmwrri.nmsu.edu/wp-content/uploads/2015/publish/techrpt/tr370/tr370.pdf

Thank you again for the opportunity to provide this additional testimony. If you need further information or assistance please do to hesitate to call upon the Middle Rio Grande Conservancy District, the University of New Mexico's Utton Transboundary Resources Center, or me personally. I look forward to continued dialogue with you and the rest of the Committee on this vital issue.

From: Lynn Schloesser [mailto:lschloesser@acec.org]
Sent: Tuesday, October 06, 2015 5:33 PM
To: Kearney, Christopher (Energy) ; Stansbury, Melanie (Energy)

Cc: Steve Hall <SHall@acec.org>; Roberta Rosenberg <RRosenberg@acec.org>; Gerry Donohue <gdonohue@acec.org>
Subject: Western Drought Legislation; SENR hearing October 8, 2015; Statement for Your Use

Christopher Kearney and Melanie Stansbury:

Below find a statement from the ***American Council of Engineering Companies*** that you may use as needed for the upcoming SENR hearing October 8, on Western drought legislation.

"There are credible forecasts of long-term and generally worsening Western drought conditions that demand action to improve and enhance woefully inadequate and crumbling water infrastructure. S. 1894 recognizes this need as part of the solution to the drought in California. Ranked highest among all states in terms of water infrastructure needs, the U.S. Environmental Protection Agency's *2013 Drinking Water Infrastructure Needs Survey and Assessment* determined that since 2007, California's water infrastructure needs increased from $44.2 billion to $44.5 billion. California's needs include an estimated $26.7 billion to improve drinking water transmission, $8.4 billion for water treatment and $6.4 billion for water storage."

Regards,

Lynn Schloesser
Director, Environmental and Energy Programs
American Council of Engineering Companies
1015 15th Street NW, 8th Floor
Washington DC 20005-2605
(202)347-7474 (main)
(202)682-4354 (desk)
(703)409-7694 (cell)
(202)898-0068 (fax)
lschloesser@acec.org

October 5, 2015

The Honorable Lisa Murkowski
Chairman
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Maria Cantwell
Ranking Member
U.S. Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

In advance of the Energy and Natural Resources Committee's October 8, hearing on a suite of drought bills, we are writing to alert you to our concern about the provisions in Title X (Safety of Dams) of H.R. 2898 (Valadao) and Section 314 of S. 1894 (Feinstein).

APPA is the national service organization representing the interests of not-for-profit, state and locally owned electric utilities. More than 2,000 public power systems provide over 15 percent of all kilowatt-hour sales to over 48 million customers in every state except Hawaii. NRECA is the national service organization representing the national interests of cooperative electric utilities and the consumers they serve. More than 900 not-for-profit rural electric utilities provide electric energy to over 42 million people in 47 states, or 12 percent of electric customers nationwide.

Approximately 1,300 public power utilities and rural electric cooperatives in 34 states are preference customers of the Power Marketing Administrations (PMAs) that purchase cost-based power from these federal entities. Through long-term contracts, the partnership between the PMAs and preference customers has repaid all power program expenses, plus the interest on any capital projects, and has ensured continued investment in the federal infrastructure. For many decades, this arrangement has been a win-win for the federal government and for public power and rural electric cooperative utilities and their customers.

The goal of the provision is to authorize the Bureau of Reclamation (BOR) to undertake feasibility studies to "develop additional project benefits" through the construction of "new or supplementary works," when it undertakes safety repairs under the Act at any of the federal dams it owns and operates. Under existing law, BOR would not be allowed to construct such improvements to provide "additional project benefits."

We understand that the new authorization is intended to facilitate more efficient and economic development of new storage capacity or other new benefits, and we are supportive of that goal. However, both bills specify that the cost of those new benefits – whether for drought storage, recreation, or other additional benefits – would be repaid by *existing* project beneficiaries. As you know, most BOR dams are multi-purpose facilities that include hydropower generation as an authorized project purpose. We are concerned that, as currently drafted, both bills would require power users to repay the costs of constructing, operating, and maintaining the "additional project benefits" – even if these power users do not benefit from such activities.

We believe that a simple amendment could prevent this inequitable situation. The amendment would clarify that the cost of the "new additional benefits" be paid for exclusively by the parties that benefit from the additional construction. We would be happy to work with you and your staff on language to remedy this or to explore other ways to address the problem.

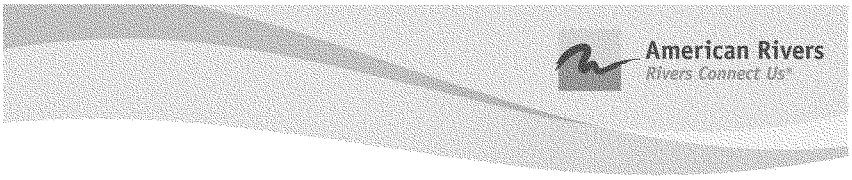
Further, we request that, as the debate on western drought legislation moves forward, representatives of our organizations be "at the table" with other stakeholders. As you well know, the relationship between water and power beneficiaries of BOR projects dates to the inception of the Reclamation program and Federal power customers play a critical role in the financing, repayment and operations of multi-purpose BOR dams.

We appreciate this opportunity to comment on this provision of the drought bills that will be before the Committee on October 8 and look forward to working with you and your staff to develop an effective and equitable west-wide drought measure. Please contact Amy Thomas (APPA) at 202-467-2934 or Ryan Serote (NRECA) at 703-907-6460 with any questions.

Sincerely,

American Public Power Association

National Rural Cooperative Association



October 7, 2015

Honorable Tom Udall
531 Hart Senate Office Building
Washington DC, 20510

Honorable Martin Heinrich
303 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Udall and Senator Heinrich:

On behalf of our hundreds of thousands of supporters across the country, I am writing to express American Rivers' support for S. 1936, your recently introduced legislation. Passage of S. 1936 is essential to strengthen New Mexico's water security and resiliency in the face of drought.

After witnessing the impacts of a decade-long drought, westerners are acutely aware of the aridity of the American West. While we recognize that water scarcity is felt with the greatest urgency at the local level, the connectivity of water requires solutions that work at a basin scale and balance the needs of cities, farms and rivers. We recognize that the management of water resources is primarily a state issue. The federal government, however, has a significant role to play in advancing innovative, collaborative, and widely supported water conservation measures and creative financing to meet water demands and protect and restore healthy river flows. S. 1936 promotes innovative approaches to water management that will help keep water in rivers to benefit fish and wildlife while supporting rural economies.

The New Mexico Drought Preparedness Act accomplishes this by providing vital funding and program authorizations that enable urban, agricultural and ecosystem sectors to simultaneously thrive in a shared water system. Key provisions of the legislation include:

- Section 8, which strengthens WaterSMART, a major component of the Bureau of Reclamation's water conservation efforts, which has led to expected savings of over 860,000 acre-feet per year. There is significant untapped potential for WaterSMART, as only 1 in 5 grants are currently funded. S.1936 would increase available funding from $300M to $400M allowing up to 1 in 3 grants to be funded. The bill expands the scope of grants to include planning for the impacts of drought. It also provides discretionary authority for the Commissioner of Reclamation to waive cost-share requirements for emergency drought situations, and allows for prioritizing projects with multiple benefits, or those that include innovative tools, such as water conservation and markets.

1101 14th Street, NW | Suite 1400 | Washington, DC 20005-5637 | phone 202.347.7550 | fax 202.347.9240 | AmericanRivers.org

- Section 9, which reauthorizes Reclamation's States Emergency Drought Relief Act, presently the best available programmatic statute authorizing Reclamation to act for the benefit of fish and wildlife. The Reclamation's States Emergency Drought Relief Act also provides a broad array of drought relief to states, tribes and water districts. At the request of states or tribes, the Drought Relief Act authorizes the Bureau to help prepare and implement drought contingency plans, designed to prevent or mitigate the adverse effects of drought. These plans can draw on innovative and flexible mechanisms such as water banks, water conservation, use of Reclamation project facilities to store and convey non-project water, and water supplies for fish and wildlife. S.1936 would extend authorization through 2018 and more than doubles the amount of funding that can be appropriated from $90M to $190M.

- Section 2, which establishes a voluntary water acquisition program across New Mexico to be managed by the Bureau of Reclamation in coordination with other federal agencies, and the state and local water districts. This program will operate for the benefit of fish and wildlife, water quality and river ecosystem restoration, and the stewardship and conservation of working lands, water and watersheds. Incentives and cost-share are available to water districts and producers to improve irrigation systems and efficiency as well as establish water leasing programs. Voluntary water leasing is a collaborative, flexible solution for achieving substantial benefits during times of drought. It enables a financial return for farmers while still preserving agricultural water rights and rural economies in perpetuity.

The bill also authorizes additional programs and studies focused on improving flexibility, efficiency and optimization of water supply, storage and delivery through reservoir management and reoperation in the Upper Rio Grande Basin. Modernizing water management would benefit all water users by enhancing water productivity, conservation, and drought resiliency while reducing conflict over water management that benefits healthy rivers and ecosystems.

S. 1936 focuses on sustainable solutions that optimize supply and benefits for cities, agriculture and nature across multiple scales from districts to river basins.

For these reasons, American Rivers is pleased to support S.1936.

Sincerely,

Matthew B. Niemerski
Director, Western Water and Public Lands Policy
American Rivers

Cc: The Honorable Lisa Murkowski

Chair, Senate Energy And Natural Resources Committee

The Honorable Maria Cantwell
Ranking Member, Senate Energy and Natural Resources Committee

American Rivers * California Coastkeeper Alliance * California League of Conservation Voters * Center for Biological Diversity * Center for Food Safety * Clean Water Action * Coastal Environmental Rights Foundation * Defenders of Wildlife * Earthjustice * Endangered Species Coalition * Environmental Action Committee of West Marin * Environmental Defense Fund * Epic-Environmental Protection Information Center * Friends of the Earth * Klamath Forest Alliance * League of Conservation Voters * Los Padres ForestWatch * National Audubon Society * National Parks Conservation Association * Natural Resources Defense Council * Northcoast Environmental Center * The Wilderness Society *

July 22, 2015

The Honorable Jared Huffman
U.S. House of Representatives
1630 Longworth House Office Building
Washington, DC 20515

Re: Support for H.R. 2983's innovative drought solutions that will benefit communities, farmers, and the environment.

Dear Representative Huffman:

On behalf of the undersigned organizations, we write to express our support for H.R. 2983, your recently introduced legislation that provides real drought solutions that will benefit California's communities, farmers, and the environment. Instead of blaming the environment and pitting certain water users against others like H.R. 2898, H.R. 2983 would provide new investments in lasting water solutions, growing the economy while also protecting our rivers, wildlife, and the thousands of jobs that depend on them.

H.R. 2983 authorizes and helps fund innovative water supply measures like water recycling and stormwater capture and focuses on improving outdated, inefficient water-related infrastructure. Investments in these modern water supply solutions could create millions of acre feet of new water supply for cities and farms in California and across the west, taking pressure off of imperiled rivers and streams and providing a more drought resistant water supply. The bill also authorizes improved management of existing surface water reservoirs, watershed restoration, and projects to reduce evaporative losses from existing infrastructure.

H.R. 2983 recognizes that real drought solutions don't involve gutting environmental protections. California's drought – not environmental laws – has dramatically reduced water supplies for farms, cities, and rural communities, and drought and diversions are drastically reducing water flowing in the State's rivers and streams. Our fish and wildlife – and the thousands of fishing and tourism jobs across the West that depend on healthy fisheries and wildlife – are also struggling through the drought. Instead of overriding and waiving critical state and federal environmental laws that protect fish, wildlife, and water quality, H.R. 2983 focuses on sustainable solutions that benefit all water users and the environment. This includes

assistance for national wildlife refuges and state wildlife management areas that provide essential habitat for birds migrating along the Pacific Flyway, as well as plans to protect endangered fisheries during dry periods. These measures will help to ensure California's economy can thrive during drought by protecting cities and agriculture, as well as fish and wildlife and the jobs that depend upon having abundant salmon and other natural resources.

Finally, H.R. 2983 was developed through a transparent process that solicited input from all interested parties and the public at large. Stakeholders and the public were able to participate before the bill was introduced, helping to create legislation that is protective of fish and wildlife, forward-looking, innovative, and filled with win-win solutions.

For these reasons, we support H.R. 2983.

Sincerely,

American Rivers
California Coastkeeper Alliance
California League of Conservation Voters
Center for Biological Diversity
Center for Food Safety
Clean Water Action
Coastal Environmental Rights Foundation
Defenders of Wildlife
Earthjustice
Endangered Species Coalition
Environmental Action Committee of West Marin
Environmental Defense Fund
Epic-Environmental Protection Information Center
Friends of the Earth
Klamath Forest Alliance
League of Conservation Voters
Los Padres ForestWatch
National Audubon Society
National Parks Conservation Association
Natural Resources Defense Council
Northcoast Environmental Center
The Wilderness Society

American Rivers * Clean Water Action * Defenders of Wildlife * Earthjustice * Environmental Defense Fund * Golden Gate Salmon Association * National Audubon Society * National Parks Conservation Association * Natural Resources Defense Council * League of Conservation Voters * Pacific Coast Federation of Fishermen's Associations * Sierra Club * The Bay Institute

October 5, 2015

RE: New Bills on California Drought, and Upcoming ENR Hearing on H.R. 2898/S. 1894

Dear Senator:

On behalf of our millions of members and supporters throughout the United States, we write to discuss two legislative proposals pending in the Senate Energy and Natural Resources Committee that focus on the historic drought in California and other Western states (H.R. 2898 and S. 1894), and to request your assistance as these measures come before the Committee in the next few weeks. As discussed below, we urge you to oppose H.R. 2898 and any other drought legislation that weakens or undermines state and federal environmental laws protecting fish, wildlife, and thousands of fishing jobs. We urge you to support elements of S. 1894 that provide federal funding for investments in water conservation, water recycling, and similar strategies to create new water supplies across the Western United States. California's ongoing drought – not environmental laws protecting salmon and other native fish and wildlife – is the primary reason for low water supplies across the state and overriding environmental protections won't fix that problem.

H.R. 2898: The House-passed "Drought Bill" attacks environmental laws and fishing jobs rather than solving California's drought crisis.

Pending before the Senate Energy and Natural Resources Committee is H.R. 2898 by Rep. David Valadao (R-CA), a bill that would dramatically weaken protections for salmon, migratory birds, and other fish and wildlife in California's important Bay-Delta Estuary, as well as the thousands of jobs in California and Oregon that depend on the health of these species. In addition, the bill includes several titles that would apply across Western states and would reduce public participation and environmental reviews of new dams, reduce funding for key programs of the Bureau of Reclamation, and limit the federal government's ability to manage and protect water resources.

Both the White House and the State of California have consistently opposed similar legislative proposals in recent years and when H.R. 2898 went to the House floor in July, the White House threatened to veto the measure. The bill was also opposed by large numbers of fishing, wildlife and conservation organizations, and nearly every Democrat in the House. H.R. 2898 threatens thousands of fishing jobs in California, Oregon, and beyond that depend on healthy salmon runs that transit the Bay-Delta. Further, H.R. 2898 would permanently override protections for salmon and other native fisheries under the Endangered Species Act and substitute political judgment for existing scientific determinations. This sets a dangerous precedent that threatens critical Endangered Species Act protections in every state.

S. 1894: Introduced by Senators Feinstein and Boxer, this bill supports innovative drought solutions and avoids wholesale attacks on the environment, but some problems remain.

The approach taken by the recently introduced "California Emergency Drought Relief Act of 2015" (S. 1894) is significantly different than that of the House-passed bill. Many elements of S. 1894 have the potential to improve California's response to the drought and better prepare for future droughts, including provisions that would authorize federal funding and grants for agricultural water conservation projects, water recycling projects, emergency water supply projects for small disadvantaged communities, and habitat restoration. We note that elements of S. 1894 are similar to other legislation in the House and Senate (such as S. 1837 and H.R. 2983), which would make emergency appropriations to respond to the drought and focus on water recycling, conservation, and safe drinking water for disadvantaged communities. On the other hand, a few sections of S. 1894 raise concerns because they could harm rivers and wildlife in the West, as well as the public's right to provide input on major infrastructure projects. Some of our organizations have discussed our concerns with the bill's authors and appreciate their openness to working with our community to try to address the remaining issues.

Given the complicated legislative process that any Western drought measure will need to follow before it becomes law, we greatly appreciate the emphatic assurances that Senator Feinstein and Senator Boxer have each provided that federal legislation must not violate or override any environmental laws or Endangered Species Act biological opinions, and we look forward to working with Senators Feinstein and Boxer and the members of the Senate Energy and Natural Resources Committee to ensure that objective is achieved through the legislative process.

Consideration of these drought-related measures in the U.S. Senate.

California's four-year drought has been devastating for all parts of the state, from the agricultural sector to numerous small communities to our fragile fish and wildlife and the jobs that depend on them. The state and federal administrations have devoted significant resources to addressing the drought, and the need for additional funding in the short term and additional water management innovations over the long term is particularly evident. As the Senate Energy and Natural Resources Committee takes up this important but complex issue in the weeks ahead, we urge the Committee to resist the simplistic approaches offered by some to pit one part of California against another, or to adopt measures that cause harm to our already-stressed environment in hopes of gaining short-term water supplies for certain industries. We urge you to oppose H.R. 2898 and any drought legislation that weakens or undermines environmental protections for salmon and other imperiled fish and wildlife in the West, and the communities and jobs that depend on healthy rivers. Instead, we believe this Committee can help California and other Western states tackle the immediate drought crisis and also the long-term challenges that are increasing throughout the West by focusing on water management that preserves and strengthens our natural systems while also tapping the technological innovations that can stretch our water supplies in smart and effective ways.

Sincerely,

American Rivers
Clean Water Action
Defenders of Wildlife

Earthjustice
Environmental Defense Fund
Golden Gate Salmon Association
National Audubon Society
National Parks Conservation Association
Natural Resources Defense Council
League of Conservation Voters
Pacific Coast Federation of Fishermen's Associations
Sierra Club
The Bay Institute

American Rivers * California League of Conservation Voters * Center for Biological Diversity * Clean Water Action * Conservatives for Responsible Stewardship * Defenders of Wildlife * Earthjustice * Endangered Species Coalition * Environmental Defense Fund * Greenpeace * League of Conservation Voters * National Audubon Society * Natural Resources Defense Council * Pacific Coast Federation of Fishermen's Associations * San Juan Citizens Alliance * Sierra Club * The Bay Institute * Western Nebraska Resources Council * Wildlands Network

PLEASE OPPOSE H.R. 2898

Dear Representative:

On behalf of the undersigned organizations, we write to urge you to oppose H.R. 2898 (Valadao, R-CA), a bill that would dramatically weaken protections for salmon, migratory birds, and other fish and wildlife in California's Bay-Delta estuary, and the thousands of fishing jobs in California and Oregon that depend on the health of these species. In addition, the bill includes several titles that would apply across Western states, which would reduce public and environmental reviews of new dams and water infrastructure, reduce funding for the Bureau of Reclamation, and limit the federal government's ability to manage and protect water resources. Both the White House and the State of California have opposed similar legislation in recent years, including opposition to H.R. 3964 (Valadao, R-CA) and H.R. 5781 (Valadao, R-CA) in 2014.

California's ongoing drought – not federal environmental laws protecting salmon and other native fish and wildlife – is the primary reason for low water supplies across the state. Yet H.R. 2898 would permanently override protections for salmon and other native fisheries under the Endangered Species Act, and substitute political judgment for existing scientific determinations. It could also devastate wildlife refuges that provide habitat for millions of birds that migrate along the Pacific Flyway by undermining the refuges' water rights and threatening critically important funding sources. H.R. 2898 is not a temporary response to drought, but instead would permanently amend and override the requirements of the Endangered Species Act and other federal laws. For example, under the proposed legislation, critical environmental review and public input under the National Environmental Policy Act would be either severely limited or completely eliminated for new dams and other water storage projects across the west. Moreover, several provisions of the bill would preempt state law, including a provision (section 313) which would repeal and override state and federal laws, a court order, and a binding settlement agreement to restore the San Joaquin River.

H.R. 2898 has never been subject to a single committee hearing to receive public input from the State of California, hunting organizations, sport and commercial fishermen, tribes, or conservation groups, despite the fact that the bill could greatly interfere with state water rights and cripple the ability of state and federal agencies to manage limited water resources for all

beneficial uses. The bill attempts to scapegoat environmental protections for the lack of rain and snow, and it threatens thousands of fishing jobs in California, Oregon, and beyond that depend on healthy salmon runs from the Bay-Delta. The closure of the salmon fishery in 2008 and 2009 resulted in thousands of lost jobs in these states. The livelihoods of commercial and recreational salmon fishermen, Delta farmers, fishing guides, tackle shops, and communities across California and along the West Coast depend on the environmental protections that H.R. 2898 would eliminate.

For these reasons, we respectfully urge you to oppose H.R. 2898.

Sincerely,

American Rivers
California League of Conservation Voters
Center for Biological Diversity
Clean Water Action
Conservatives for Responsible Stewardship
Defenders of Wildlife
Earthjustice
Endangered Species Coalition
Environmental Defense Fund
Greenpeace
League of Conservation Voters
National Audubon Society
Natural Resources Defense Council
Pacific Coast Federation of Fishermen's Associations
San Juan Citizens Alliance
Sierra Club
The Bay Institute
Western Nebraska Resources Council
Wildlands Network

July 15, 2015

Speaker John Boehner
U.S. House of Representatives
H-232 The Capitol
Washington, DC 20515

Democratic Leader Nancy Pelosi
U.S. House of Representatives
233 Cannon Building
Washington, DC 20515

Chairman Rob Bishop
House Natural Resources Committee
123 Cannon Building
Washington, DC 20515

Ranking Member Raul Grijalva
House Natural Resources Committee
1511 Longworth Building
Washington, DC 20515

Dear House Leaders,

The drought in California and the arid West has created an unprecedented situation which requires sacrifice and tough choices. H.R. 2898, the Western Water and American Food Security Act of 2015, however, would disproportionately place the brunt of the sacrifice on fishery resources, sport and commercial fishing industries, and communities in California, Oregon, and Washington.

The American Sportfishing Association (ASA) is the nation's recreational fishing trade association. In California alone, there are nearly 1.7 million anglers who have a $4.6 billion annual economic impact, supporting 36,000 jobs. ASA has significant concerns with H.R. 2898. Specifically, we fear that if implemented various provisions in this bill will worsen an already difficult situation caused by drought. The livelihoods of thousands of commercial and recreational fishermen, fishing guides, tackle shops, and communities across California and along the West Coast depend on salmon fisheries. If not for an abundant salmon fishery and angler access to these iconic species, tourism would also surely suffer.

ASA is aware that, despite the many stakeholder groups, non-fishing interests have prevailed in previous instances of water allocation during drought. We are concerned that written protections for fisheries in the Sacramento-San Joaquin watershed are too frequently undermined, slighting the social, economic, and environmental benefits of conservation. The dry conditions that are causing low water supplies are placing a hardship on many and it is important that balanced solutions be sought. ASA is opposed to any legislation, such as H.R. 2898, that seeks to evade federal salmon protections. Overturning the provisions of the Endangered Species Act and decimating a major fishery sets a dangerous precedent and threatens natural resources nationwide.

California's iconic Chinook salmon have thrived in great abundance for millennia. Water projects in California already have slashed this abundance to a fraction of its former levels. California's salmon may vanish altogether if this legislation passes. Today, northern California Chinook and Coho salmon have access to just 10 percent of spawning areas that were occupied 100 years ago. As a

AMERICAN SPORTFISHING ASSOCIATION
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result of their limited range and other environmental factors and governance, the salmon fishing industry is nowhere near its estimated worth of $5 billion if restored.

This bill would weaken or eliminate protections for California's rivers, salmon fisheries and the Bay-Delta estuary. We urge the Congress to legislate more balanced measures, and therefore oppose H.R. 2898.

Sincerely,

Scott B. Gudes

Scott Gudes
Vice President of Government Affairs
American Sportfishing Association

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J. Leroy Arquero
Governor

Dwayne Herrera
Lt. Governor

P.O. Box 70
255 Cochiti Street
Cochiti Pueblo, NM 87072-0070
PH# (505) 465-2244 FAX# (505) 465-1135

Statement of Governor J. Leroy Arquero
Pueblo de Cochiti
Before the
Senate Committee on Energy and Natural Resources
on
S. 1936
New Mexico Drought Preparedness Act of 2015

October 22, 2015

Chairman Murkowski, Ranking Member Cantwell and Members of the Committee, I am writing as Governor, Pueblo de Cochiti, to thank you for holding this hearing and providing us with the opportunity to share our concerns regarding the New Mexico Drought Preparedness Act of 2015, S. 1936.

The testifying witnesses in this hearing noted that our Pueblo has experienced substantial harms from adverse impacts of the Cochiti Dam and called for partnership and consent of the Pueblo for any changes to the existing authorization. Adrian Ogelsby, Vice-Chair of the Middle Rio Grande Conservancy District stated, "[w]e fully recognize the potential impacts that any changes to the Cochiti authorization may have to Cochiti Pueblo and we fully support any action necessary to address their concerns. This is especially important given the physical and social damage that the construction of Cochiti Dam inflicted upon Cochiti Pueblo."

The original flood control easement and the modification to add and maintain a permanent pool to the Cochiti reservoir have imposed enormous cultural, environmental and financial costs upon us. Chairman Murkowski's opening statement recognized the potential negative impacts that drought mitigation can have on local communities. Ranking Member Cantwell also pointed out that these measures can create long-term problems with costly impacts. The Pueblo profoundly understands these impacts from our experience with the harms caused by the Cochiti Dam and Reservoir, which include irreparable cultural losses, as well as economic and environmental impacts from which we are still recovering.

In light of our experience, the Pueblo is deeply concerned by the suggestions of changing uses to and demands on the Cochiti Dam and Reservoir. The Pueblo is grateful to Senators Udall and Heinrich for including terms in S. 1936 to fund a feasibility study and we appreciate the

provisions in Section 5(e) that require the consent of the Pueblo de Cochiti regarding the effects of any proposed deviation of the operations of Cochiti reservoir on the Pueblo. The testimony of Department of Interior Deputy Secretary Michael Connor also expressed support for partnership with the Pueblo in carrying out the feasibility study. He stated, "The Department supports a feasibility study in partnership with the Army Corps of Engineers and Cochiti Pueblo to assess maximized operational flexibilities if the concerns of Cochiti Pueblo are addressed."

As the Committee considers S. 1936, the Pueblo urges the Committee to lend its full support for a feasibility study conducted in partnership with the Pueblo and the inclusion of Section 5(e) terms requiring our consent for any changes in the operations of Cochiti Dam. The feasibility study represents a critical preliminary step to determine the effects on the Pueblo of any such change in operations. As Ranking Member Cantwell stressed in her opening remarks, long-term, comprehensive plans must be devised that focus on resiliency and coordinated planning. As for the effects on the Pueblo caused by the operations of Cochiti Dam and Reservoir, such a coordinated planning framework involves not only addressing impacts, but also obtaining consensus and approval of the Pueblo. Moreover, that framework must clarify that any new authorization of uses of Cochiti Dam will open opportunities for additional investments into Cochiti Pueblo's existing mitigation infrastructure, provide for new and sustained resources to build capacity for managing mitigation systems, include provisions governing the United States' liability for any damages associated with new uses and establish mechanisms under which the Pueblo may obtain revenues to compensate for both existing and new responsibilities to the users and beneficiaries of the Cochiti Reservoir.

As discussed in the hearing, the feasibility study in Section 5 and the balance of the proposed legislation reflects a concern for the endangered Rio Grande silvery minnow (and the federal agencies' desire for pulse releases from Cochiti Reservoir to aid in its spawning) and enhanced long term water storage capacity for the Middle Rio Grande Pueblo tribes of New Mexico (Cochiti, Santo Domingo, San Felipe, Santa Ana, Sandia and Isleta) for irrigation purposes. Yet, Cochiti Pueblo has no resources available to address the proposals for extra water storage or changes in water release schedules either to facilitate protection of the silvery minnow or for irrigation water storage for the Middle Rio Grande Pueblos or the Middle Rio Grande Conservation District (MRCD).

We have been engaged in dialogue with the U.S. Army Corps of Engineers and other federal agencies for several years seeking to establish mechanisms under which the Pueblo may generate revenues related to current use of the Cochiti Reservoir, including, for instance, uses related to the approximately 600,000 recreational users who come to our lands each year to access Cochiti Lake. (The Pueblo bears responsibilities for trash, wear and tear on our roads and law enforcement obligations with no income to offset those costs and burdens.) To date, these discussions have not resulted in the establishment of a revenue-sharing agreement or other mechanism to offset costs, in part due to the need for legislation authorizing the Pueblo's assumption of program and administrative responsibilities and receiving the corresponding funding or user fees. The Pueblo has indicated openness to certain partnerships with the federal agencies, but administrative, fiscal and legal hurdles have sandbagged those efforts. We

encourage the Committee to be sensitive to implementation obstacles when considering drought mitigation legislation.

With respect to S. 1936, the Pueblo also calls to your attention the following concerns, which we believe must be carefully examined and addressed as the Committee considers this proposed legislation:

1. We are concerned about adverse environmental impact from increased water storage on the upstream delta of the Rio Grande upstream from Cochiti Reservoir. Storing more water in the Reservoir for purposes such as conservation or irrigation for extended periods will cause extensive environmental harm in that location as documented in the "Cochiti Reservoir Reregulation Interagency Biological Report" issued June 30, 1993. We have not seen any data modifying the conclusions of that report or identifying any method for mitigating the upstream environmental harms extended water storage at the reservoir would cause.

2. The Cochiti Dam is an earth-filled dam. If more water is stored in the reservoir for a prolonged period, this increases saturation of the earth fill in the Dam's structure and increases the risk of some future dam collapse.

3. The Pueblo and the United States entered into a settlement agreement regarding the seepage problem caused by the reservoir that was approved by the congress in 1992. This settlement agreement addressed damages to the Pueblo de Cochiti's agricultural fields in a defined area caused by seepage from the Dam as the reservoir project existed at that time. As part of that settlement, the Army Corps of Engineers installed an underground, gravity-based drainage system for our agricultural fields located southwest of the dam. The drainage system was designed to accommodate maintenance of a 1,200 surface acre permanent pool and the periodic storage and release regime authorized by the flood control legislation existing at that time.

The proposed long-term storage of other waters is a new development that could overwhelm the drainage system and cause new damages to Pueblo agriculture and other aspects of Pueblo life. The Pueblo requests that any feasibility studies and comprehensive planning process will proceed only with the full participation and consent of the Pueblo and will consider such measures as are necessary to protect the Pueblo from adverse impacts. If implementation of a new program, however, results in damages to the Pueblo, the express terms of any authorizing legislation should ensure that federal funding is available to the Pueblo in order to identify, analyze and cure any problems that may arise and reverse the damages caused by the new conditions. The Pueblo requests that S. 1936 include specific terms governing liability and compensation for damages to the Pueblo's culture, economy, operational and administrative costs and other interests. Such language could be in the form of a proviso stating that the Pueblo shall be eligible to receive federal funding to compensate the Pueblo for any and all costs and damages caused by the implementation of this Act.

4. We have heard various estimates of the quantity of additional waters that some agencies (in particular the U.S. Fish and Wildlife Service, the Middle Rio Grande Conservancy

District, and some of the other Pueblos having rights to prior and paramount irrigation waters from the Rio Grande) would like to see stored at the Cochiti Reservoir. Those estimates have contemplated additional water storage of up to 60,000 additional acre feet for conservation storage for periods that might include 60 to 90 days or longer. The greater the amount of water held in the reservoir and the longer its duration, the more impact this would have on the first three factors listed above.

5. We are pleased that the Corps of Engineers recognizes that it has no discretion to authorize deviations from the existing authorized uses of Cochiti Reservoir or the waters contained therein, but that recognition only came after many years of negotiation with the Corps. The Pueblo's dealings with the Corps have been very costly because of the Pueblo's need to engage legal counsel and experts in connection with those dealings. The Pueblo has limited resources because it is not a gaming tribe. We now have a positive and mutually respectful relationship with the Corps. Despite our positive experience with the Corps, the Pueblo has great concern as S. 1936 proposes to add yet another federal agency, the Bureau of Reclamation (BOR), in the formal management structure regarding Cochiti Reservoir uses and water release schedules. Based on our experience, adding a new federal actor will cost the Pueblo a great deal of time and money to protect its rights, educate the agency, build relationships and effectively coordinate with BOR. The Pueblo has had a positive meeting with the BOR and we have shared our concerns. We appreciate that the BOR listened and seemed to understand those concerns. Nonetheless, we oppose adding the new layer of federal bureaucracy in the management of Cochiti Reservoir. In that vein, we wish to make it clearly understood by this Committee that the U.S. Fish and Wildlife Service, one of the principle drivers of proposed changes in use of the reservoir, has never consulted with the Pueblo to hear our views regarding any of these matters even though Executive Order 13175 requires all federal agencies to engage in regular and meaningful government-to-government consultation with tribal officials in the development of federal policies that have tribal implications.

6. No one has identified a source of water that would even be available on a sustained basis for the benefit of the Rio Grande silvery minnow, for which additional water storage is proposed. With the exception of prior and paramount water the Middle Rio Grande Pueblos seek to store at Cochiti Reservoir, we believe the experience of the prior five year temporary deviation experiment by the Corp for purposes of benefitting the minnow raises serious questions about whether there would be much water actually available for future long term storage at the reservoir for any purpose.

7. It is now well settled that the only permitted uses which the Corps is allowed on the Pueblo's land are those set out in the existing authorization legislation are flood control, sediment control, recreational enhancement in the lake and fish and wildlife enhancement. We note in particular that the reference to Fish and Wildlife enhancement in the above provision relates to Fish and Wildlife enhancement at the reservoir not at some other location upstream or downstream. Any ambiguity over the meaning of these words in our easement agreement must be construed and resolved in our favor based on longstanding canons of interpretation. *Montana v. Blackfeet Tribe of Indians,* 471 U.S. 750 (1985).

8. The Pueblo in the past has agreed to temporary deviations of the water release schedule to accommodate various interests. On further reflection, the Pueblo is not comfortable with continuing those arrangements as they are not legally authorized and present some dangers to the Pueblo. Neither the Corps nor the Pueblo have the legal authority to unilaterally alter the existing congressionally authorized uses and the Pueblo does not at this time support any such legislative change.

The Pueblo is fully committed to work with the Committee and with Senators Heinrich and Udall to establish a comprehensive plan for a coordinated framework to address the many interests and concerns associated with the Cochiti Dam and Reservoir. Given the concentrated impacts of any new authorization on the Pueblo, we count on that framework including mechanisms to address impacts and to provide appropriate new investments into Cochiti's existing mitigation infrastructure, provide for sustained resources to build capacity to managing mitigation systems, and establish terms governing the United States' liability damages associated with new uses. The Pueblo further hopes that careful planning will reveal the equity of and necessity for authority under which the Pueblo may obtain revenues to compensate for the Pueblo's existing and new responsibilities associated with the Cochiti reservoir.

Association of Northwest Steelheaders
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Bob Rees
Executive Director

June 17, 2015

From: Association of Northwest Steelheaders

To: Senator Jeff Merkley, Senator Ron Wyden and Congressman Peter Defazio

RE: Drought Legislation Overriding Protections for California's Central Valley Salmon Runs

The Association of Northwest Steelheaders (ANWS) is dedicated to enhancing and protecting fisheries and their habitats for today and the future. ANWS serves all residents of the Pacific Northwest who value strong salmon and steelhead runs and clean water. We write today to express our significant concerns about a number of media reports and statements by members of Congress describing closed-door negotiations in Congress regarding legislation which could weaken or eliminate bedrock protections for Central Valley salmon populations. We strongly believe that any such negotiations should occur in the open, with input from all interested parties. We would also like to go on record stating that we would oppose any proposed federal drought legislation which would weaken protections for salmon runs in the California Central Valley and Bay-Delta Estuary. In years past, Oregon's coastal salmon fishing opportunity has been negatively impacted by the reduction or elimination of critically important federal protections for Central Valley salmon, resulting in collapsed salmon populations, lost recreational opportunity, thousands of lost jobs, and millions of dollars in lost income to our coastal communities.

As we have seen through the 2008 and 2009 closures of salmon fishing south of Cape Falcon, not just anglers, guides, and charter operators were affected by the lack of fishing. Entire coastal communities and salmon fishing infrastructure felt the repercussions of these closures including the tackle stores, repair shops, restaurants, and ports. These closures devastated Oregon's salmon fishing communities.

It is vitally important to continue the protections provided to Central Valley salmon under the Central Valley Project Improvement Act and Endangered Species Act to assure that salmon can return to their native rivers for spawning and that smolts can reach the ocean to grow to maturity and thus provide economic benefits to our coastal communities, which sustainably harvest the salmon while providing world-class recreational opportunities. We also urge you to continue to support federal efforts to restore salmon runs in the Central Valley's San Joaquin River under the San Joaquin River Restoration Program.

Thank you for your consideration on this important issue.

Sincerely,

Bob Rees

Bob Rees
Executive Director

Anglers dedicated to enhancing and protecting fisheries and their habitats for today and the future.
The Association of Northwest Steelheaders is a 501(C)3 corporation: 91-1031100

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October 13, 2015

The Honorable Senator Lisa Murkowski
Chair, Senate Energy and Natural Resources Committee
Washington, DC

The Honorable Senator Maria Cantwell
Ranking Member, Senate Energy and Natural Resources Committee
Washington, DC

RE: S. 1894 and H.R. 2898

Dear Chairwoman Murkowski and Ranking Member Cantwell:

Audubon California, the state program for the National Audubon Society, submits these comments for the record on behalf of its members regarding S. 1894 (Feinstein) and H.R. 2898 (Valadao). Audubon appreciates the considerable effort that has been invested in these bills and the authors' efforts to address California's ongoing drought.

For more than a year, Audubon has worked with its partners in the conservation community to provide input on S. 1894. In June, we were pleased to see significant improvements in S. 1894 over prior drafts, including strong language to uphold existing water rights priorities for wildlife refuges, maintain existing environmental laws, and make real financial investments aimed at ameliorating the drought and improving California's drought resiliency. While we have expressed certain concerns about S. 1894, we have been optimistic that the bill provides the best available model for successful drought legislation. We understand that any final drought legislation that will pass through both houses will require compromise. Senator Feinstein and her co-authors have worked to provide that compromise in S. 1894.

The wildlife and habitat conservation community was excluded from providing input on H.R. 2898. Not surprisingly, the bill as it currently reads constitutes a multi-pronged attack on existing environmental protections in California and undermines the Central Valley Project Improvement Act (CVPIA). Rather than providing real solutions and investments in California, the bill is an example of exploiting a crisis to further old agendas: it would weaken the Endangered Species Act (ESA), reduce the priority for wildlife refuges to receive the water that was promised in the CVPIA, and repeal the San Joaquin River Restoration Settlement, which was entered into in good faith by conservation organizations, the Bureau of Reclamation, and water users. The water gains from these steps would be negligible while the environmental impacts would be devastating. H.R. 2898 notably lacks financial investments to address the emergency, undercutting proponents' arguments that it will substantially ameliorate drought impacts. Overall, whereas S. 1894 compliments the considerable progress and investment the State of California has made in improving the state's drought resilience, H.R. 2898 serve to undermine and negate state and law.

Audubon understands that the drought has hit farmers, local communities, and the environment extremely hard. We also know that for fish and wildlife, the stakes are extremely high. Since 1850, we have lost and converted approximately 95% of California's wetland habitats. Once, California boasted 4 million acres of wetlands, which supported 20-40 million waterfowl and millions upon millions of shorebirds. Those high bird population numbers were indicative of a richly biodiverse Central Valley, teeming with native plants, insects, reptiles, mammals, and fish. Today, a scant 250,000 acres of wetland habitats remain, two-thirds of which are in private ownership, providing vital habitat to 6-8 million waterfowl and approximately 350,000 shorebirds, whose numbers have declined by 50% since the 1970s. These bird losses are felt throughout the West along the Pacific Flyway. Moreover, California's over-taxed water system has resulted in the significant decline in our salmon runs, with immense consequences for commercial fisherman in California, Oregon, and Washington. The CVPIA was intended to address some of these concerns and its mandate remains unmet.

For Audubon's part, we will continue to try to work with both authors on their bills to providing meaningful and balanced drought relief and improve drought resilience in California. Our support for any efforts will depend on certain principles, particularly that

1. environmental laws, including the CVPIA and the ESA, are not undermined by the final legislation;

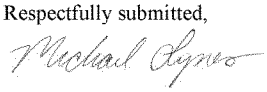
2. California's federal, state, and private wildlife refuges maintain the same rights and priorities for receiving water as they have under current law;

3. the legislation does not contradict or undermine state laws, and

4. the legislation does not create a Restoration Advisory Board for the CVPIA Restoration Fund, particularly one that fails to provide balanced representation for representatives on behalf of fish, wildlife, clean water, and local communities.

Once again, we appreciate the hard work invested in developing a federal drought response. We strongly urge members of the Senate and House to craft legislation that provides real relief to California's people and wildlife. Thank you for consideration of our comments.

Respectfully submitted,



Michael Lynes
Director of Public Policy
Audubon California

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

OFFICE OF THE CHAIRMAN

The Honorable Lisa Murkowski
Chairman
Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

RE: S.1583, S.2083, and S.2046

Dear Chairman Murkowski:

This letter is in response to a request by the Senate Committee on Energy and Natural Resources for my views on S.1583, a bill to authorize the expansion of the existing Terror Lake Hydroelectric Project, located at Terror Lake, on Kodiak Island, Alaska; S.2083, a bill to extend the deadline for the commencement of construction of the W. Kerr Scott Hydroelectric Project in North Carolina; and S.2046, a bill to authorize the Federal Energy Regulatory Commission (Commission) to issue an order continuing a stay of a hydroelectric license for the Mahoney Lake Project in the State of Alaska, and for other purposes.

S.1583

On October 5, 1981, the Commission issued an original license authorizing Kodiak Electric Association, Inc. to construct and operate the Terror Lake Project No. 2743, to be located on the Terror and Kizhuyak Rivers, 25 miles southwest of the City of Kodiak, Alaska. The project was originally authorized to have a capacity of 20 megawatts (MW), but has since expanded to 36 MW.

S.1583 would expand the special-use permit issued for the project by the Secretary of the Interior, in order to allow the construction, operation, and maintenance of a tunnel and associated facilities and activities for the project-related Upper Hidden Basin Diversion. The diversion would provide additional flows to the project, thus allowing increased generation.

The Commission has no jurisdiction over the special-use permit, so I have no comment on S.1583. However, I am aware that Kodiak Electric Association is in the process of preparing an amendment application, scheduled to be filed with the Commission in 2017, seeking authorization to construct the facilities needed for the Upper Hidden Basin Diversion. It is my understanding that the licensee has prepared a draft amendment application and held joint agency and public meetings to discuss it, and

has begun consultation under the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, and the National Historic Preservation Act. I also understand that, to the extent that the amendment will result in the project occupying additional lands within a reservation of the United States, S.1583 will preserve the right of the Secretary of the department under whose supervision those lands fall to impose conditions, pursuant to section 4(e) of the Federal Power Act, that the Secretary deems necessary for the adequate protection and utilization of the reservation. Should the amendment application be filed with the Commission, staff will review it as expeditiously as possible.

S.2083

On July 17, 2012, the Commission issued Wilkesboro Hydroelectric Company, LLC a license to construct and operate the proposed 4-MW W. Kerr Scott Hydroelectric Project, to be located at the U.S. Army Corps of Engineers' (Corps) W. Kerr Scott Dam and Reservoir, located on the Yadkin River, in Wilkes County, North Carolina. The license required the company to commence project construction within two years of the issuance date of the license, the longest time period allowed by section 13 of the Federal Power Act. On May 7, 2014, the Commission, at the licensee's request, granted the one, two-year extension of the commencement of construction deadline permitted by section 13, thus making the deadline July 17, 2016. On June 19, 2015, the licensee filed an application with the Commission, seeking to amend the project license consistent with the results of its design consultation with the Corps.

S.2083 would allow the Commission, at the licensee's request, to extend the time period within which the licensee is required to commence construction for up to three consecutive two-year periods following the expiration of the extension authorized by the May 7, 2014 order.

The last several Commission Chairmen have taken the position of not opposing legislation that would extend the commencement of construction deadline no further than 10 years from the date that the license in question was issued. Where proposed extensions would run beyond that time, there has been a sense that the public interest is better served by releasing the site for other public uses. Because S.2083 provides for commencement of construction deadlines that do not exceed 10 years from the date on which the project license was issued, I do not oppose this bill.

S.2046

On January 22, 1998, the Commission issued the City of Saxman, Alaska an original license authorizing the construction and operation of the proposed 9.6-MW Mahoney Lake Hydroelectric Project, to be located on Upper Mahoney Lake and Upper Mahoney Creek, near Ketchikan, Alaska. On August 5, 2004, as required by Public Law

No. 108-7, the Commission issued an order granting stay of the Mahoney Lake Project license. Under section 314(b) of the law, the Commission was required to lift the stay upon request of the City, but not later than six years after the Commission received written notice of the completion of the Swan-Tyee transmission line. By letter filed October 4, 2011, the Southeast Alaska Power Agency, which built the transmission line, reported that the Swan-Tyee transmission line was operational on October 21, 2009. Accordingly, I believe that the Commission is currently required to lift the stay no later than October 4, 2017.

S.2046 would require the Commission to stay the license, upon the licensee's request, for a period of no more than 10 years after the date of enactment of the bill, make the effective date of the license the date on which the stay is lifted, and grant up to three two-year extensions of the construction deadline. Given the policy of the last several Chairmen that I discussed above, and that S.2046 could result in a commencement of construction deadline more than 30 years after the project license was issued, I do not support S.2046.

As you know, I recently spoke at the National Hydropower Association meeting in Anchorage and met with a number of hydropower operators. I understand the importance of hydropower for communities in Alaska and elsewhere, and look forward to working with you on hydropower issues.

If I can be of further assistance to you on this or any other Commission matter, please let me know.

Sincerely,

Norman C. Bay
Chairman

Senator Dianne Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

Senator Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510

September 8, 2015

Dear Senators Feinstein and Boxer:

As members of the Board of Supervisors of San Francisco, Marin, San Mateo and Contra Costa counties, we are writing to thank you for your longstanding support of forward-looking water policies. As we review the California Emergency Drought Relief Act of 2015 (S. 1894), we urge you to continue to focus on real solutions as the legislation moves forward, including prioritizing smart investments that allow us to make better use of our limited water supply during this unprecedented drought. We are deeply concerned that H.R. 2898, which recently passed the House of Representatives, could have a devastating impact on the San Francisco Bay-Delta Estuary and the economies it supports. The environmentally destructive and divisive components of that bill have no place in legislation for California.

Our communities rely on the natural resources of the San Francisco Bay-Delta Estuary, including adequate water quality, flows and habitat for fish and wildlife. Our economy depends on a healthy Bay and Delta for our commercial and recreational fishing industries, tourist industry, real estate industry, and our exceptional quality of life. The current drought threatens to have devastating impacts on this magnificent but fragile estuary and these industries. The drought has also exacerbated the long-term water quality degradation in the Delta that has resulted from three decades of increased exports, with impacts to local drinking water supplies.

We support federal legislation that takes a 21st century approach to make us stronger and more resilient during this drought for the long run. Whatever happens in the near future in terms of rainfall, most believe we are in a "new normal" in California, one that requires new, forward-looking ways of managing this scarce and invaluable natural resource.

Unfortunately, legislation such as H.R. 2898 reignites old conflicts and puts the health of the San Francisco Bay-Delta in jeopardy. H.R. 2898 overrides protections for native salmon runs, takes water from habitats that are essential for birds migrating along the Pacific Flyway, and undermines water quality standards that ensure the water in the Bay-Delta is safe for drinking, irrigation, and wildlife habitat. H.R. 2898 replaces scientifically-justified limits on water operations with political judgments and could have devastating consequences for our fish and wildlife that are already struggling during this drought. San Francisco Bay Area governments have invested millions of dollars in wetland restoration projects to provide flood control benefits and improve habitat for our fish and wildlife. H.R. 2898 diverts the fresh water needed to help these restoration projects succeed.

Furthermore, H.R. 2898 proposes solutions that would cause substantial economic harm to our communities. By threatening salmon runs that migrate through the San Francisco Bay-Delta Estuary, the bill puts thousands of fishing jobs at risk. Fishermen fear that the impacts from H.R. 2898 could force a complete shutdown of the salmon fishery like the one that occurred in 2008-2009. Such a shutdown would harm marina operators, boating supply businesses, bait shops, tackle manufacturers, fish processors, and

restaurants, in addition to commercial fishermen, recreational fishermen, and charter boat operations. These jobs support families in the Delta and in our cities, as well as communities all along the California and Oregon coasts.

Our fishing industry is part of our heritage and is the defining feature of Fisherman's Wharf, the Delta, and dozens of other communities along California's coast. San Francisco Bay is also an international tourist destination. By degrading the quality of the Bay's water and depleting fish and wildlife populations, H.R. 2898 puts at risk all of the industries that depend upon the crowds that flock to San Francisco and surrounding cities.

Legislation is needed that benefits all Californians and protects our natural resources. Like Congressman Huffman's H.R. 2983, effective legislation will promote innovative new policies and increased funding to encourage water recycling, stormwater capture, water-use efficiency, and other solutions. We appreciate that some of the provisions in S. 1894 adopt a similar approach. These approaches, and others like them, reflect the steps our Bay and Delta communities are already taking, with a renewed focus on how we can promote effective solutions locally. The State of California is also focusing on these key tools through the efforts of the State Water Resources Control Board and emergency drought legislation.

The serious water supply shortages being experienced across the state are not the result of environmental protections; therefore, it is important that our response to the drought focus on real solutions that address the real problem of demand management. In contrast, H.R.2898 is an enormous step in the wrong direction, and we strongly oppose the bill.

We appreciate the serious compromises needed to adequately address impacts of the current and future droughts and respect the leadership you have provided during this crisis. Rather than a divisive approach that favors certain interests over others, we urge you to continue to work with all stakeholders on solutions that do not negatively impact the economies, farmers, communities, and environments of the San Francisco Bay and Sacramento-San Joaquin Delta.

The Bay Area has shown that we do not need to choose between a vibrant economy and a healthy ecosystem. We know that effective solutions to difficult problems require innovative thinking that looks to the future. The Bay Area is a global pioneer in using technology to develop new approaches to the challenges that face us. This kind of creativity is essential in response to the drought. We are eager to work with you to suggest specific examples of such innovative approaches in the water arena.

Again, thank you for playing such a key, long-term, and positive role in helping California manage our water supply in a smart, effective way. Thank you, as well, for considering our views.

Sincerely,

Scott Wiener
Member, San Francisco Board of Supervisors

Steve Kinsey
Member, Marin County Board of Supervisors

Dave Pine
Member, San Mateo County Board of Supervisors

Mary Nejedly Piepho
Member, Contra Costa County Board of Supervisors

CALIFORNIA
ALLIED GROWER GROUP

October 7, 2015

The Honorable Maria Cantwell
Energy and Natural Resources Committee
U.S. Senate
Washington, D.C. 20510

Dear Ranking Member Cantwell:

Over a year ago, we wrote to thank each of you for your respective legislative efforts to address the dire water situation facing the State of California. At that time, we also called upon you to resolve the differences between the House and Senate legislative proposals to finally deliver much needed relief to the parched state. To facilitate the resolution of those differences, we put forward key concepts we continue to believe are essential to developing legislation that actually helps our communities.

We sincerely appreciate each of your efforts in this new Congress to pass H.R. 2898, the Western Water and American Food Security Act of 2015 through the U.S. House of Representatives, and to introduce S. 1894, the California Emergency Drought Relief Act of 2015 in the Senate; however, we are acutely aware of how far these efforts are from actually getting enacted into law. Efforts short of Congressional enactment bring no relief from the current regulatory and legal headwinds imposed upon us. Simply put, we need more from each of you.

Therefore, we are once again asking each of you to work diligently and in good faith to bridge your differences. Failure will ensure that the current regulatory and policy regimes that were put in place to improve the health of the Delta and the Central Valley, but have actually done the opposite, will continue unchecked. As a result, more acreage will be fallowed further diminishing our ability to provide a safe and sustainable food supply and threatening our national security. In addition, the demands on food banks, existing high unemployment, the inability of families to pay utilities and stay in their homes, and the lack of job opportunity that already exists in disadvantaged communities will all be exacerbated.

To facilitate the resolution of your differences, we emphasize the concepts we believe are essential to any legislation that moves forward. To be meaningful, any bill must:

- Provide congressional direction concerning the operation of the Central Valley Project and the State Water Project to ensure sufficient operational flexibility to restore water supply and water supply reliability to the farms, communities and refuges dependent on Delta operations. The operators of these projects must be able to capture water from the Delta during periods of higher flows and move water from north to south in order to achieve this critical objective.

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- Extend the provisions of any legislation for a period of time that will allow communities to establish sound long term water supplies for their future;
- Establish a process that could lead to increased storage in a reasonable timeframe;
- Ensure that additional burdens are not placed on the State Water Project as a result of congressional action; and
- Recognize that the reasonableness and efficacy of the San Joaquin River Restoration Program must be reevaluated in light of changed conditions since its authorization, including the reality of federal budget constraints.

We are optimistic that if you focus on addressing these concepts, you can resolve your differences in time to provide our communities the needed relief. It is time for you to move forward with policies that restore regulatory balance, achieve benefits, and improve the social, economic, and environmental health of much of California.

Respectfully,

Georgeanne White
Director –Friant Water Authority
Chief of Staff – City of Fresno

Jim Nickel
President – Nickel Family
Treasurer – San Joaquin River Exchange Contractors Water Authority

Kimberly Brown
Director of Water Resources
Wonderful Orchards

Mark Watte
Partner – Watte & Sons
Director – Friant Water Authority

Loren Booth
President – Booth Farms
Chair – Hills Valley Irrigation District
Chair – California AgLeadership Foundation

Dan Errotabere
General Partner – Errotabere Ranches
Western County Grower

Cannon Michael
President – Bowles Farming
Director – San Luis Canal Company

Paul Adams
Booth Farms
Wheeler Ridge Maricopa Water Storage Dist.

11609 Hereford Road - Los Banos, California 93635

Kent Stephens
Sec/CFO – Sunview Vineyards of California
Director – Friant Water Authority

Tom Barcellos
T-Bar Dairy/Barcellos Farms
Director – Lower Tule River Irr. Dist.

Ashley Swearengin
Mayor – City of Fresno

Aubrey J. D. Bettencourt
Executive Director
California Water Alliance

Earl Perez
President – Perez Farms
Vice President – Del Puerto Water District
Board – California Processing Tomato
Advisory Board

Dan Keppen
Executive Director
Family Farm Alliance

Sarah Woolf
Partner – Clark Bros. Farming
Director – Westlands Water District

Dave Loquaci
President – Madera Ag Services
Board Member – Madera Irrigation District
Board Member – Friant North Authority

John Bennett
President – JFB Ranch
President – Panoche Water District

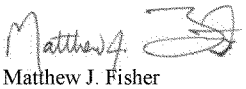
John Reiter
CEO
Maricopa Orchards

William D. Phillimore
Executive Vice President
Wonderful Orchards

Edwin Camp
President – D.M. Camp & Sons
Friant Executive Committee
Arvin Edison WSD President

11609 Hereford Road - Los Banos, California 93635

John N. Fisher IV
President – Southern San Joaquin Municipal Utility District Water Board



Matthew J. Fisher
California Citrus Mutual Board Member

cc: Secretary of Interior Sally Jewell
Secretary of Commerce Penny Pritzker
Governor Jerry Brown

11609 Hereford Road - Los Banos, California 93635

October 5, 2015

The Honorable Dianne Feinstein
U.S. Senate
Washington, DC 20510

The Honorable Barbara Boxer
U.S. Senate
Washington, DC 20150

RE: Desalination Provisions of S. 1894 (California Drought Legislation)

Dear Senator Feinstein and Senator Boxer:

On behalf of California Coastkeeper Alliance, California Coastal Protection Network, Heal the Bay, Natural Resources Defense Council, Orange County Coastkeeper, and our millions of members and activists, we would like to express our concerns about the desalination provisions of the California Emergency Drought Relief Act of 2015 (S. 1894) and urge some amendments to improve those provisions. Desalination often poses far greater environmental and energy threats than many of the other water supply options available to improve California's drought readiness and identified in your bill, including water recycling, water conservation, and stormwater capture. Desalinated water also typically costs far more than these alternatives, and frequently results in expensive desalination plants sitting idle when less expensive water supply options are available. For example, Australia constructed six large-scale seawater desalination plants during its Millennium Drought at a cost of $10 billion Australian Dollars. By the time the plants were operational, the drought had eased and cheaper alternatives made the water from the desalination plants impractical. Four of the six Australian plants have stood idle for years while ratepayers continue to pay off millions of dollars annually in expensive construction and operation and maintenance costs. While there may be appropriate locations and designs for some desalination facilities, particularly those focused on brackish groundwater, other water supply options should generally be exhausted first.

In order to address these concerns, we urge you to amend the desalination provisions of your bill as follows:

- Prioritize funding for less environmentally-destructive and more economical water supply options by adopting a provision similar to section 215(b)(3) in H.R. 2983, that provides: "The Secretary shall prioritize projects that promote wastewater recycling, agricultural or urban water conservation and efficiency, stormwater capture, or other innovative projects that reduce reliance on surface and groundwater supplies."
- Prioritize federal funding for desalination projects to those projects that are environmentally responsible, including projects that desalinate brackish groundwater or utilize subsurface intakes, and reduce energy use and greenhouse gas emissions.

- Direct states to develop comprehensive plans for desalination siting and regulation, including identifying priority locations, based on statewide considerations of potential impacts on coastal and ocean resources and fisheries, the effects of sea level rise, the protection of marine protected areas and other sensitive marine resources, and other factors relevant to project siting.
- Direct the Secretary to ensure that approved projects comply with all applicable state and federal laws, including the California State Water Resources Control Board's 2015 Desalination Ocean Plan Amendment.
- Direct funding to research projects that could reduce the harmful environmental impacts of some desalination facilities, such as improving subsurface intake technology, and encouraging requirements to implement best available technologies and designs for desalination facilities that minimize the impacts to natural resources.

We appreciate your efforts to improve California's drought resiliency. Thank you for considering our comments.

Sincerely,

Sarah Aminzadeh
Executive Director, California Coastkeeper Alliance

Ray Hiemstra
Associate Director, Orange County Coastkeeper

Susan Jordan
Director, California Coastal Protection Network

Rita Kampalath
Science and Policy Director, Heal the Bay

Elizabeth Murdock
Director, Pacific Ocean Initiative, Natural Resources Defense Council

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0115

California Legislature

May 27, 2011

The Honorable Tom McClintock
Chair, Subcommittee on Water and Power
House Natural Resources Committee
1522 Longworth House Office Building
Washington, D.C. 20515

The Honorable Grace Napolitano
Ranking Member
Subcommittee on Water and Power
House Natural Resources Committee
1329 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman McClintock and Ranking Member Napolitano:

RE: OPPOSE H.R. 1837 (Nunes)

We are at a time of tremendous opportunity in California to solve lasting and seemingly intractable issues of water supply reliability and environmental harm. And we have been working on a bi-partisan basis to do so in a responsible and sustainable way. We have made historic progress in recent years towards resolving California's water wars. With so much at stake for California's future, this is the worst possible time for federal legislation that undermines judicial agreements, erodes long-standing water law principles, usurps California's sovereignty, and lays waste to any hope of progress in the Sacramento-San Joaquin Delta. Yet that is exactly what H.R. 1837 would do. There is, in fact, no part of H.R. 1837 that provides balance or constructive solutions. It is almost breathtaking in its total disregard for equity and its willful subjugation of the State of California to the whims of federal action.

H.R. 1837 flouts 150 years of federal jurisprudence. As United States Supreme Court Justice Rehnquist acknowledged in *California v. United States*, "the history of the relationship between the Federal Government and the States…is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress." H.R. 1837 broadly preempts state law.

Under the guise of reforming the Central Valley Project Improvement Act, it sabotages the legal settlement on the San Joaquin River and includes provisions that set aside that part of the Reclamation Act preserving the state's legal ability to control, appropriate, use, or distribute irrigation water. It also totally preempts state law as applied to water operations and endangered species act protections -- not just for the operations of the CVP but also California's own State Water Project.

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This sweeping intrusion into the longstanding domain of California law purports to be based on a 1994 Delta "Principles of Agreement" document, which concerned in-Delta water quality standards, not endangered species. Indeed, most of the threatened and endangered fish affected by CVP and SWP water operations were not even listed until after 1994 and the dramatic decline of in-Delta native fish began in late 2004. It was following this period that the State of California and the Federal government began working with key stakeholders on a Bay Delta Conservation Plan (BDCP). The current state administration's focus on transparency and scientific integrity offers renewed hope of a successful outcome for that process. But that would not be possible with the passage of H.R. 1837, which would effectively terminate the cooperation and trust BDCP stakeholders have been working to build.

Finally, and very significantly, H.R. 1837 fatally undermines the historic bi-partisan package of water legislation we passed in 2009 to address the State's water crisis. A key provision of that legislation codified co-equal goals in the Delta of providing a more reliable water supply for California and protecting, restoring, and enhancing the Delta ecosystem while respecting the values of the Delta and its communities. Those are the fundamental underpinnings for any durable Delta solution. H.R. 1837 makes a mockery of those principles by prioritizing water deliveries for one region of the state over all other values.

For these reasons and more we urge the Subcommittee to respect the rights of the State of California and to reject H.R. 1837.

Sincerely,

DARRELL STEINBERG
Senate President pro Tempore

JOHN A. PEREZ
Speaker of the California Assembly

JARED HUFFMAN
Chair, Assembly Water Parks & Wildlife

FRAN PAVLEY
Chair, Senate Natural Resources and Water

WESLEY CHESBRO
Chair, Assembly Natural Resources

EDMUND G. BROWN JR., Governor
JOHN LAIRD, Secretary for Natural Resources

February 15, 2012

The Honorable Doc Hastings
Chairman
House Natural Resources Committee
1324 Longworth House Office Building
Washington, D.C. 20515

The Honorable Edward J. Markey
Ranking Member
House Natural Resources Committee
1329 Longworth House Office Building
Washington, DC 20515

RE: Oppose H.R. 1837 (Nunes)

Dear Chairman Hastings and Ranking Member Markey:

On June 2, 2011, I testified before the Natural Resources Committee's Water and Power Subcommittee in opposition to H.R. 1837. At the time, the state of California objected to the highly dangerous and unprecedented nature of this legislation. Despite some efforts to recast and amend the flaws of the original legislation, I write on the behalf of the state of California to again express our strong opposition to the amended version of H.R. 1837, the Sacramento-San Joaquin Valley Reliability Act.

Even after its amendment, H.R. 1837 continues to undermine California's ability to address its serious water challenges and will erase years of progress toward a collaborative solution to address water issues. The bill seeks to impose extreme legislative decrees – including sweeping exemptions from federal laws and sweeping pre-emption of California state laws – while ignoring the very real problems in our water system that require reasoned, consensus-driven solutions, rather than new congressional mandates.

The centerpiece of H.R.1837 would be to enshrine into law the 1994 water agreement that created the CALFED process. In the subsequent 18 years, many California water issues have changed. The fishery populations in the Sacramento-San Joaquin Delta crashed a decade ago; the full impact of seismic activity on possible water service interruption has been better understood; and the impacts of climate change in water delivery and habitat restoration have more clearly come into view. These facts have led all parties to see the need for a series of new long-term agreements over California's water future. Yet, H.R. 1837 will undermine our chances of obtaining such agreements and make genuine solutions more difficult.

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph: 916.653.5656 Fax: 916.653.8102 http://resources.ca.gov

Baldwin Hills Conservancy • California Coastal Commission • California Coastal Conservancy • California Conservation Corps • California Tahoe Conservancy
Coachella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Delta Stewardship Council • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
Energy Resources Conservation & Development Commission • Native American Heritage Commission • Sacramento-San Joaquin Delta Conservancy • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board

For the state of California, the carefully wrought and strongly supported bipartisan compromise passed by the California State Legislature in 2009 must guide our development of a Delta solution. The 112th Congress just reaffirmed this guiding principle in its own Omnibus Appropriations bill signed into law just two months ago. The 2009 compromise provided statutory authority to proceed with the Bay Delta Conservation Plan, which will achieve the dual co-equal goals of water supply reliability and ecosystem restoration through the use of sound science. These goals were added to California law as part of this agreement.

By destroying part of this package, H.R. 1837 wreaks havoc with this delicately balanced effort, and could make achieving any final Bay Delta Conservation Plan impossible, despite massive investments by numerous California water agencies to achieve a long-term Delta solution.

H.R. 1837 would also overturn a century old precedent in water law: Congress ought not pre-empt the right of states to manage their own water under state water rights law. If this bill passes, no state will be safe from congressional interference in their water rights laws. Another consequence would be the immediate opposition of states to continued federal involvement in water development, since it would come with the danger of a future Congress overturning state water rights law as H.R. 1837 now seeks to do.

This bill would also overturn the San Joaquin River Restoration Act, an act that resolved an extremely divisive controversy in a way that was supported by all sides. By overturning the Act, H.R. 1837 would almost certainly send that controversy back to court, where the consequences of litigation would be unknown and the ability to resolve long-standing issues, including meeting the co-equal goals could be substantially delayed.

There remain numerous other problems with H.R. 1837, which is as threatening to our state's laws and future with the newly announced amendments as it was when I testified on the original bill last year. For these reasons and more, we strongly urge you to oppose H.R. 1837 and instead reiterate your support for consensus-based solutions to California's difficult water issues, solutions that meet the twin goals outlined by the California State Legislature that are based on sound science and sustainable water management.

Sincerely,

John Laird
Secretary for Natural Resources

cc: California Congressional Delegation

EDMUND G. BROWN JR., *Governor*
JOHN LAIRD, *Secretary for Natural Resources*

February 28, 2012

California Congressional Delegation
U.S. House of Representatives
Washington, DC 20015

Dear Members of the California Congressional Delegation:

I write with great urgency to again declare the state of California's strong opposition to H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act. This bill, if passed and signed into law, will not deliver on its promise of providing greater water reliability and alleviating joblessness. In fact, this bill will have the unintended effect of causing greater uncertainty.

A more effective approach to securing water availability and promoting job creation would be to allow the carefully wrought and strongly supported bipartisan compromise passed by the California State Legislature in 2009 guide a Delta solution. The 2009 compromise provided statutory authority to proceed with the federal- and state-led Bay Delta Conservation Plan, which will achieve the dual co-equal goals of water supply reliability and ecosystem restoration through the use of sound science. H.R. 1837, if enacted, has the potential to wreak havoc with this delicately balanced effort, and could make achieving any final Bay Delta Conservation Plan impossible despite massive investments by numerous California water agencies to achieve a long-term Delta solution.

The state of California is particularly troubled by H.R. 1837's pre-emption of state law (Section 204). The Western States Water Council, a non-partisan organization consisting of representatives appointed by the governors of 18 western states, has rightly objected to H.R. 1837's rejection of this long-held precedent. Congress should not pre-empt the right of California – or any state – to manage water under state water rights law. Despite what proponents point to as the uniqueness of this bill, if passed and enacted, no state will be safe from congressional interference in their water rights laws.

While seeking to increase water supply reliability, H.R. 1837 does not address the other critical threats to California's water supply. The bill is silent on addressing seismic risks, increased salinity from sea-level rise, and the shift in responsibility and cost of meeting environmental requirements from some water rights holder to other water rights holders. The unintended consequences of this bill makes it all that more destructive.

We need consensus-based solutions that meet the dual goals outlined in state law and are based on sound science and sustainable water supply management. Unfortunately, H.R. 1837 will not solve California's difficult water issues. I ask that you oppose H.R. 1837.

Sincerely,

John Laird
Secretary for Natural Resources

1416 Ninth Street, Suite 1311, Sacramento, CA 95814 Ph. 916.653.5656 Fax 916.653.8102 http://resources.ca.gov

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Coachella Valley Mountains Conservancy • Colorado River Board of California • Delta Protection Commission • Delta Stewardship Council • Department of Boating & Waterways • Department of Conservation
Department of Fish & Game • Department of Forestry & Fire Protection • Department of Parks & Recreation • Department of Resources Recycling and Recovery • Department of Water Resources
Energy Resources, Conservation & Development Commission • Native American Heritage Commission • Sacramento-San Joaquin Delta Conservancy • San Diego River Conservancy
San Francisco Bay Conservation & Development Commission • San Gabriel & Lower Los Angeles Rivers & Mountains Conservancy • San Joaquin River Conservancy
Santa Monica Mountains Conservancy • Sierra Nevada Conservancy • State Lands Commission • Wildlife Conservation Board

July 8, 2015

Hon. John Fleming
Chairman
Subcommittee on Water, Power & Oceans
House of Representatives
2182 Rayburn HOB
Washington, D.C. 20515

Re: HR 2898 (Valadao) Western Water and American Food Security Act of 2015 – OPPOSE

Dear Congressman Fleming:

The California Waterfowl Association opposes HR 2898. While the bill purports to provide drought relief for California's Central Valley, in reality it would eliminate water supplies for California's migratory waterfowl and other wetlands-dependent species.

Section 306 (page 50) directs the Bureau of Reclamation to meet refuge contract needs through installation of conservation measures, conveyance facilities, and groundwater wells, using only funding made available under "Reclamation programs of the Department of the Interior." The Bureau would then be required to "make available . . . the additional water obtained" from those activities for other contractors. This section would replace Central Valley Project supplies provided under Section 3406(d) of the Central Valley Project Improvement Act (PL 102-575) with supplies that depend on conservation and efficiency measures and groundwater.

The Bureau has already consistently failed to meet its water supply obligations under incremental Level 4, because of the unavailability of the types of supplies identified in Section 306. Making Level 2 supplie: dependent on the same unreliable sources of supply would make obtaining even the baseline Level 2 supplies much more unreliable and difficult to obtain.

Section 503(c) (page 72) states that rights and obligations under water contracts shall not be modified o amended, "including the obligation to satisfy exchange contracts and settlement contracts prior to the allocation of any other CVP water." This section modifies the priority of refuge water supplies provided under Section 3406(d) of the CVPIA to make them subordinate to agricultural contractors.

The purpose of Section 3406(d) was to provide mitigation of the loss of water supplies to the Central Valley Project, so refuges were given an equal priority to senior exchange and settlement contracts. To subordinate this priority to other contractors would remove the mitigation and further damage the water supplies to refuges and other wetlands habitat.

California Waterfowl opposes the establishment of a Restoration Fund advisory Board that would lack representation of refuge and other environmental stakeholders would not be subject to the rules that apply generally to federal advisory committees, and would be housed within the Bureau of

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Reclamation's offices. The Restoration Fund must continue to be funded for the protection of fish and wildlife resources.

Generally, California Waterfowl opposes any terms within that would modify the CVPIA to lessen the reliability of water deliveries to refuges and wildlife areas, replace CVPIA supplies to refuges with groundwater or other supplies, subordinate the priority of refuges to other contractors, or establish a Restoration Fund advisory board. California Waterfowl also opposes provisions of HR2898 that would override state water rights law to which the Central Valley Project has been subject.

Migratory waterfowl in California are a public trust resource. They are protected by the international Migratory Bird Treaty, the North American Wetlands Conservation Act, and other state and federal laws. In California, up to 95 percent of the historical wetland habitat for migratory habitat has been "reclaimed" for agriculture, urban use, and flood protection.

Among other purposes, the CVPIA was enacted in 1992 to protect migratory birds and other fish and wildlife resources from the effects of the water diversions associated with the Central Valley Project. To make the changes to the CVPIA that are included in HR 2898 would have long-term impacts on the migratory waterfowl resource.

The California Waterfowl Association is a statewide nonprofit organization whose principal objective is the conservation of the state's waterfowl, wetlands, and hunting heritage. California Waterfowl believes hunters have been the most important force in conserving waterfowl and wetlands.

Please vote "No" on HR 2898. If you have any questions about the recommendations, please contact Jeffrey Volberg at (916) 217-5117, or jvolberg@cawaterfowl.org.

Yours truly,

Jeffrey A Volberg
Director of Water Law & Policy
California Waterfowl Association

CC: Senator Dianne Feinstein
Governor Jerry Brown
Hon. Charlton Bonham, Director California Dept. of Fish & Wildlife

CC: Congressman Jared Huffman
Congressman Kevin McCarthy
Congressman Mike Thompson
Congressman Jeff Denham
Congressman Doug LaMalfa
Congressman Tom McClintock
Congressman Jim Costa
Congressman Devin Nunes
Congressman David G. Valadao
Congressman Ken Calvert

October 16, 2015

The Honorable Senator Lisa Murkowski
Chair, Senate Energy and Natural Resources Committee
Washington, DC

The Honorable Senator Maria Cantwell
Ranking Member, Senate Energy and Natural Resources Committee
Washington, DC

Re: S. 1894 and H.R. 2898

Dear Chairwoman Murkowski and Ranking Member Cantwell:

On October 8, the Senate Energy and Natural Resources Committee considered S 1894 (Feinstein) and HR 2898 (Valadao). California Waterfowl was not able to attend the hearing, but would like to put our comments on the record for each of these bills.

The two bills follow different approaches to the persistent drought conditions in California. California Waterfowl opposes the approach taken in HR 2898 and supports the approach taken in S 1894. S 1894 was developed with the cooperation of numerous water districts as well as fisheries and conservation groups to provide a comprehensive approach that does not injure the interests of any of the stakeholders. HR 2898, on the other hand, only considers the needs of certain San Joaquin Valley farming interests and would do serious short-term and long-term damage to the water supplies of wildlife refuges in California as a whole.

California Waterfowl would not like to see a merging of the two bills, but would prefer to see the language and approach taken in S 1894 adopted as the sole provisions of Congress's drought relief package for California. California Waterfowl joins with the Grassland Water District on the three principles for supporting a drought relief bill:

1) No new statements of priority for Central Valley Project contractors, especially those that contradict the current priority status of wildlife refuges as contractors.
2) Maintain the priority focus of the Central Valley Project Improvement Act on mitigation and restoration.
3) Do not establish a new Restoration Fund Advisory Fund.

The sections of HR 2898 that do not meet these principles are Section 503(c)(1), 602, 604, and 609.

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Thank you for your leadership on providing relief for drought-stricken areas of California and the western states. If you or your staff would like to contact California Waterfowl regarding its support of S.133, please call (916) 217-5117, or email jvolberg@calwaterfowl.org.

Sincerely,

Jeffrey A. Volberg
Director of Water Law & Policy
California Waterfowl Association

Encl:

Letter of Support for S. 1894 dated August 12, 2015
Letter of Opposition for HR 2898 dated July 8, 2015

OFFICE OF THE
CITY COUNCIL

JAY SCHENIRER

COUNCILMEMBER
DISTRICT FIVE

CITY OF SACRAMENTO
CALIFORNIA

October 7, 2015

Honorable Lisa Murkowski, Chair
Committee on Energy and Natural Resources
United State Senate
Washington, D.C. 20510

Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources
United States Senate
Washington, D.C. 20510

SUBJECT: CALIFORNIA EMERGENCY DROUGHT RELIEF ACT OF 2015

Dear Chairwoman Murkowski and Ranking Member Cantwell:

The City of Sacramento (Sacramento) understands that the Committee on Energy and Natural Resources is pursuing legislative proposals to address the persistent drought that California and the western U.S. are experiencing. Sacramento is committed along with our partner agencies to promoting water supply reliability and natural resource protection within the American River watershed and the broader Sacramento and San Joaquin River Basins.

Sacramento's primary concern is that legislation such as the California Emergency Drought Relief Act of 2015 (S. 1894) result in improved management of Folsom Reservoir, and avoid untenable depletion of that storage facility. Adoption of the regionally developed "Modified Flow Management Standard" (Sacramento Water Forum, 2015) which addresses both storage management for a reliable water supply and Lower American River instream flow, is an essential element of any federal drought legislation that might affect Folsom Reservoir operations.

Folsom Reservoir is essential to meet local and regional municipal water needs, including that of Sacramento. Sacramento provides municipal and industrial water supply to over 480,000 residents and 136,000 customer accounts. Sacramento is also a wholesale water supplier to a number of local water agencies. A critical element of that water supply is water made available from Folsom Reservoir pursuant to Sacramento's senior operating contract with the Bureau of Reclamation (Contract 14-06-200-6497). Continued depletion of Folsom storage puts that water supply at unacceptable risk.

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Sacramento supports S. 1894's provisions to provide federal assistance to facilitate the development of sustainable water supply infrastructure to address the challenges created by the drought. Sacramento appreciates the committee's efforts to craft legislation that reduces the impact of drought and helps to develop alternative water supplies such as recycled water, desalination, groundwater recharge, and new storage; and to make water supplies stretch further with investments in conservation. It is our hope that final legislation will incorporate the Modified FMS for Folsom operations and instream flow, in addition to the foregoing laudable infrastructure funding provisions.

Sacramento appreciates the language on avoiding the redirection of impacts to existing water users in section 113 of S. 1894. These protections should be expanded to encompass Sacramento's above-referenced contract.

Sacramento is committed to work with you in developing a legislative solution that addresses the serious need for water supply reliability. If you have any questions, please contact Randi Knott at (916) 808-5771.

Sincerely,

Jay Schenirer, Council Member
Chair of Law and Legislation Committee

cc: Honorable Diane Feinstein, Senator
Honorable Barbara Boxer, Senator
Honorable Doris Matsui, Congresswoman
Honorable Ami Bera, Congressman
City of Sacramento Mayor and Council Members

Congress of the United States
Washington, DC 20515

October 8, 2015

The Honorable Lisa Murkowski
Chairman, Senate Energy and Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member, Senate Energy and Natural Resources Committee
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

We are writing to express our concerns with H.R. 2898, the Western Water and American Food Security Act of 2015, which passed the House in July and will be a part of the legislative hearing in your Committee today. This bill does nothing to solve California's water crisis or address the drought impacting Oregon, Arizona, Washington and states throughout the West. Instead, H.R. 2898 preempts state laws, reduces management flexibility, eliminates protections for salmon and other endangered species, and rolls back our nation's fundamental environmental laws.

The State of California opposes federal legislation that would "weaken state and federal environmental protections, pre-empt state law and favor one region or economic sector of the state over another," which is exactly what this bill does. Moreover, this proposal would not support the State's groundbreaking work to address the drought through water conservation programs, infrastructure improvements, and innovative water recycling initiatives.

We are pleased that state and federal agencies have been making great progress by working proactively and collaboratively. These agencies should retain the statutory flexibility to best manage our water supply rather than the prescriptive language proposed in H.R. 2898. In fact, the Department of the Interior agrees that this bill is the wrong course of action because it would, "impede an effective and timely response to the continuing drought while providing no additional water to hard hit communities."

H.R. 2898 is also yet another attempt to chip away at the Endangered Species Act. Important protections have been targeted in recent legislation for the African elephant, greater sage grouse, gray wolf, northern long-eared bat, Sonoran desert tortoise, and many other species. H.R. 2898 simply adds the Delta smelt and several salmon and steelhead runs to the list of species that have been deemed as no longer needing protection.

Further, the bill preempts state law, including California's long-standing system of water rights, overriding the regulations that Californians themselves have devised to administer the state's complex water supply system. An expansion of federal management over the world's most complicated water structure sets a bad precedent for states across the country.

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H.R. 2898 also reaches into other Western states, including Oregon and Washington. By weakening protections for fish in California's Bay-Delta, this bill has potential far-reaching and damaging impacts on the Pacific Northwest's fishing industry, wildlife, and related economy. On multiple occasions, Senators and House Members of the Oregon delegation wrote to express parallel concerns with similar short-sighted legislation, H.R. 5781, that passed the House in the 113th Congress.

Furthermore, opposition to this legislation includes other key stakeholders such as commercial and sport fishermen, Native American tribes, environmental groups, and recreation employers. The Obama Administration also issued a veto threat against this bill because of its potential to undermine environmental laws.

Responsible solutions to the West's short and long-term water shortages require input from all stakeholders without prioritizing sectors of the economy or geographic regions over others, and without further endangering at-risk species. This historic drought demands an unprecedented compromise involving all affected parties. We remain committed to working on federal drought legislation that does not negatively impact the economies, farmers, communities, and environments of California, Oregon, Arizona, Washington, and other Western states.

Sincerely,

JERRY MCNERNEY
Member of Congress

JARED HUFFMAN
Member of Congress

PETER DEFAZIO
Member of Congress

MARK DESAULNIER
Member of Congress

SUSAN DAVIS
Member of Congress

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The Honorable Al Franken
The Honorable Martin Heinrich
The Honorable Mazie K. Hirono
The Honorable Angus King
The Honorable Joe Manchin III
The Honorable Bernard Sanders
The Honorable Debbie Stabenow
The Honorable Elizabeth Warren
The Honorable Ron Wyden
The Honorable Barbara Boxer
The Honorable Dianne Feinstein

October 2, 2015

The Honorable Patty Murray
U.S. Senate
Washington, DC 20510

The Honorable Maria Cantwell
U.S. Senate
Washington, DC 20510

Re: Please safeguard Washington's Southern Resident orcas by opposing any legislation that would undermine protections for Chinook salmon.

Dear Senator Murray and Senator Cantwell:

On behalf of our combined members and supporters of over five million people nationwide, including our more than 150,000 members and supporters in Washington State, we are writing to urge you to oppose any legislation that could negatively impact our State's iconic and beloved Southern Resident orcas by harming their primary food source—Chinook salmon. Recent efforts to enact drought legislation, particularly in California, have advanced strategies that would undermine protections for Chinook salmon and could devastate the orcas' food supply. For example, H.R. 2898 (Valadao, R-CA), which passed the House in July, includes provisions that would override Endangered Species Act protections for Chinook salmon in the San Francisco Bay-Delta and could substantially harm already-struggling salmon populations. Because Chinook salmon that migrate through the San Francisco Bay-Delta are an important food source for Southern Resident orcas, provisions like those included in H.R. 2898 could have a substantial and negative impact on Washington's cherished whales.

As you know, orcas are culturally, economically and ecologically important to Washington. Southern Resident orca tourism attracts between 60 and 75 million dollars annually to the state, and healthy population levels have been linked to maintaining a healthy marine ecosystem (PSP 2014). Southern Resident orcas use waters off the coasts of Washington, Oregon, and California, traveling from sites as far north as the Queen Charlotte Islands in British Columbia to as far south as the Monterey Bay in California. The whales spend their summers in the Salish Sea, and Washington residents travel from near and far to view the marvelous creatures.

Southern Resident orca were listed as endangered in 2005. According to the last official census in July 2015, there are only 81 southern resident orcas in the wild, plus one Southern Resident orca held in captivity, though there used to be nearly twice as many (NMFS 2008). New scientific information and a

series of deaths over the last several years in this already-endangered population have heightened concerns of orca scientists and advocates regarding the extinction potential for this iconic Northwest creature.

A primary concern is that there is not enough food available to support a thriving Southern Resident orca population. In the last ten years, scientists have confirmed that Southern Residents depend upon Chinook salmon for up to 80-90 percent of their diet (Hanson et. al. 2010). Chinook salmon populations, however, have declined significantly in the last three decades. As Chinook salmon populations have plummeted, scientists have found that Southern Resident orca become "nutritionally stressed," meaning they aren't finding enough to eat (Ayres et.al. 2012).

The decline of California's rivers has contributed to nutritional stress among orcas. California's Sacramento River, which flows into the San Francisco Bay, used to be the second largest salmon producing river system on the West Coast of the United States (Yoshiyama et. al. 1998). Today, winter-run Chinook salmon in this river system have declined by 87-95 percent and their future is uncertain (NMFS 2014). Monitoring data in 2014 indicated that approximately 95 percent of winter-run Chinook salmon eggs and fry produced in the Sacramento River did not survive because of water temperatures and low water levels caused by mismanagement and drought conditions (NOAA 2015). Spring-run Chinook salmon have also declined by a similar percent (NMFS 2014). The last remaining unlisted Chinook salmon in California – the fall run – has suffered similar declines in recent years. A portion of the Southern Resident orca population spends considerable time feeding along the California coastline near the San Francisco Bay, and the decline of Sacramento River Chinook salmon presents a grave risk to these Southern Resident orcas. In fact, NMFS found that the continued existence of the Southern Resident orca population was in jeopardy without the important protections for Chinook that H.R. 2898 would eliminate (NOAA 2005, NMFS 2009).

Scientists agree that reversing the current orca population decline depends upon significantly increasing the amount of available prey – Chinook salmon – within their range (Ayres et al. 2012, NOAA 2014). Even if other main threats to the Southern Residents are reduced, we cannot recover Southern Resident orca without also restoring their primary food source.

Because we can only truly protect Southern Resident orcas by safeguarding their food supply, we ask that you help to defend this iconic animal by opposing any legislation that would undermine protections for Chinook salmon.

Sincerely,

Elizabeth Ruther, Northwest Representative
Defenders of Wildlife

Steve Mashuda, Attorney
Earthjustice

Joseph Bogaard, Executive Director
Save Our wild Salmon Coalition

Howard Garrett, President
Orca Network

Dr. Deborah Giles, Science Advisor
SRKW: Chinook Salmon Initiative

Giulia Good Stefani, Attorney
Marine Mammal Protection Project
Natural Resources Defense Council

Mark Rockwell, Pacific Coast Representative
Endangered Species Coalition

Colleen Weiler, Rekos Orca Fellow
Whale and Dolphin Conservation

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United States House of Representatives
Washington DC 20515

July 7, 2015

Re: H.R. 2898 (Valadao) - "Western Water and American Food Security Act of 2015 " OPPOSE

Dear Members of the California Congressional Delegation:

The undersigned conservation and recreation organizations, outdoor businesses, and Native American Tribes urge you to reject Rep. Valadao's H.R. 2898. Under the guise of water and food "security," H.R. 2898 proposes to maximize water exports, and weaken regulations protecting threatened and endangered fish and wildlife in California.

Passage and implementation of this complex legislation will almost certainly result in the extinction of the endangered Delta smelt in its native habitat and accelerate the already precipitous decline of the Central Valley's wild salmon and steelhead towards extinction. It will also further degrade Delta water quality (the drinking water source for millions of Californians) and harm rural and urban communities throughout the state, while primarily benefitting just a few water districts in the southern Central Valley.

H.R. 2898 fails to provide real water and food security because of its narrow focus on maximizing water exports and expediting costly, ineffective, and environmentally destructive new dam projects. These water options cannot produce new water supplies in this unprecedented fourth year of drought (no matter how quickly they may be implemented) and they may never be able to produce new supplies with our changing (and likely to be drier) climate.

Just a few of the most egregious provisions of H.R. 2898 include:

- Complex technical direction for Delta water flows, upstream dam project operations, and Delta smelt incidental take calculations for which Congress has neither the expertise or authority to undertake (Sec. 102-103, 302-307).

- Selective use of alleged "new" science to mandate a non-federal fish predator control program that fails to address the many significant habitat and water quality issues - including blocked habitat, lack of spawning gravel, modified flows, high water temperatures, low dissolved oxygen levels, and high concentrations of pesticides - that have largely contributed to the decline of salmon in the Stanislaus River (Sec. 203).

- Mandate impossibly short deadlines for endangered species consultation, emergency environmental review and permitting, and expedited water transfers that will likely result in poor decisions, unacceptable environmental impacts, and increased litigation (Sec. 302, 305, 308, 309).

- Allow all the fresh water inflow from the San Joaquin River to be exported in April-May, which will further degrade Delta water quality, and expand water transfers well into the spring and fall, when threatened and endangered salmon and steelhead are most sensitive to modified flows (Sec. 302).

- Overturn a significant public investment in the legally and legislatively mandated goal of restoring salmon in the San Joaquin River in favor of an undefined "warm water fishery" (Sec. 313).

- Establish impossibly short deadlines for the completion of feasibility and environmental studies for CALFED dam projects and penalizes the Bureau of Reclamation if the deadlines are not met, which all but ensures that the studies will be incomplete or inadequate (Sec. 401, 403).

- Prohibit the Interior Secretary from discharging her duties under the National Wild & Scenic Rivers Act to protect the San Joaquin River Gorge, a river segment recommended by the Bureau of Land Management for National Wild & Scenic River protection (Sec. 402).

- Ignore the coordinated operation of state and federal water projects and weaken state protection for endangered species by promising additional water yield from federal sources to make up for state water delivery reductions that may be required by the California Endangered Species Act (Sec. 501).

- Make it nearly impossible to keep promise of no redirected adverse impacts on water rights in regard to Endangered Species Act compliance and other legal obligations (Sec. 503).

- Generally infringe on state water rights authority by guaranteeing full delivery of federal north of Delta water contracts in most water years (Sec. 505).

- Establish an oversight board for the expenditure of CVPIA restoration funds with nearly exclusive representation from water contractors and no representation from the U.S. Fish and Wildlife Service or the general public (Sec. 602).

- Penalize the Bureau of Reclamation for failing to complete and implement a CVPIA water replacement plan that is simply infeasible and fails to recognize that the state has likely reached its limit in regard to new water development (Sec. 604).

- Ordain that federal agencies not "distinguish" between naturally and hatchery spawned anadromous fish species when making endangered species determinations, despite substantial biological opinions to the contrary (Sec. 605).

- Transfer ownership and operational control of the federal New Melones Dam, in which million in public funds have been invested, to local water and power providers, apparently at no cost (Sec. 606).

- Prohibit water releases into the Trinity River that may be needed to prevent a repeat of the massive salmon die-off in the Klamath River that occurred in 2002 (Sec. 608).

- Establish unreasonable deadlines for the completion of environmental studies and for federal cooperating agencies to fulfill their legal duties in regard to reviewing and commenting on new dam projects (Sec. 705).

- "Streamline" and accelerate feasibility studies, environmental review, and permitting for new dam projects in a manner that will likely fail to identify financially and environmentally feasible alternatives and result in inadequate reports and poor decisions (Sec. 803-805).

- Fail to explicitly protect Sacramento Valley groundwater aquifers, which will likely increase pumping and export of north state groundwater south of the Delta.

Instead of passing this one-sided and environmentally destructive bill, we urge you instead to introduce and pass true drought relief legislation for California that protects water quality, aquatic ecosystems, and native fish and wildlife in our rivers and estuaries, while providing effective and timely relief to California communities, industry, and farms.

Effective drought relief legislation should focus on those immediate actions that will extend our existing supplies, reverse the near total loss of wild salmon runs, boost water conservation and efficiency, provide immediate relief for economically disadvantaged communities and neighborhoods that have run out of water, help mitigate the economic

impacts of reduced water deliveries to farms, and encourage the permanent establishment of fundamental and long term changes in how water is managed and used in California.

We believe that this goal is achievable only if the drought relief bill is drafted in public with the full participation of and input from all of California's water stakeholders.

California does need federal assistance and relief from this devastating drought. But Congress should not make this situation worse by passing drought relief legislation that overrides environmental laws, weakens state water rights authority, pits different regions of the state and different water users against each other, and focuses on the most costly and environmentally destructive water supply option (surface storage) that will provide little immediate drought relief.

Thank you for your consideration.

Sincerely,

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GENERAL MANAGER
Thaddeus L. Bettner, P.E.

Thaddeus Bettner, PE
General Manager
Glenn-Colusa Irrigation District

Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing
On
"Western and Alaska Water Legislation"
Washington, D.C.
October 8, 2015

Chairwoman Murkowski, Ranking Member Cantwell and Members of the Committee, thank you for the opportunity to submit this statement for the record.

I am Thaddeus Bettner, the General Manager of the Glenn-Colusa Irrigation District (GCID), the largest irrigation district in the Sacramento Valley and the third largest irrigation district in the State of California. I appreciate the opportunity to provide GCID's perspective on how the Federal Government can help non-federal public agencies better address the water supply needs of not only our region, but the water supply needs west-wide.

The pressures on our water infrastructure continue to grow each year from changed hydrology associated with the climate change, population growth and new demands for water for the environment. We need a new way of working in partnership with the Federal Government to accelerate water infrastructure improvements that need to be made to be better prepared for water shortages and future droughts. We need new tools from the Federal Government to help non-federal water agencies build new water storage, conveyance and management infrastructure, as well as modernize, upgrade and expand existing water supply infrastructure in the west, much of which was built early in the last century.

I am pleased to say that the two bills before the Committee, S. 1894, sponsored by Senators Feinstein and Boxer, and H.R. 2898, sponsored by Representatives Valadao and others, including Represenative Doug LaMalfa, who represents part of the GCID service area, both have significant provisions that would greatly improve our capacity to accelerate and advance water supply projects to help better prepare our region and State for future water shortages.

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Calfed Water Storage Projects

Both S. 1894 and H.R. 2898 include identical language setting statutory deadlines for the completion of the feasibility study associated with the Sites Reservoir Project, the authorized Calfed North-of-Delta Offstream Storage project.

The language in both bills mandates that work on the project move forward in a manner that will support the construction of the project as either a federal or a non-federal project. The Sites Joint Powers Authority, of which GCID is a member, is working to construct and operate Sites as a non-federal project. The way the language is structured, requiring the completion of a publically available draft feasibility study no later than November 30, 2016, for example, is included to specifically support the formation of a new partnership with the Federal Government, with Reclamation, to expeditiously move this critically important project forward.

New Federal Assistance Tools to Accelerate Water Infrastructure Investments and Implementation

We strongly support the portfolio of opportunities for federal assistance found in S. 1894, as well as the permit streamlining proposals in H.R. 2898. These are among the new tools and reflect the new partnership that must be forged to accelerate needed investments in water infrastructure,

Specifically, the proposals in S. 1894 for (1) low-cost, long-term federally-backed loans, (2) expanded grant opportunities under WaterSMART, (3) direct support from Reclamation for federal and non-federal water storage projects and (4) opening up the Title XVI water reuse program to currently unauthorized water reuse and desalination projects, will, in combination and certain instances coordination, significantly accelerate non-federal investments in much needed water supply infrastructure in California and west-wide.

The provisions of S. 1894 authorizing the Reclamation Infrastructure Finance and Innovation Act (RIFIA) would, for example, provide significant savings to the Sites Project and other large water infrastructure projects west-wide. If a RIFIA loan program were in place today, the program would provide water project sponsors with access to loans with a repayment period of up to 35 years at a rate of 2.89 percent. In comparison to the five percent interest rate assumed in the Sites planning documents, the lower interest rate and extended repayment period would lower the annual debt service costs on any funds borrowed under RIFIA by 29.24 percent. If the Sites JPA could borrow 49 percent of the total project costs, estimates are that RIFIA would drive down the cost of water by approximately $131 an acre-foot, dropping the cost from $571 dollars an acre-foot to $440 an acre-foot, an overall 23 percent reduction in the cost of water from the project. The savings could be greater, given that the federal backing could allow Sites JPA members to attract lower cost financing for any part of the project not covered by RIFIA.

We also support the provisions of S. 1894 that would authorize Reclamation to participate in a non-traditional way in non-federal projects like Sites. S. 1894 authorizes Reclamation to contribute up to 25 percent of total project costs in non-federal projects

like Sites. Reclamation would be able to benefit from a project as a project partner, rather than being saddled with all aspects of a project's development and long-term operation and maintenance. That is the kind of new role Reclamation needs to assume to help accelerate investments in needed water infrastructure west-wide.

GCID also supports efforts to streamline the environmental review process associated with water infrastructure development. While delays in the water supply project environmental review and permitting process are due, in part, to the complexities associated with multiple state and federal agencies being involved in the project, other delays are attributable to shifting environmental requirements.

H.R. 2898 seeks to address many of these challenges by establishing a lead agency to coordinate all federal environmental reviews related to a surface water storage project and directing that a schedule be established and strictly adhered to by Reclamation for the completion of all environmental review processes. And, we appreciate that the environmental streamlining process proposed in H.R. 2898 includes projects, like the Sites Project, which are being developed by non-federal entities in cooperation with Reclamation and other Federal agencies on non-federal lands.

Water Rights Recognition and Protection

GCID also supports the provisions of both bills that seek to reaffirm and strengthen federal recognition of state granted water rights and priorities. As a semi-arid Western state, California has always faced water shortages. The California water rights system was born out of this water scarcity and provides legal stability to an inherently uncertain climatic situation. This legal stability has fostered California's economic and social structures. Indeed, it is the foundation upon which California has been built.

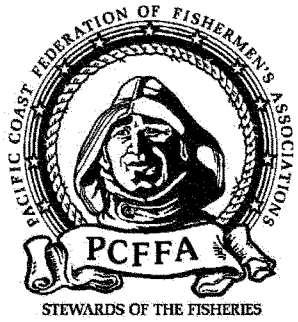
For these reasons, we strongly support the inclusion of language that clearly and unequivocally states adherence to State granted water rights and priorities. We strongly support the concept that there should be no redirected impacts on one group of water users as the Federal Government seeks to help those facing water shortages. The language on these points in H.R. 2898 is preferred over the language in S. 1894. We believe it is clearer in construction and affect. However, we are happy to work with the Committee and others to develop compromise language to address this important priority.

Salmon Recovery

Finally, on salmon recovery, we strongly support the provisions of S. 1894 that call for the implementation of the National Oceanic and Atmospheric Administration's (NOAA) Salmon Restoration Plan. The bill creates an expanded opportunity for non-federal entities to partner with the NOAA Fisheries on salmon recovery projects. The bill not only provides NOAA Fisheries with additional resources, $4 million annually, it calls for NOAA Fisheries to work with other federal agencies to look for ways to better coordinate the permitting and environmental review process for salmon recovery projects.

In 2014, GCID carried out a salmon recovery project at Painter's Riffle on the Sacramento River. This is an area outside of the boundaries of our District, but it was a project of great importance to salmon recovery. In 2011, Painter's Riffle became blocked. Prior to that time, for 25 years, Painter's Riffle, a salmon spawning area, assisted in the survival of the winter-run and spring-run Chinook salmon. GCID worked with state and federal agencies and invested an estimated $300,000 of our own resources to secure the permits and complete the project. Water users in our region have identified dozens of similar salmon recovery opportunities that will be advanced by the adoption of the provisions of S. 1894.

We encourage the Committee and the Congress as a whole to give careful consideration to these important proposals. We encourage you to move forward with your deliberations as soon as practicable, and GCID stands ready to assist you in any way possible. Please do not hesitate to let us know how we may be of assistance as you carry out your important work to help the West become more drought resilient.



8 July 2015

Dear Members of the House Natural Resources Committee,

We write today representing a coalition of sport and commercial salmon fishing groups opposed to House Bill H.R. 2898, the so-called Western Water and American Food Security Act of 2015.

As you know, California and the west are at a critical moment in determining how best to manage scarce water resources during this unprecedented drought. Rather than looking forward to the potential that this drought may continue into the foreseeable future, H.R. 2898 proposes projects and changes to established law that will undermine our ability to respond to the hard realities of drought.

H.R. 2898 is especially concerning to the fishing community because of its potential impacts on the fish species on which our community of commercial and sport fishermen, seafood processors, boat repair businesses, harbors, hotels, wholesalers, truckers, restaurants, grocers and consumers depend. California's fishing industry supports tens of thousands of jobs and contributes billions of dollars to the state's economy. H.R. 2898 will severely compromise this community's ability to put food on the table, especially during this trying moment already complicated by the ongoing drought.

The fishing community takes issue with several of specific provisions in H.R. 2898, both for their impacts on fish and the fishing economy, and for their illogical approaches to remedying practical problems. We list several of the problems we identify in the bill below:

H.R. 2898 Cuts the Fishing Community Out of Management of California's Water Supply

H.R. 2898 purports to consider the impacts of the drought on all different kinds of water users, including refuges, but the words "salmon industry" never appear in the voluminous 170-page draft. This omission lays bare the divisive, political nature of the bill that appears to favor industrial irrigators by sacrificing the needs of the fishing community. It also harms the fragile ecology of the San Francisco Bay-Delta Estuary and other critical waterways in the west that could support a salmon industry that, if healthy, would be valued at almost $6 billion.

The bill takes away management of the Central Valley Project Improvement Act Restoration Fund and giving it to an Advisory Board made up of four agricultural users, two municipal and industrial

users, three Central Valley Project power contractors, one national wildlife refuge representative and one economic analyst. There are no seats reserved for the fishing or salmon industry. This is clearly another attempt to remove salmon and fishing advocates from meaningful participation in matters that affect us directly.

Given the inherent unpredictability of the western water supply, all groups should share the impacts of drought into the future. The bill will guarantee future water deliveries for Central Valley Project water contractors, even in the driest of but these will come, almost certainly, at the expense of the salmon fishery.

H.R. 2898 Relies on Projects that Will Harm Fish and Will Not Provide More Water

A major problem with the bill is its reliance on water storage as the panacea for this drought. H.R. 2898 calls for accelerated review of surface storage projects – without providing essential protections for salmon and other fish and wildlife. Moreover, it's not at all clear that those projects will work as intended – most specifically because it is not clear there will be enough rain in enough years to make those reservoirs functional. And it is plain that there is not enough surplus water in California at this time to warrant construction of any new aboveground storage. Development of new water sources, particularly recycling facilities, would be a much better use of funds that would be set aside for these expensive projects paid for by the taxpayers.

H.R. 2898 proposes that the California Department of Water Resources (DWR) install a deflection barrier in Georgiana Slough to protect migrating salmonids. This would be great if such a technology existed and had been proven effective. DWR has been trying to develop such technology for years with very little success. The fishing community urges you to support development and testing of this technology and prove its efficacy before legislating implementation of these types of expensive infrastructure projects.

The bill averts responsibility for what ails our salmon fishery by trying to redirect the blame to predators, rather than the massive water engineering projects and other manmade modifications of the river and Delta that disrupt salmon habitat while creating ideal predator ambush habitat. Particularly, it sets up a non-native predation fish removal program in the Stanislaus River targeting striped bass, smallmouth bass, largemouth bass and other non-native species with wire fyke traps, portable resistance boards, weirs and boat electrofishing. Any predation program should target mitigation of human impacts that facilitate predation. Going after predators alone is simply a red herring.

H.R. 2898 Rolls Back Protections for the Fish we Rely on for our Livelihoods

The bill significantly curtails Endangered Species Act (ESA) protections for salmon, making it basically impossible to keep our already compromised salmon runs intact. These include closing the Delta cross-channel gates, and increasing diversions to the Bay-Delta Estuary pumping operations. And while these mitigation measures, also known as reasonably prudent alternatives (RPAs), were memorialized in the 2009 salmon Biological Opinion (BiOp), it has become clear that taken alone, the RPAs in the BiOp are not adequate to fully protect all salmon runs – we need additional, stronger mitigation measures, not a weakening of those already in place, as this bill would do.

The bill provides complicated guidance on how ESA-listed salmon species will be managed, but it wholly fails to address any non-listed species. This includes the commercially valuable fall and late fall runs, which are the cornerstone of California's commericial and recreational salmon fisheries,

and also support fisheries in both Oregon and Washington. We call your attention to the recent letter from the Oregon delegation urging consideration of impacts on that states' fisheries vis-a-vis drought legislation. H.R. 2898's weakening of environmental protections for the benefit of industrial irrigators in the western San Joaquin desert will certainly harm commercially valuable runs, and lead to potentially devastating effects on the fishing industries in California, Oregon and Washington.

The bill would require that listed hatchery salmon and wild spawning salmon shall be categorized as one and the same evolutionarily significant unit (ESU), even though this approach was struck down by a federal court in *Alsea Valley Alliance v. Evans* 161 F.Supp.2d 250 (D. Oregon 2001). This provision goes against the measured opinion of the expert agencies, and would likely be struck down pursuant to future, unneccesary litigation if H.R. 2898 becomes law.

The bill requires the USBR Commissioner and the Assistant NOAA Administrator (NMFS) to develop and implement changes to salmon RPA's as to facilitate additional water deliveries. It goes into great detail on each action that must be evaluated for better flows and requires an annual report of efforts to implement those changes. However, this reverses the purpose of the BiOp and its RPAs, which are based on the best available science and designed to protect listed salmon runs. In dry years, we are already losing salmon runs under the current RPAs; any additional relaxation of those standards could create severe challenges for the fleet.

We urge you to adhere to the ESA's current protections for fish. Despite that we are in the business of harvesting fish, the fishing community believes that the ESA is a main reason we still have salmon in California. We offer our strong support for preserving and strengthening the ESA as a means of ensuring fishing's future, and not tearing it down, as H.R. 2898 would do.

H.R. 2898 Changes Established Water Allocation Principles for the Benefit of Industrial Irrigators, At the Expense of Fish and Fishermen

H.R. 2898 calls for changes to the operations of the Trinity River, for the benefit of growers in the San Joaquin Valley at the expense of salmon. This is a bald-faced water grab that says industrial irrigation is more important than the survival of a species.

H.R. 2898 undermines a careful balance of water allocation that took 18 years to achieve. The bill would repeal the San Joaquin River Settlement and the salmon restoration program that all water users, including the industrial irrigators supporting H.R. 2898, supported when the settlement was signed. Establishing the precedent that hard-fought, collaborative water agreements could be simply legislated out of existence may undermine any future attempts at cooperative efforts to resolve water issues in the west.

In conclusion, there are many significant flaws in H.R. 2898. This drought and its impacts will not be solved by pushing the burden onto each other's backs. We need real-world solutions that deal with the fact that there might not be as much water in the west as our forebears were lead to believe. For that reason, we call on you to reject H.R. 2898, which will undoubtedly force significant, disparate impacts on fishermen, while permitting industrial irrigators to carry on business as usual with an even greater water supply at the expense of the environment.

It seems clear that the salmon will never survive if this bill becomes law.

Sincerely,

John McManus

John McManus, Executive Director
Golden Gate Salmon Association

Tim Sloane, Executive Director
Pacific Coast Federation of Fishermen's Association

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October 7, 2015

The Honorable Senator Lisa Murkowski
Chair, Senate Energy and Natural Resources Committee
Washington, DC

The Honorable Senator Maria Cantwell
Ranking Member, Senate Energy and Natural Resources Committee
Washington, DC

Re: <u>S. 1894 and H.R. 2898</u>

Dear Chairwoman Murkowski and Ranking Member Cantwell,

On October 8, 2015 the Senate Energy and Natural Resources Committee will consider S. 1894 (Feinstein) and H.R. 2898 (Valadao), each setting forth a different approach for addressing the persistent drought conditions in California, including challenges faced by Central Valley Project water users. Grassland Water District is a Central Valley Project contractor and submits these comments for the record on both bills.

Grassland Water District worked with other water contractors to ensure that S. 1894 does not include provisions that could create conflicts with federal water contracts and reclamation law, or create unnecessary administrative hurdles in our collective efforts to combat drought. (There was no such opportunity for collaboration on the development of H.R. 2898.) As a result, Grassland Water District has developed a set of three basic principles required for our support of any federal drought legislation:

1. No new statements of contractor priority, including statements that contradict the current priority status of refuge contractors.

2. Maintain the priority focus of the CVPIA on mitigation and restoration.

3. No new Restoration Fund Advisory Board.

Grassland Water District strongly opposes the following four provisions of H.R. 2898, which go against these basic principles: Sections 503(c)(1), 602, 604, and 609. Grassland Water District strongly supports S. 1894 as currently written. Thank you for considering these comments as Congress moves forward on reaching a workable legislative solution for California's drought crisis.

Sincerely,

Ric Ortega
General Manager

cc: Senator Diane Feinstein
Senator Barbara Boxer

1124-835j

STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

February 27, 2012

The Honorable John Boehner
Speaker of the House of Representatives
Office of the Speaker
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
House of Representatives
H-204, US Capitol
Washington, DC 20515

RE: H.R. 1837 (Nunes)

Dear House Speaker Boehner and House Minority Leader Pelosi:

I am writing to express my opposition to H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act. I am deeply concerned that passage of H.R. 1837 would abrogate long-standing provisions of California law designed to protect the State's natural resources and would violate settled constitutional principles of state sovereignty.

H.R. 1837 would transgress state sovereignty in at least three important respects. First, the legislation would mandate that the federal Central Valley Project (CVP) and the California State Water Project (SWP) operate in perpetuity to fixed water quality standards for the Sacramento-San Joaquin Delta agreed upon in 1994, even though the California State Water Resources Control Board (SWRCB) is presently re-evaluating those standards based upon the almost two decades of new scientific information made available since 1994. Second, the legislation would prohibit the SWRCB and the California Department of Fish and Game (DFG) from exercising their state law responsibilities to protect fishery resources and public trust values where such actions would restrict the diversion and storage of water, not just by the CVP and the SWP, but by virtually any water diverter in the State. Third, the legislation would overturn settled principles of cooperative federalism by vacating the San Joaquin River Restoration Settlement Act and banning the application of State fishery protections to the San Joaquin River operations of the Friant Unit of the CVP.

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These proposed federal constraints on California's ability to manage its natural resources are unprecedented. Over three decades ago, in the seminal decision of *California v. United States* (1978) 438 U.S. 645, 653, former Chief Justice William Rehnquist affirmed California's ability to impose state law terms and conditions on federal reclamation projects, and observed that "[t]he history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress." Under California law, the SWRCB has the continuing authority to review and reconsider all water rights for the purpose of determining whether the exercise of those rights would violate the reasonable use requirements of Article X, Section 2 of the California Constitution or California's public trust doctrine. According to the California Supreme Court in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." In 2009, the California Legislature expressly adopted these principles as "the foundation of state water management policy." (Cal.Wat. Code, § 85023.) By abrogating the State's ability to apply these principles to water diverters, H.R. 1837 contravenes the long-standing history of deference to state water law described by Chief Justice Rehnquist.

Moreover, H.R. 1837 takes these steps in violation of settled constitutional principles of state sovereignty. Relying upon separation of powers principles set forth in the Tenth Amendment and elsewhere in the U.S. Constitution, the U.S. Supreme Court in *New York v. United States* has held that "Congress may not simply 'commandee[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program." (*New York v. United States, supra,* 505 U.S. at 161, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.* (1981) 452 U.S. 264, 288.) In *Printz v. United States,* the U.S. Supreme Court expanded its ruling in *New York* and declared that "[t]oday we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly." *Printz v. United States* (1997) 521 U.S. 898, 935. According to the Court, the constitutional system of dual sovereignty demands that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Id.*)

By compelling the SWP, a state financed and managed water project, to operate based upon 1994 Delta water quality standards, rather than allowing California to develop standards that reflect the most recent scientific information regarding the Delta, H.R. 1837 violates the U.S. Supreme Court's state sovereignty principles. Similarly, by prohibiting the SWRCB, the DFG, or other state agencies from taking action to protect fishery and public trust values other than those contained in the 1994 standards, the legislation further violates these state sovereignty

rulings. Under H.R. 1837, Congress would have, in effect, unconstitutionally "dragooned" state officers "into administering federal law." (*Id.* at 928.)

I urge you to reject H.R. 1837. It undermines the long history of cooperative federalism and invades an important arena of state sovereignty. It is important to Californians and to all the citizens of this great Nation that the existing legal framework for water resource issues be strengthened and preserved, rather than dismantled.

Sincerely,

KAMALA D. HARRIS
Attorney General

cc: California Congressional Delegation
Senator Dianne Feinstein
Senator Barbara Boxer
Jerry Brown, California Governor
John Laird, California Natural Resoures Secretary
Senator Pavley, California Senate Natural Resources and Water Comm. Chair
Assembly Member Huffman, CA Assembly Water, Parks, & Wildlife Comm. Chair

Statement of Ryan P. Jackson
Hoopa Valley Tribal Council Chairman

Before the
Committee on Energy and Natural Resources
United States Senate

S. 1894,
the California Emergency Drought Relief Act of 2015,

and

H.R. 2898,
the Western Water and American Food Security Act of 2015

Full Committee Legislative Hearing
October 8, 2015, 9:30 a.m.

Thank you for the opportunity to present written testimony on behalf of the Hoopa Valley Tribe concerning S. 1894 and H.R. 2898. I ask that the Subcommittee consider our testimony carefully in determining whether to take action on these bills. In brief, Section 101(a) of S. 1894 should be amended. H.R. 2898 should be disapproved by the Committee or, at a minimum, Section 608 of H.R. 2898 should be deleted.

1. Introduction and Interest of the Hoopa Valley Tribe

The Hoopa Valley Indian Reservation is the largest land based Indian reservation in California. The Klamath River runs through the northern part of our Reservation, and the Trinity River, the largest tributary of the Klamath, bisects our Reservation running south to north. Since 1963, most of the Trinity River flow has been diverted into the Sacramento River by the Trinity River Division ("TRD") at Lewiston, California. The diversion tunnels through the mountains to Whiskeytown Reservoir and thence to the Sacramento River where its waters are integrated with those of the Central Valley Project ("CVP"). The Trinity and Klamath Rivers join at our northern boundary with the Yurok Indian Reservation. See attached map. The Hoopa Valley Tribe has a vital interest in actions that affect the Klamath River Basin and the CVP.

Since time immemorial, the fishery resources of the Klamath and Trinity Rivers have been the mainstay of the life and culture of the Hoopa Valley Tribe. The fishery was "not much less necessary to the existence of the Indians than the atmosphere they breathed." *Blake v. Arnett,* 663 F.2d 906, 909 (9th Cir. 1981) (quoting *United States v. Winans,* 198 U.S. 371, 381 (1905)). The salmon fishery is integral to the customs, religion, culture, and economy of the Hoopa Valley Tribe and its members.

The federal government established the Hoopa Valley Reservation in 1864. The Hoopa Valley Reservation is located in the heart of the Tribe's aboriginal lands, lands the Tribe has occupied since time immemorial. The Hoopa Valley Tribe has fishing and water rights in the Klamath River with a priority date of 1864, as recognized by the United States in the Memorandum from Solicitor of the Department of the Interior to the Secretary of the Interior (Oct. 4, 1993); and the Memorandum from Regional Solicitor, Pacific Southwest Region to the Regional Director, Bureau of Reclamation, Mid-Pacific Region (July 22, 1995) (collectively, "Solicitors' Opinions"); and by federal courts in, for example, *Parravano v. Babbitt*, 70 F.3d 539 (9th Cir. 1995).

Congress has recognized and confirmed, for example in the Central Valley Project Improvement Act, Pub. L. 102-575, Sections 3406(b)(23) (Oct. 30, 1992), that the United States has a federal trust responsibility to restore and maintain the fishery trust resources of the Hoopa Valley Tribe to specified standards. Those standards are recognized in federal law and have become a legal mandate. The Hoopa Valley Tribe's rights are unique.

The fish and water resources of the Klamath River Basin have been severely and adversely affected by the federal authorization, construction, and operation of the Trinity River Division ("TRD") of the CVP and by the Klamath Reclamation Project and the Klamath Hydroelectric Projects upstream of the Hoopa Valley Reservation. The impacts associated with blocked fish passage, nutrient enrichment, loss of habitat, and inadequate instream flows due to the authorization, construction, and operation of the CVP and the Klamath Projects have contributed to the listing of the Southern Oregon/Northern California coast ("SONCC") Coho salmon and its critical habitat under the Endangered Species Act.

2. S. 1894 and H.R. 2998 Hurt Indian Fisheries

Unless amended, these bills will adversely affect our Tribe's rights to fish in the Trinity River, which is the largest tributary and source of Klamath River Basin fish. Our rights are based on a legal framework that the Tribe has spent decades in developing and enforcing. The capstone of that framework is the Trinity River Mainstem Fishery Restoration Record of Decision ("TRROD") that Congress specifically authorized the Secretary and the Tribe to adopt in Pub.L. 102-575 (1992). It is our 20th Century Treaty with the United States. Our stewardship of the fishery resources of the Trinity and Klamath River system is well-recognized and has been publicly commended by Members. We cannot accept legislation that will impair those treaty commitments. The Hoopa Valley Tribe has a long record, through administrative, legislative, and judicial action, of defense of our rights in the Klamath and Trinity Rivers. We will not rest until our rights are secured.

Recent dry conditions in the Oregon portion of the Klamath Basin coupled with over-appropriation of waters from the Upper Klamath River by the Bureau of Reclamation frequently create serious adverse conditions, in both Oregon and California, with consequences that ripple all the way to southern California.

The reduced availability of Klamath River water in several years has caused the Pacific Fisheries Management Council, the Trinity Management Council, and California Salmon and Steelhead Advisory Committees to call on the Secretary of the Interior to take action to release

water from the CVP's TRD reservoirs water, in addition to that released for the Trinity fishery under our TRROD treaty with the United States, in order to prevent a die-off of adult salmon in the Lower Klamath River. In 2013, 2014, and 2015, CVP contractors sued to prevent those water releases and that litigation is pending in federal court. The Trinity and Klamath are under stress from the CVP and the BDCP.[1]

As less volume and more polluted water flows into California from Oregon, the stress on California salmon of the Klamath Basin increases sharply. For most of the last decade, the only safety valve for fish survival in the Lower Klamath River and estuary has been increased releases of water from Trinity (TRD) reservoirs. That means less water for the CVP. In *Wyoming v. Colorado,* 259 U.S. 419 (1922), the Supreme Court ruled that the waters of a stream rising in one State and flowing into another State may not be disposed of by the upper State without regard to the harm that may inure to the lower State. Even without an interstate adjudication, the relative rights of two adjoining states which have both adopted the doctrine of prior appropriation should be determined on that basis. Oregon is not free to adjudicate and dispose of all of the waters of the Klamath River Basin in Oregon, but must respect the senior, 1864, rights reserved by the United States for the Hoopa Valley Tribe in California in order to support a moderate living based upon the taking of salmon and other aquatic species. *See Parravano v. Babbitt,* 70 F.3d 539 (9th Cir. 1995). Unless S. 1894 and H.R. 2898 are amended, they threated to exacerbate the interstate problem described above. Under existing law, the United States and the Bureau of Reclamation are obligated to ensure that irrigation projects do not interfere with the tribes' senior water rights.[2] The United States has a trust responsibility to ensure that its activities would not adversely affect the tribes' fishing rights.

3. S. 1894 Should be Amended to Protect Tribal Fishing Rights and the Klamath River Basin

Section 101(a)(1) of S. 1894 directs the Secretary of the Interior and the Secretary of Commerce to provide maximum quantities of water to CVP contractors and others "consistent with applicable laws." We urge the Committee to amend Section 101(a)(1) to state as follows:

> . . . consistent with applicable laws (including regulations), **and subject to the diversion limits, priorities, and Klamath basin uses established in Section 2 of Pub. L. 84-386, 69 Stat. 719 (August 12, 1955), Section 3406(b)(23) of Pub. L. 102-575, 106 Stat. 4720 (October 30, 1992) (including agreements and**

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[1] Analyses of the Bay Delta Conservation Plan (BDCP) and the proposed tunnels around the San Francisco Bay Delta rely on water legally committed to the Trinity and Klamath Rivers. BDCP and Interior officials continue to deny requests that BDCP models incorporate Trinity water rights. They have refused to do so on the grounds that the water has not been historically used. But that is because of Interior's refusal to release the water. The BDCP model includes anticipated future uses in the Sacramento basin, so it makes no sense for the Bureau to refuse to do the same for existing demands in the Klamath basin.

[2] *See* Memorandum of Regional Solicitor, Pacific Southwest Region to Regional Director, Bureau of Reclamation Mid-Pacific Region re Certain Legal Rights and Obligations Related to the U.S. Bureau of Reclamation, Klamath Project (July 25, 1995) and Memorandum to Regional Director from Regional Solicitor, Pacific Southwest Region re Oregon Assistant Attorney General's March 18, 1996 Letter (January 9, 1997).

> **contracts based thereon), and the federal trust responsibilities to Indian tribes,** projects and operations to provide additional water supplies as quickly as possible based on available information, to address the emergency conditions.

As noted above, the 1955 and 1992 Acts represent a careful balance between the needs of the CVP and those of the Klamath Basin's Trinity River, which is diverted into the CVP. The important interests in the Klamath Basin must be respected by making clear that those laws are among the "applicable laws" denoted by this subsection.

4. H.R. 2898 Contains Harmful Provisions That Must Be Deleted

The Hoopa Valley Tribe strongly opposes H.R. 2898. We ask that the Committee use S. 1894, as amended above, as a better alternative approach to water issues in California.

Section 608 of H.R. 2898 directly injures our reserved water and fishing rights and the rights of the Klamath Basin people and economy more generally.[3] That section limits water releases to the Trinity River to those prescribed in the TRROD, the Record of Decision of December 2000. Section 608 thus appears to override other statutory obligations of the Secretary, such as the duty to "adopt appropriate measures" to preserve fish and wildlife and the duty of the Secretary to make water available to Humboldt County and downstream water users, both as provided in the Act of August 12, 1955, ch. 872, 69 Stat. 719. If the Committee decides to advance H.R. 2898, then the language preserving specified applicable laws in S. 1894, Section 101(a) should also be included in H.R. 2898.[4]

My testimony focuses on Section 608 of the bill because it would confiscate our long-standing vested contractual and other property rights under federal and California State law in the Trinity River. The law governing our rights is a model of cooperative federalism that should be upheld, not debased, as would be the case with H.R. 2898. If enacted, H.R. 2898 would break faith with national and state commitments to our people and California's North Coast region. It would also set back progress in rebuilding our tribal economy.

Section 608 provides that the Secretary of the Interior shall not make releases [to the Trinity River] from Lewiston Dam in excess of the volume for each water year type required by the TRROD, the Record of Decision, Trinity River Mainstem Fishery Restoration. While Section 608 accurately lists the requirements of the TRROD, it ignores other provisions of law mandating that additional water remain in the Trinity River. Further, Section 608 overlooks the limited scope of the TRROD and thus seeks to make it the exclusive means of addressing problems it was never intended to encompass.

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[3] Other provisions of H.R. 2898 repeal San Joaquin Valley restoration obligations, tamper with reasonable and prudent measures required to protect endangered fish in the Central Valley, and interfere with the work of the California State Water Resources Control Board.

[4] This could be done by inserting a new Sec. 605, to read as follows: "Nothing in this Act preempts or modifies the diversion limits, priorities, and Klamath basin uses established in Section 2 of Pub. L. 84-386, 69 Stat. 719 (August 12, 1955), section 3406(b)(23) of Pub. L. 102-575, 106 Stat. 4720 (October 30, 1992), and by the federal trust responsibility to Indian tribes."

In the fall of 2002, a fish die-off occurred in the Lower Klamath River (downstream of the confluence with the Trinity River) and within the Yurok Reservation. Federal, state, and tribal biologists concluded that pathogens were the primary cause and that warm water and low flow conditions contributed to the outbreak. The U.S. Fish and Wildlife Service estimated that over 34,000 fish, mainly adult fall-run Chinook salmon, died from the disease outbreak, but noted that its estimate was a conservative one. Actual losses may have been more than double that number.

Following the unprecedented fish die-off, the Bureau of Reclamation made flow augmentation releases to the Trinity River in excess of the TRROD limits in 2003 (34,000 acre-feet) and in 2004 (36,200 acre-feet) in an effort to avoid repeat of 2002 conditions. Low flow conditions and projected high fish densities again coincided in the recent drought years. In 2012, fisheries scientists developed flow recommendations aimed at preventing another fish die-off and the Bureau of Reclamation, pursuant to environmental assessments and findings of no significant impact, made releases in 2012 (39,000 acre-feet), 2013 (17,500 acre-feet), 2014 (64,000 acre feet) and 2015 (51,000 acre feet).

Unlike the TRROD, which was addressed to limited fisheries habitats in the 20 miles immediately below Lewiston Dam, the flow augmentation releases ("FARs") addressed the needs of migrating salmon more than 100 miles farther downstream, on the Lower Klamath River. The authority of the Secretary to make FARs has been the subject of litigation in the federal courts. In *San Luis and Delta-Mendota Water Authority v. Jewell,* 52 F. Supp. 3d 1020 (2014) ("*Jewell I*"), Judge O'Neill examined the applicability of Proviso 1 of the Act of 1955, ch. 872, 69 Stat. 719, which states:

> That the Secretary is authorized and directed to adopt appropriate measures to ensure the preservation and propagation of fish and wildlife.

The court ruled that the TRROD was limited in geographic scope to the Trinity River Basin and that its maximum flow limitations (recited in Section 608 of H.R. 2898) did not preclude the Secretary of the Interior from releasing water from Lewiston Dam above and beyond those maximums. However, the court concluded that the authority provided by Proviso 1 of the 1955 Act was limited to the Trinity River Basin. *Jewell I* at 1057-63.[5]

Judge O'Neill's ruling in *Jewell I* did not address other legal authorities that independently support the use of FARs to avert fish die-offs. Those additional authorities came into play in 2015 when the Secretary relied in particular on Proviso 2 of Section 2 of the 1955 Act. In denying a request for injunctive relief, the court ruled:

> [T]he cited authorities [are] more compelling than those relied upon in the prior lawsuit. For instance, federal defendants now principally rely on the second proviso of Section 2 of the 1955 Act (Proviso 2), which states "not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to

[5] That ruling is before the Ninth Circuit Court of Appeals in No. 14-17493.

> Humboldt County and downstream users." The present record reflects the Congresses' reference to "downstream users" may have been intended to include users on the Klamath River below the confluence with the Trinity, including some users who likely would only have been concerned with instream, rather than consumptive uses.

San Luis and Delta-Mendota Water Authority v. Jewell, No. 15-cv-01290 (E.D. Cal. Aug. 26, 2015) (footnote omitted) ("*Jewell II*").

Section 608 of H.R. 2898 would by implication repeal Proviso 2 of the 1955 Act, the law that was relied upon by Judge O'Neill in *Jewell II.* But Section 608 would have even broader effect on existing law because other laws also provide independent authority for the Secretary to release water to the Trinity River as necessary to avoid fish die-offs. For example, the Trinity River Basin Fish and Wildlife Management Act of 1984, as amended, authorizes the Secretary to:

> [F]ormulate and implement a fish and wildlife management program [that] includes . . . [t]he design, construction, operation, and maintenance of facilities to rehabilitate fish habitats. . . . [And to implement] other activities as the Secretary deems to be necessary to achieve the long-term goal of the program [of restoring fish and wildlife populations].

Pub. L. 98-541, 98 Stat. 2721.

When the Trinity River Basin Fish and Wildlife Management Act was reauthorized in 1996 the scope of its rehabilitation mandate was expanded to include the requirement to:

> Rehabilitate fish habitats in the Trinity River between Lewiston Dam and Weitchpec and in the Klamath River downstream of the confluence with the Trinity River.

Pub. L. 104-143, 110 Stat. 1338, § 2(a)(1).

Indeed, in *Jewell I,* the court pointedly suggested that the Bureau of Reclamation could have relied upon the 1996 amendment to the Trinity River Basin Fish and Wildlife Management Act to make the FARs involved there. *Id.,* 52 F. Supp.3d at 1062, n. 26.

In addition, California law protecting fish populations would be overridden by Section 608 of H.R. 2898. In particular, Cal. Fish and Game Code § 5937 requires the owner of any dam to "allow sufficient water at all times to pass . . . over, around, or through the dam to keep in good condition any fish that may be planted or exist below the dam." Section 5937 is a legislative expression of the public trust protecting fish as trust resources when found below dams. In *Jewell I* the California Department of Fish and Wildlife argued that the FARs are "entirely consistent with and implemented these public trust requirements."

In summary, Section 608 of H.R. 2898 would radically change existing provisions of law that protect fish and water resources of the Trinity River Basin and would deny to the residents of Humboldt County and downstream areas the 50,000 acre-feet of water that Congress required be made available for beneficial uses.[6]

5. Basin Wide Management.

It was apparent by the 1980s that the Klamath and Trinity fishery and watershed activities were in need of being coordinated if proper fishery, habitat and water management were to be successful. In 1986, we worked with the States of California and Oregon, the Department of the Interior and Pacific Fishery Management Council to coordinate harvest management, fish habitat and water management that would complement our work on the Trinity. The Tribe was instrumental in enacting Pub. L. 99-552, the Klamath River Basin Fishery Resource Restoration Act, which created the Klamath Fishery Management Council and Klamath River Basin Fisheries Task Force (Klamath Task Force). The Klamath Fishery Management Council worked to bring together policy managers from the States and Federal agencies, while the Klamath Task Force focused its attention on habitat issues.

Pub. L. 99-552 provided a framework to: Ensure more effective long-term coordination of Klamath-Trinity River fisheries under sound conservation and management principles that ensure adequate spawning escapement and monitoring.

- improve area hatcheries to assist in rebuilding natural fish populations and maintaining genetic integrity and diversity among sub basin stocks;
- improve upstream and downstream migration by removal of obstacles to fish passage; and
- rehabilitate watersheds;

The Act also planned for the expansion of the management structure to include the Klamath Tribes and Commissioners of Klamath County in Oregon once management activities included areas above the Iron Gate Dam.

The Klamath Fisheries Management Council successfully worked among the agencies and stakeholders to establish a balanced harvest and spawning escapement management structure that remains in place. Today, the Klamath Fishery Management Council's work has been incorporated into the West Coast fishery management. The Klamath Task Force's reports, findings and recommendations on habitat and restoration are posted online by the U.S. Fish and Wildlife Services Office in Yreka, California. The Klamath Task Force thus attempted to bring balanced management to Klamath and Trinity fishery restoration activities and water quality and quantity concerns. Unfortunately, Pub. L. 99-552 expired in 2006 and was not reauthorized.

[6] In 2014, the Solicitor of the U.S. Department of the Interior definitively construed the 50,000 acre-feet provision of the 1955 Act, making clear that the volume of water was separate from waters to be used for preservation and propagation of fish.

In 1996, Pub. L. 104-143, the Trinity River Basin Fish Management Reauthorization Act of 1995, was enacted to expand the definition of Trinity River fishery habitat to include the Lower Klamath River area downstream of the confluence with the Trinity River. Pub. L. 104-143 also required improvements in the Trinity River Fish Hatchery so that it can best serve its purpose of mitigation of fish habitat above Lewiston Dam while not impairing efforts to restore and maintain naturally reproducing anadromous fish stocks within the basin.

Basin-wide management, based on the Trinity River Restoration Program model, is important for an additional reason. The Trinity River stands as the sole safety net for the Klamath River Basin. As demonstrated in 2004, 2012, and 2013, the Trinity River has been the only source of available water to address low flow, warm water, and disease conditions that have come to characterize the Lower Klamath River Basin. In order to keep the Trinity River in a position of being able to address water quality for the Lower Klamath River, the Trinity restoration work must continue to be successful, with stable funding and an adequate water quantity for salmon spawning and rearing habitat.

The National Research Council Report on Klamath (2007)[7] also urged establishment of a Basin-wide management structure. The National Research Council Report pointed to the final Trinity River Mainstem Fishery Restoration EIS/EIR [2000] as:

> a governance structure that is explicitly intended to facilitate the program's Adaptive Environmental Assessment and Management efforts. . . . [T]his governance structure appears to provide clear paths for bringing information that is critical to land, water and species management to those who can use it. Adaptive management in the greater Klamath River Basin would benefit substantially by adopting organizational and process approaches that are being used to support restoration planning in the Trinity River sub-Basin.[8]

In response to this recommendation, the Hoopa Valley Tribe has proposed a Joint Directorate, which would extend the Trinity River Restoration Program approach to the entire Klamath River Basin. The comprehensive management structure that Hoopa has suggested here is based on our successful work over the last few decades to coordinate management in the Klamath and Trinity Basins. The Committee may wish to consider using provisions of Pub. L. 99-552 or our Joint Directorate proposal if it undertakes restructuring of S. 1894 and H.R. 2898.

My statement is accompanied by (1) the Memorandum Opinion M-37030 of the Solicitor, U.S. Department of the Interior, to the Secretary of the Interior, Regarding Trinity River Division Authorization's 50,000 Acre-Foot Proviso and the 1959 Contract between the Bureau of Reclamation and Humboldt County (December 23, 2014) http://bit.ly/1Nnb0lY; and (2) a map of the region prepared by the Tribe that depicts the geographical and physical features of California water resources developments affecting the Hoopa Valley Reservation http://bit.ly/1hqKTfm.

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[7] Committee on Hydrology, Ecology, and Fishes of the Klamath River Basin, National Research Council (2007), (Chap. 6 "Applying Science to Management").

[8] Hydrology, Ecology, and Fishes of the Klamath River Basin (NRC 2007) at 141.

S. 1894 should be amended to clarify the applicability of laws protecting the Klamath-Trinity Basin. H.R. 2898 should not be reported or passed in its present form. Thank you for the opportunity to testify in this matter.

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United States Department of the Interior

OFFICE OF THE SOLICITOR

December 23, 2014

M-37030

Memorandum

To: Secretary

From: Solicitor

Subject: Trinity River Division Authorization's 50,000 Acre-Foot Proviso and the 1959 Contract between the Bureau of Reclamation and Humboldt County

Introduction

This memorandum responds to the Bureau of Reclamation's request for a legal interpretation of section 2 of the 1955 Act[1] that established the Trinity River Division (TRD) and the corresponding 1959 contract between the Bureau of Reclamation (Reclamation) and Humboldt County (1959 Contract). The request stems in part from a September 2010 letter from the Chairman of the Humboldt County Board of Supervisors seeking to "reaffirm the County's contractual right to not less than 50,000 acre-feet annually from the Trinity Reservoir" based on section 2 of the 1955 Act.[2]

Concerns regarding fishery needs in the lower Klamath River, below the confluence with the Trinity River to the Pacific Ocean, and actions that Reclamation took in the late summer the past three years have further heightened interest in this matter.[3] Over the past twelve years, the Department--particularly Reclamation--has faced increasing pressure to address conditions in the lower Klamath River in order to prevent a fish die-off, such as the one that occurred in September 2002. In five of the past twelve years, Reclamation has responded by releasing additional water from the TRD--first through purchase from willing sellers in 2003 and 2004, and then in 2012 and 2013 under the authority of the 1955 Act to protect the fishery. This year, Reclamation also released flows on an emergency basis, again citing the 1955 Act, to address rapidly deteriorating conditions related to the severe drought. The more recent releases spurred Central Valley Project (CVP) water users to file a lawsuit challenging Reclamation's actions.[4]

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[1] Act of August 12, 1955, 69 Stat. 719.

[2] September 7, 2010 Letter from Humboldt County Chairman Clendenen to Commissioner Connor re: Humboldt County Central Valley Project Contract. *See also infra* note 11.

[3] *See, e.g.*, July 19, 2013 Letter from Congressmen Huffman, Thompson, and Miller to Secretary Jewell (discussing efforts to protect the fishery in 2012 and 2013 and previous requests by Humboldt County and others to utilize section 2 of the 1955 Act); October 2, 2014 Letter from Congressman Huffman to Acting Commissioner Pimley (discussing the desire for Reclamation to address the obligation to make water available under section 2 of the 1955 Act).

[4] Reclamation cited Proviso 1 of the 1955 Act for the TRD supplemental flows (*i.e.* in addition to the volumes established in the 2000 ROD) released in 2012, 2013, and 2014 to protect Klamath and Trinity fish stocks against

During the period since 2002, as well as previously, Humboldt County officials and other interested parties also urged Reclamation to release additional TRD water to support instream flows for salmon.[5]

In response to these concerns, Reclamation is developing a long-term management strategy regarding instream flows in the lower Klamath River. This memorandum provides legal analysis of one of the authorities that Reclamation is considering in developing a long-term augmentation plan.

As discussed in more detail below, I conclude that the two provisos in section 2 of the 1955 Act--one regarding the maintenance of Trinity River flows and other appropriate measures to ensure the preservation and propagation of fish and wildlife (Proviso 1), and the other requiring that not less than 50,000 acre-feet be released annually and made available for Humboldt County and downstream water users (Proviso 2)--represent separate and independent limitations on the TRD's integration with, and thus diversion of water to, the CVP. Accordingly, I conclude that the water envisioned in Proviso 2 does not necessarily fall within the volumes released pursuant to Proviso 1. Additional releases to the Trinity River may also be required pursuant to Proviso 2 in response to proper requests and applicable law.

The legal analysis in this memorandum includes a review of Reclamation's past interpretation of the 1955 Act as well as prior memoranda from the Regional Solicitor's office. The prior interpretations generally deemed water to satisfy Humboldt County and downstream water users under Proviso 2 as being subsumed within the fishery releases of Proviso 1. It is my conclusion that these interpretations may not be consistent with the distinct purposes of the two provisos. I conclude instead that the better reading of the statute is that the two provisos authorize and may require separate releases of water as requested by Humboldt County and potentially other downstream users pursuant to Proviso 2 and a 1959 Contract between Reclamation and Humboldt County.

Relevant Statutory Provisions

Section 2 of the 1955 Act reads:

> Subject to the provisions of this Act, the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available: *Provided*, That the Secretary is authorized and directed to adopt appropriate measures to insure the

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potential disease outbreaks, such as occurred in 2002 in the lower Klamath River. Central Valley water users sought to enjoin this action in 2013. Although the court did not prevent Reclamation from making such augmentation flows in 2013 or 2014, the court's recent ruling questioned Reclamation's ability to rely upon Proviso 1 as authority for the 2013 releases. *San Luis & Delta Mendota Water Authority, et al. v. Jewell, et al.*, Case No.: 1:13-CV-01232-LJO-GSA (E.D. Cal., Oct. 1, 2014). The Department of Justice will be filing a protective notice of appeal on behalf of the Department.

[5] *See, e.g., supra* notes 2 and 3; *infra* note 11 and accompanying text.

preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be non-reimbursable **[Proviso 1]**: *Provided further*, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users **[Proviso 2]**.

Setting and Background

TRD Authorization and Contract with Humboldt County

The Trinity River originates in the Salmon-Trinity Mountains (also known as the Trinity Alps) of northwest California. *See* Attachment 1 (Map). The Trinity River drains approximately 2,965 square miles and flows generally southward until Lewiston, where it then flows northwesterly, joining the Klamath River in Humboldt County near the boundary of the Hoopa Valley Indian Reservation. From this point, the lower Klamath River continues in a northwesterly direction, flowing through Humboldt County and the Yurok Indian Reservation before reaching the Pacific Ocean just south of the California-Oregon border. Reclamation's TRD facilities include Trinity Dam and Reservoir and Lewiston Dam and Reservoir on the Trinity River in Trinity County, and while the facilities allow a portion of the water from the Trinity River to flow to its confluence with the Klamath River, since the completion of the TRD, the facilities have diverted a significant volume of the Trinity River outside of the Trinity River basin and into the Sacramento River Basin to the east, making it available for delivery to Reclamation's CVP contractors.

Plans to divert Trinity River water to the Central Valley began in the 1930s under California's Water Plan.[6] The Department subsequently provided Congress with reports and findings on a plan of development in the early 1950s. Based on the reports, Congress concluded that water "surplus" to the present and future needs of the Trinity and Klamath Basins--estimated at approximately 700,000 acre-feet per year and considered "wasting to the Pacific Ocean"--could be diverted to the Central Valley "without detrimental effect to the fishery resources."[7] Congress authorized the TRD on August 12, 1955 (1955 Act).[8] Attachment 2.

[6] The *California Water Plan* (Plan), a State document, provides a framework for water managers, legislators, and the public to consider options and make recommendations regarding California's water future. The Plan, which is updated every five years, presents basic data and information on California's water resources--including water supply evaluations and assessments of agricultural, urban, and environmental water uses--to quantify the gap between water supplies and uses. The first Plan was the State Water Plan of 1930, transmitted on January 1, 1931.
[7] H. Rep. No. 84-602, at 4-5 (1955); S. Rep. No. 84-1154, at 5 (1955).
[8] Pub. L. No. 84-386, 69 Stat. 719-21.

Congress authorized the TRD as an integrated component of the CVP in order to increase water supplies for irrigation and other beneficial uses in the Central Valley. Section 2 of the 1955 Act, however, included two provisos that limit this integration. Proviso 1 directed the Secretary to ensure the preservation and propagation of fish and wildlife through the adoption of appropriate measures, including certain minimum flows then deemed necessary in the Trinity River for the fishery. Proviso 2 specified that "not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users."

In recognition of Proviso 2, a 1959 water delivery contract between Reclamation and Humboldt County states as follows:

> The United States agrees to release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users.[9]

Attachment 3. In addition, Reclamation's water permits from the State of California similarly include a distinct condition related to Humboldt County and downstream users.[10]

As discussed more fully below, the Department and Reclamation have previously asserted a view that these two provisos be read as addressing the same block of water notwithstanding the separate statutory provisos, the contract language (which mirrors Proviso 2), and the state water permit terms. Humboldt County has asked Reclamation to provide water pursuant to its contract to protect Klamath and Trinity River fish stocks in 2012, 2013, and 2014 as well as in previous years.[11] The Hoopa Valley Tribe joined in these requests. Reclamation has also received letters from water users supporting Reclamation's prior interpretation of these provisos.[12]

Initial TRD Operations and Subsequent Efforts to Restore and Protect Fish and Wildlife

Following the completion of the TRD in the early 1960s, Reclamation released into the Trinity River 120,500 acre-feet per year, which included the minimum fishery releases set by Proviso 1

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[9] 1959 Contract Article 8.

[10] *See infra* at 50-52.

[11] *See, e.g.*, March 13, 2013 Letter from Humboldt County Board of Supervisors Chairperson Bass and Hoopa Valley Tribe Chairman Masten to Secretary of the Interior Salazar and California Governor Brown re Prompt Action Requested to Protect Klamath River from Catastrophic Fish Kill; August 14, 2013 Letter from Humboldt County Board of Supervisors Chairman Sundberg and Hoopa Valley Tribe Chairman Masten to Secretary of the Interior Jewell re *San Luis & Delta Mendota Water Authority v. Jewell*, Case No. 1:13-CV-01232-LJO-GSA – Urgent Request for Telephone Conference. April 16, 2014 Letter from Hoopa Valley Tribe Chairwoman Vigil-Masten to Secretary of the Interior Jewell re Central Valley Project operations in violation of Law of the Trinity River; July 22, 2014 Letter from Humboldt County Board of Supervisors Chairman Bohn to Secretary of the Interior Jewell re Request for augmentation flows in lower Klamath River; August 14, 2014 Letter from Hoopa Valley Tribe Chairwoman Vigil-Masten to Secretary of the Interior Jewell re Salmon Fishery and Water Crisis. *See also, e.g.*, *supra* note 3.

[12] *See, e.g.*, January 18, 2011 Letter from San Luis & Delta Mendota Water Authority Executive Director Nelson to Commissioner Connor re 1959 contract between Humboldt County and Reclamation for 50,000 acre-feet of Trinity River Division water.

and as further established by the TRD permits issued by the State Water Board.[13] For the first ten years of full operations, TRD diversions to the Central Valley averaged nearly 90 percent of the upper Trinity Basin inflow--exporting to the Central Valley on average 1,234,000 acre-feet annually from the 1,396,000 acre-feet total average inflow into Trinity Lake.[14] Construction of Trinity and Lewiston Dams also resulted in the loss of upstream spawning and rearing habitat and the degradation of fish habitats below the dams. The river's salmon and steelhead populations declined significantly as a result of these combined effects.[15]

A 1980 Environmental Impact Statement (EIS) estimated fish population reductions of 60 to 80 percent and habitat loss to be 80 to 90 percent since completion of the TRD. The EIS attributed the depletion of fish populations to three causative factors--inadequately regulated harvest, excessive streambed sedimentation, and insufficient streamflows--but concluded that insufficient streamflows represented the most critical limiting factor to fishery restoration. Based on the 1980 EIS, the 1955 Act, and trust obligations to the Hoopa Valley and Yurok Tribes, Secretary Andrus directed the U.S. Fish and Wildlife Service to complete a 12-year study to assess the effectiveness of flow and habitat restoration efforts and make recommendations on measures necessary to address the fishery impacts attributable to the TRD consistent with the Department's obligations.[16] Secretary Andrus increased fishery releases--ranging from 140,000 acre-feet in critically dry years to 340,000 acre-feet in normal years--and directed that these releases not be "permanently allocated" to any other purpose until the Secretary could act on the completed report and determine the needs of the Trinity River fishery.[17]

Congress enacted subsequent legislation aimed at addressing the growing problems facing the Trinity River. In 1980, Congress enacted the Trinity River Stream Rectification Act,[18] aimed at controlling sand deposition problems resulting from the degraded Grass Valley Creek watershed. In 1984, Congress passed the Trinity River Basin Fish and Wildlife Management Act,[19] which made findings similar to those in the 1980 EIS and directed the Secretary to develop a program to restore fish and wildlife populations to levels approximating those that existed immediately before TRD construction began.[20] In 1992, Congress enacted the Central Valley Project

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[13] Testimony before the State Water Rights Board on the permits for the TRD established that the water Congress directed to be released in Proviso 1 (150 cfs for July through November and 15 cfs at Clear Creek) would result in 46,000 acre-feet of releases. *In re Applications 5627, 5628, 15374, 15375,15376, 16767, 16768, 17374, United States of America, Bureau of Reclamation*, Before the Water Rights Board, State of California, Dec. 29, 1958 at 31 (1958 Testimony). Condition 8 of the TRD permit then sets out the balance of releases that add up to 120,500 acre-feet per year. *See infra* note 50; *see also* 1958 Testimony at 24.

[14] 2000 ROD at 5. Trinity Lake was formerly known as Trinity Reservoir or Clair Engle Reservoir.

[15] *Id.*

[16] Secretarial Issue Document, Trinity River Fishery Mitigation (January 1981).

[17] *Id.*

[18] Pub. L. No. 96-335.

[19] Pub. L. No. 98-541.

[20] Amendments to the 1984 Act redefined its restoration goals so that the fishery restoration would be measured not only by returning anadromous fish spawners, but also by the ability of dependent tribal and non-tribal fishers to participate fully in the benefits of restoration through meaningful in-river and ocean harvest opportunities, and also expanded the scope of the habitat restoration efforts beyond Weitchpec and the immediate Trinity River Basin to include the lower Klamath River downstream of its confluence with the Trinity River. Trinity River Fish and Wildlife Management Reauthorization Act of 1995, Pub. L. No. 104-143 (May 15, 1996).

Improvement Act (CVPIA), including section 3406(b)(23), which (1) set the minimum flow volume in the Trinity River at not less than 340,000 acre-feet based on the supplemental Secretarial Decision signed by Secretary Lujan in 1991;[21] (2) directed the completion of the 12-year study initiated by Secretary Andrus "in a manner which insures the development of recommendations, based on the best available scientific data, regarding permanent instream fishery flow requirements and [TRD] operating criteria and procedures for the restoration and maintenance of the Trinity River fishery"; and (3) mandated the Secretary to implement the recommendations from the study upon concurrence by the Secretary and the Hoopa Valley Tribe.

In 2000, Secretary Babbitt, with the concurrence of the Hoopa Valley Tribe, issued the 2000 ROD, which relied upon the multi-year Trinity River Flow Evaluation Study (TRFES) completed in 1999 and its associated EIS.[22] In addition to stream modifications, infrastructure improvements, sediment management, and other recommendations, the 2000 ROD adopted a variable annual instream flow regime for the mainstem Trinity River below the TRD, based on the annual forecasted hydrology for the basin, ranging from 369,000 acre-feet in critically dry years to 815,000 acre-feet in extremely wet years.[23] The regime mimics the natural spring snowmelt hydrograph for the basin, with higher flows focused in the spring and early summer months and relatively low base flows from July through March. The flows established in the 2000 ROD also address various habitat requirements of the Trinity River fishery, including spawning and rearing needs, migration cues, temperature conditions, and associated river-maintenance considerations. The 2000 ROD focused on the flow and habitat requirements of the Trinity River mainstem and did not consider the lower Klamath River below its confluence with the Trinity River.

Thus, although efforts were previously made to determine necessary TRD fishery releases, not until completion of the TRFES Final Report and EIS did the Secretary have a fully informed understanding of the biological and physical needs of the fishery based on the best available science, including TRD releases that must be dedicated to ensure the restoration and maintenance of the Trinity River fishery within the mainstem Trinity River.[24] Since 2001 and implementation of the 2000 ROD, flows in the Trinity River have averaged just over 630,000 acre-feet annually

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[21] Secretary Lujan set the minimum release to be "at least" 340,000 acre-feet per year for the remainder of the flow study process to ensure the integrity of the study because five of the first six years had been dry water years.

[22] The TRFES and EIS, and thus the 2000 ROD, focused on measures necessary to restore habitat conditions within the 40 miles of Trinity River mainstem immediately below Lewiston Dam, concluding that the detrimental effects of TRD construction and operation were particularly severe within this area. EIS § 1.3; *see also id.* § 1.2 (discussing purpose and goal of the TRFES as focused on restoration and maintenance of the mainstem Trinity River and its fishery); TRFES fig. 5.1 (showing study area extending from Lewiston Dam to the Hoopa Valley); 2000 ROD at 8.

[23] Central Valley water and power users challenged implementation of the 2000 ROD. The Ninth Circuit affirmed the 2000 ROD, noting that restoration of the Trinity River was "unlawfully long overdue." *Westlands Water District v. Dep't of the Interior*, 376 F.3d 853, 878 (9th Cir 2004). Moreover, the Ninth Circuit specifically rejected Plaintiffs' complaint that the Department impermissibly constrained the action's geographic scope to the Trinity River mainstem, recognizing that "the federal agencies were within their discretion in focusing the EIS on mainstem rehabilitation as a part of promoting fishery basin-wide." *Id.* at 866-67.

[24] As discussed in the final TRFES report, the science supporting the fishery flow volumes and regimes established both as part of the 1955 Act and the 1981 Secretarial Decision focused primarily on single-species management (Chinook salmon) and, initially, only on one life stage of that species (spawning). Trinity River Flow Evaluation Final Report at 1-2, 8 (June 1999).

and diversions to the CVP have averaged nearly 690,000 acre-feet annually.[25]

50,000 acre-foot Proviso and Previous Interpretations

Prior to passage of the 1955 Act, in-basin users became concerned that the TRD authorization would deprive them of water essential for their needs. Various statements in committee reports supporting the 1955 Act emphasized that only water deemed "surplus" to the needs of the Trinity Basin could be exported to the Central Valley. Statements in the Congressional Record also note that the inclusion of Proviso 2 as an amendment during debate on the House floor, after the committee reported the bill out containing only Proviso 1, was "to assure to Humboldt County, Calif., an *additional* 50,000 acre-feet of water from the rivers concerned[.]"[26]

Since the TRD's authorization, offices and bureaus within the Department have asserted a view that Proviso 2 should be read in conjunction with Proviso 1 and not as a separate release requirement. In 1958, Reclamation argued to the State Water Rights Board (State Water Board or Board)[27] that the 1955 Act's section 2 provisos required only a single permit condition. Although the State Water Board included two separate conditions in the TRD permits (*see* Attachment 4) and Reclamation entered into a contract with Humboldt County in 1959 that references Proviso 2, Reclamation sent a letter to the State Water Board on the same day as the contract's execution, noting that it entered the contract "on the basis of our firm position that the 50,000 acre-feet made available thereby is not additive to the 120,000 acre-feet annually released from Lewiston Dam."[28]

Later, in 1974 and 1977, the Regional Solicitor's Office examined the two provisos in the 1955 Act in two separate memoranda. The 1974 memorandum from the Assistant Regional Solicitor to Reclamation's Regional Director, although focused primarily on the issue of whether the 1955 Act authorized "flood control or other purposes generally beneficial to downstream interests" (concluding in the negative), also addressed the issue of an "interpretation of the last proviso of section 2 of the Act as it relates to releases authorized for fish preservation." Attachment 5.[29] With respect to Proviso 2, the 1974 memorandum briefly concluded, without any in-depth analysis:

> The water released for fishery purposes is not consumed, but remains available later for use by other downstream users. In addition, the term "downstream water user" is not specific, but appears to refer to all downstream users generally, including the fishery.

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[25] Trinity River releases during this period have included not only fishery releases pursuant to the 2000 ROD, but also occasional safety-of-dam releases (including more than 400,000 acre-feet in 2006), biennial tribal ceremonial releases, and additional late-summer fishery releases (*see supra* note 4 and *infra* note 35 and accompanying text).

[26] 101 Cong. Rec. H7962 (1955) (emphasis added).

[27] The State Water Rights Board was the predecessor to the State Water Resources Control Board, the entity presently charged with issuing and administering water rights in the State of California.

[28] June 19, 1959 Letter from Regional Director Bellport to California State Water Rights Board.

[29] July 1, 1974 Memorandum from Assistant Regional Solicitor to Reclamation Regional Director re Request for opinion re authority of the Secretary of the Interior to alter present functions and accomplishments of Trinity River Division, Central Valley Project, at 1-3.

> Therefore it is my opinion that since the purpose of the [TRD] is to provide as much water as possible to the Central Valley . . . the 50,000 acre-feet referred to in the last proviso of Section 2 should be construed to include the water necessary to maintain minimum specified instream flows for fish preservation and propagation rather than being considered to be in addition to such flows.[30]

Thus, the 1974 memorandum interpreted the section 2 provisos together rather than as authorizing separate or additional releases to meet the purposes of each proviso.

In 1977, in response to a request from the Field Supervisor for the U.S. Fish and Wildlife Service, the Regional Solicitor "reconsidered" the interpretation of section 2 as set out in the 1974 memorandum. Attachment 6.[31] The 1977 memorandum agreed with the prior interpretation that the section 2 provisos were "not necessarily conflicting purposes," and disagreed with the Service's view that the 1955 Act provided or intended "separate and distinct 'blocks of water' for fish preservation and propagation purposes[.]" The 1977 memorandum also recognized, however, that "diversions made by downstream users" could "caus[e] harm to fish resources" and that the 1955 Act "grant[ed] the Secretary of the Interior broad authority to increase the size of the releases . . . should such additional releases be deemed necessary" to meet the purposes of Proviso 1. Accordingly, the Regional Solicitor "amended" the 1974 memorandum's concluding paragraph (quoted above) by adding the following text:

> [H]owever, it should be noted that the proviso quoted above [Proviso 2] does not limit downstream use to 50,000 acre-feet annually. Rather . . . the Secretary has discretionary authority to release additional water for the purpose of preserving or propagating fish resources.[32]

Humboldt County, Trinity County, the Hoopa Valley Tribe, and other downstream interests have raised this issue periodically over the past few decades. In response to Trinity County's scoping comments on the Sacramento River Water Contracting EIS, Reclamation replied in 1988 that "the 50,000 acre-feet requirement can be made available from the river flow established for fisheries and accretions to the river."[33] In response to Trinity County's request to Secretary Babbitt to use the water for recreation and community development, Reclamation replied in 1995 that Proviso 2:

> was intended for consumptive uses that may develop and require additional releases. As such, the contract with Humboldt County was executed . . . on the basis that the 50,000 acre-feet is included within the total quantity of water provided for in the fishery releases

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[30] *Id.* at 5 (internal citations omitted).

[31] January 21, 1977 Memorandum from Regional Solicitor to Field Supervisor, USFWS, re Trinity River Division, CVP – Reconsideration of July 1, 1974 Memorandum to Regional Director, Bureau of Reclamation, Concerning Section 2 of the Trinity River Division Act.

[32] *Id.* at 2.

[33] January 29, 1988 Letter from Reclamation Regional Director Houston to Chairman Patricia Garrett, Trinity County Board of Supervisors.

> and is not additive to that quantity *as long as* reservoir releases, accretions, and tributary flows are sufficient to supply the 50,000 acre-feet required for downstream uses.[34]

Over the past decade, Humboldt County and the Hoopa Valley Tribe made several requests to the Department to make releases pursuant to Proviso 2, primarily to avoid fish die-offs like the one that occurred in the lower Klamath River below its confluence with the Trinity in 2002. Instead, Reclamation has either acquired water from CVP contractors to provide late-season releases into the Trinity River in addition to those included in the 2000 ROD or made releases pursuant to Proviso 1.[35]

Analysis

After a thorough review of the record available to us, I believe the two provisos in section 2 of the 1955 Act address separate and distinct conditions on the TRD's integration with the CVP. Under the 1955 Act and related permits issued by the State Water Board, Proviso 2 establishes a separate obligation for Reclamation to release water from the TRD to provide for beneficial use by Humboldt County and other downstream users. This obligation is not subsumed within the obligation to release water pursuant to Proviso 1. Accordingly, additional releases from the TRD under Proviso 2 may be required in response to proper requests from Humboldt County or other downstream users.

In reaching this conclusion, I recognize there could be implications for Reclamation when altering its past practice to conform with this opinion. I believe, however, that if additional review and evaluation leads us to the conclusion that the past interpretation is erroneous, whether based on further legal review or changed circumstances, then the Department has an obligation to change its interpretation.[36] My reasoning follows.

1955 Act

Prior analyses of the 1955 Act emphasized the intent to develop facilities in the Trinity River Basin to provide additional water supplies to the Central Valley. As noted in the 1974 memorandum, section 1 of the 1955 Act authorized the TRD for the "principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley[.]" Likewise, section 2 provided that the TRD "shall be integrated and coordinated" with the CVP "in such a manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available[.]"

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[34] January 30, 1995 Letter from Reclamation Regional Director Patterson to Chairman S.V. Plowman, Trinity County Board of Supervisors, re Federal Reserved Water Right to 50,000 Acre-Feet From the Trinity Division of the Central Valley Project (re: Your Letter Dated November 16, 1994) (emphasis added).

[35] These releases occurred during the pendency of, and immediately following the conclusion of, the CVP water and power users' lawsuit challenging the 2000 ROD. *See supra* note 23. In an April 2003 order, Judge Wanger specifically authorized the 2003 supplemental releases, up to 50,000 acre-feet, during the litigation and pending appeal in order to minimize the potential die-off of salmon as occurred in the lower Klamath River in 2002.

[36] *See Chisholm v. FCC*, 538 F.2d 349, 364 (D.C. Cir. 1976) ("We note initially that an administrative agency is permitted to change its interpretation of a statute, especially where the prior interpretation is based on error, no matter how longstanding.").

Section 2, however, expressly restricted this integration. The opening clause specifically states that the TRD's integration and coordination with the CVP shall be "[s]ubject to the provisions of this Act[.]" Section 2 then included two provisos:

> *Provided*, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife [including, but not limited to, the maintenance of flows at certain specified minimum levels]; *Provided further*, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users.

These provisos set forth two separate and distinct limitations on the integration of the TRD with the CVP.

Proviso 1 refers generally to the preservation of fish and wildlife, whereas Proviso 2 refers to releases of water made available for downstream entities. Proviso 1 thus requires releases for distinct purposes, whereas Proviso 2 has no restriction on uses for the released water, instead specifying the entities that will be using the water. Proviso 1 requires a release for instream purposes, while Proviso 2 appears to allow any beneficial use contemplated by "Humboldt County and downstream water users," including diversions for consumptive use, most likely the use envisioned at the time the language was developed.[37] Thus, a conclusion that water uses under Proviso 2 are always incorporated into and subsumed within the releases in Proviso 1 is at odds with the separate purpose and stand-alone nature of each proviso of the 1955 Act.

An interpretation that Proviso 2 is always subsumed within Proviso 1 strains the practical operation of Proviso 2 because Humboldt County and other downstream users would, under such an interpretation, have to rely on instream flows provided for the fishery, by design water released at specific times and specific volumes to *remain* instream and not be used for consumptive purposes. The instream fishery flows may not necessarily meet the needs or uses of those downstream users or be "available" to those users at the time it is needed as envisioned by Proviso 2.[38] In other words, a reading that establishes that the releases for use by Humboldt County are necessarily part of the fish releases would mean that the fishery would be shorted any time Humboldt County or other downstream water users diverted 50,000 acre-feet or used it in some other way that did not support the fishery. Such an outcome is inconsistent with the language and structure of the 1955 Act, and I conclude that the better reading is that the two provisos address separate releases of water. Indeed, the language in Proviso 2 states that 50,000 AFY "shall be released annually . . . and made available. . ." to Humboldt County and other downstream users. This wording on its face ensures that on an annual basis a certain amount of water be made available to local and downstream communities, particularly in those

[37] In fact, the Humboldt County Board of Supervisors adopted Resolution No. 827 in April 1955, in which the Board agreed not to oppose the bill that became the 1955 Act if it guaranteed that the County could "divert up to 100,000 acre feet of water yearly for its use in irrigation, commercial, residential and industrial purposes" and also ensured minimum Trinity River flows. As later agreed and then enacted, Proviso 2 specifies instead "not less than 50,000 acre-feet" annually for the County and downstream users and does not articulate any particular use.

[38] As a corollary concern, if downstream users were to divert water released for preservation of fish and wildlife, then the intent of Proviso 1 may not be met.

circumstances when releases under Proviso 1 or other appropriate authorities are not a viable means for delivering such water.

Thus, Provisos 1 and 2 are stand-alone provisos that restrict the operative effect of the 1955 Act's principal purpose, *i.e.*, the integration of the TRD with the CVP. *See Cox v. Hart*, 260 U.S. 427, 435 (1922) (the purpose of a proviso "is to except something from the operative effect, or to qualify or restrain the generality, of the substantive enactment to which it is attached"); *Wayman v. Southard*, 23 U.S. 1, 30 (1825) (provisos are "generally intended to restrain the enacting clause, and to except something which would otherwise have been within it, or, in some measure, to modify the enacting clause"). The conclusion of these cases is consistent with *Sutherland's Statutory Construction*, which describes the purpose of statutory provisos as "restricting the operative effect of statutory language to less than what its scope of operation would be otherwise."[39] In other words, the 1974 memorandum reached its conclusion that *the* "purpose" of the TRD was "to provide as much water as possible to the Central Valley" without a careful examination of this settled principle regarding provisos, the 1955 Act, its legislative history, or contemporaneous events such as the state permit issuance and proceedings and Reclamation's contract with Humboldt County.

In 1979, Solicitor Krulitz, in construing whether general categories of priorities under CVP authorizations should be accorded equal priority in critically dry years, contrasted the general nature of the CVP with the specific provisions of the TRD's authorization. In doing so, Solicitor Krulitz noted that both provisos provide a limitation on the integration of the TRD with the CVP:

> On occasion the Congress has specifically limited the Secretary's discretion in meeting the general CVP priorities. For example, in authorizing the Trinity River Division of the CVP in 1955, Congress specifically provided that in-basin flows (in excess of a statutory prescribed minimum) determined by the Secretary to be necessary to meet in-basin needs take precedence over needs to be served by out of basin diversion. *See* Pub. L. No. 84-386, § 2. In that case, Congress' usual direction that the Trinity River Division be integrated in the overall CVP, set forth at the beginning of section 2, is expressly modified by and made subject to the *provisos* that follow giving direction to the Secretary regarding in-basin needs.[40]

Attachment 7. My position herein, that both provisos authorize separate and distinct limitations on the ability of Reclamation to import water into the Central Valley, is consistent with and builds on Solicitor Krulitz's opinion that the requirements of section 2 must be met before water may be exported from the Trinity River Basin.

Legislative History

Further support for my interpretation can be found in the legislative history of the 1955 Act. In addition to generally supportive statements in committee reports, statements regarding both

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[39] Sutherland § 47:08.

[40] Memorandum from the Solicitor to the Assistant Secretary – Land and Water Resources, *Proposed Contract with Grasslands Water District* at 3-4 (December 7, 1979) (emphasis (italics) was underlined in original) (1979 Grassland Memorandum).

Proviso 2 and the general intent of the legislation can be found in the Congressional Record and other contemporary sources.

As an initial matter, the bill that led to the 1955 Act, H.R. 4663, originally only included the fishery proviso in section 2. Inclusion of Proviso 2 occurred in order to secure congressional support for the legislation in the face of downstream opposition, including opposition from representatives of Humboldt County who were concerned that sufficient study had not been done regarding their water needs and that the TRD would not provide for the future needs of the basin.[41]

The bill, as reported by the House committee, emphasized:

> that there is available for importation from the Trinity River, water that is surplus to the present and future water requirements of the Trinity and Klamath River basins, and that surplus water, in the amount proposed in the Trinity division plan, can be diverted without detrimental effect to the fishery resources.[42]

The House subsequently took up H. Res. 263, the Rules Committee's terms for consideration of H.R. 4663.[43] The rules specifically allowed floor amendments to the bill. During an exchange regarding the resolution, Congressman Ellsworth specifically noted the intent to offer an amendment to address downstream concerns:

> [I]t is also my understanding informally that another amendment will be offered by the committee which will probably satisfy the opposition to the bill by another representative

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[41] *See* Hearing on H.R. 4663, *H. Subcomm. on Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong. 104-06 (Statements of Cong. Scudder), 169-70 (Statements of Richard Denbo, Humboldt County Chamber of Commerce) (April 13, 1955) [hereinafter *April 13, 1955 Hearing*]. After the hearing, the Humboldt County Board of Supervisors adopted Resolution No. 827, which the Board submitted to Congress and the Executive Branch and which promised no opposition to the TRD's authorization if (1) H.R. 4663 were amended to include specific quantities to Humboldt County for irrigation, commercial, and other purposes and (2) river flows were maintained below the TRD at certain specified levels. *See supra* note 37.

[42] H. Rept. No. 84-602, at 4 (1955).

The legislative history of the 1955 Act supports a more expansive view of Proviso 2. In addition to the language quoted above that emphasizes how only water "surplus to the present and future water requirements of the Trinity *and Klamath River basins*" would be available for export, other portions of the legislative history provide further support. For example, in advocating for the TRD, the Administration emphasized how TRD diversions from the "coastal basins" (the Trinity River itself does not touch the coast) to the Central Valley "would not affect future development of either the Trinity River Basin or the Klamath River Basin[.]" *April 13, 1955 Hearing* at 4, 10. Moreover, downstream opposition to the bill came specifically from representatives from the "Klamath River" or "Klamath Basin," including specific reference to Humboldt County as part of that group, and not just Trinity Basin interests. *See, e.g., id.* at 26 (exchange between Cong. Dawson and witness Murray); *id.* at 104-06 (referencing concerns of both Humboldt and Del Norte counties re effects to north coast communities); April 16, 1955 Redding Hearing at 71-72 (quoting concerns raised by Yurok Princess Brantner, from the lower Klamath River strip of the Reservation (which ran along the lower 20 miles of the Klamath River before it enters the Pacific Ocean), regarding fish spawning, logging, and other resource issues on the lower Klamath River affected by the bill); *see* Hearing on H.R. 4663, *S. Subcomm on Irrigation and Reclamation of the Comm. on Interior and Insular Affairs*, 84th Cong. at 18 [hereinafter *July 14, 1955 Senate Hearing*] (letter from Cong. Scudder noting objections of Humboldt and Del Norte county residents and how the Proviso 2 language will satisfy the concerns of downstream users).

[43] 101 Cong. Rec. 7,961 (1955).

> from California [Congressman Scudder]. As I understand it, this amendment will be offered to assure Humboldt County, Calif., an *additional* 50,000 acre-feet of water from the rivers concerned, which should properly take care of the neighboring area.[44]

Two weeks later, a colloquy between Congressmen Scudder and Engle, the bill's sponsor, secured the inclusion of the new Proviso 2 in order to ensure "water for people downstream[.]"[45] The Senate took up the amended bill and noted the inclusion of Proviso 2 as necessary to avoid downstream opposition.[46]

Thus, the legislative history, explaining the amendment that added Proviso 2, supports my interpretation that Proviso 2 should be interpreted as not being subsumed within Proviso 1. Rather, Proviso 2 was included to meet separate and distinct concerns from the in-basin communities and set aside an "additional" volume of water to address these concerns. This interpretation would also be consistent with the rule of statutory construction to give meaning to all legislative language within an enactment and to avoid "surplusage."[47]

State Water Board, TRD Permits, Reclamation's Contract with Humboldt County, and Federal and State Law Considerations

Between 1957 and 1959, the State Water Board held hearings on Reclamation's permit application for the TRD. Reclamation argued for one permit condition to capture both provisos found in section 2 of the 1955 Act.[48] Conversely, Humboldt County and California's Department of Fish and Game (CDFG) argued that the Board should adopt separate permit conditions to address each proviso because they contained distinct and potentially exclusive purposes for the water release and were included for distinct purposes.[49] The Board rejected Reclamation's interpretation and adopted a condition for each proviso, Condition 8[50] for Proviso

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[44] *Id.* at 7,962 (emphasis added).

[45] 101 Cong. Rec. 8,888 (1955).

[46] *July 14, 1955 Senate Hearing* at 11 (Statement of Sen. Kuchel), 18 (Letter from Cong. Scudder).

[47] *See, e.g., United States v. Menasche*, 348 U.S. 528, 538-39 (1955).

[48] *See, e.g., In the Matter of Applications 5627, 5628, 15374, 15375, 15376, 16767, 16768 and 17374, United States of America, Bureau of Reclamation, Applicant, California Department of Fish and Game (CDFG), Protestant, Trinity River, Trinity County, Before the Water Rights Board, State of California, Sacramento, California*, at 10-11 (written testimony that the 120,500 acre-feet released as specified in Proviso 1 would "satisfy the requirements for fish culture and the quantity set forth in Section 2 . . . that not less than 50,000 acre-feet be released annually . . . and made available to Humboldt County and downstream water users"), 23 (objecting to separate condition that would make second proviso "additive" to the water released under first proviso) (December 29, 1958).

[49] *Id.* at 18-19 (noting CDFG's concerns that use by downstream users not "cut into" water releases for fish), 28-30 (detailing County's position that Proviso 2 requires a separate release from TRD to be made available for downstream users and that the legislation clearly distinguishes this release from those for the fishery), 97-98 (reiterating County's position and requesting inclusion of separate condition in Reclamation's TRD permits).

[50] Condition 8 states:

> Permittee shall at all times bypass or release over, around or through Lewiston Dam the following quantities of water down the natural channel of Trinity River for the protection, preservation and enhancement of fish and wildlife from said dam to the mouth of said stream;

October 1 through October 31	200 cfs
November 1 through November 30	250 cfs

1 and Condition 9[51] for Proviso 2, in the permits issued to Reclamation.[52] Those 1959 permits are still in effect today. The Board's inclusion of two separate conditions reflects adoption of CDFG's interpretation at the time. Although not wholly dispositive of the issue, this contemporaneous construction of the State's position is consistent with the statutory and legislative history analysis above.

The language of the 1959 Contract with Humboldt County, which is still valid and in effect today, does not alter this analysis. The 1959 Contract cites the 1955 Act and essentially restates Proviso 2. The Contract states in Article 8:

> The United States agrees to release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users.

On the same day that this 1959 Contract was signed, Reclamation sent a letter to the Board stating:

> This contract has been executed on the basis of our firm position that the 50,000 acre-feet made available thereby *is not additive* to the 120,500 acre-feet annually to be released from Lewiston Dam as provided in an agreement between the United States and the State Department of Fish and Game dated March 27, 1959, copies of which have been furnished to you.[53]

Although the contemporaneous statement made in the cover letter reflects the Regional Director's interpretation at the time, a rationale for the statement was not included.

Lastly, while I believe that federal law sets forth the legal framework for the analysis of whether the two provisos are independent and separate conditions on the TRD's integration with the CVP, I also believe the interpretation set forth in this memorandum is consistent with state water law principles. The 1902 Reclamation Act, incorporated in both the 1955 Act and the 1959 Contract, directs the Secretary to defer to state law regarding the "control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder" to the extent not inconsistent with federal law.[54] Here, Congress specifically limited the integration of the TRD with the rest of the CVP in the 1955 Act by recognizing that in-basin needs for Humboldt

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December 1 through December 31	200 cfs
January 1 through September 30	150 cfs

Any water released through said Lewiston Dam for use in the fish hatchery now under construction adjacent thereto shall be considered as partial fulfillment of the above schedule.

[51] Condition 9 states:

> Permittee shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users.

[52] State Water Permits under Application Nos. 5627, 15374, 15376, 16767 and 16768 (September 16, 1959).

[53] June 19, 1959 Letter from Regional Director Bellport to California State Water Rights Board. (Emphasis added).

[54] Act of June 17, 1902, 32 Stat. 388; *see, e.g., California v. United States*, 438 U.S. 645 (1978).

County and downstream users, as well as the responsibilities to preserve fish and wildlife, take precedence over the needs to be served by out-of-basin diversions.[55] As discussed above, the State Water Board then included a separate permit condition, contrary to Reclamation's position at the time, which reflected the language of Proviso 2 and required releases for beneficial use by Humboldt County and other downstream users.[56] Interpreting the two provisos of the 1955 Act's section 2 as independent obligations is consistent with state water law principles and is consistent with the TRD permit conditions.

Implementation

Based upon this legal analysis, it is recommended that Reclamation conduct an appropriate level of analysis in response to a request for a release of water under Proviso 2 to determine the potential uses to which this water might be put, any other applicable legal requirements that must be addressed prior to releasing said water, whether existing operations or other authorities can fulfill the pending request, and then determine what additional actions may be appropriate under the circumstances. For example, Humboldt County may anticipate future consumptive uses that would be incompatible with instream fishery purposes; releases for such beneficial uses likely should not be made under Proviso 1 but as additional releases under Proviso 2. Conversely, the County or other downstream users could request releases that would be consistent with or duplicative of releases already being made pursuant to Proviso 1; under those circumstances, releases as requested under Proviso 2 may not be required. To the extent Proviso 1 water is not available, the Proviso 2 water, which may be put to any beneficial use, should be available to satisfy the articulated use. In addition, as stated at the outset of this opinion, a release made under Proviso 2 may also be part of the long-term management strategy regarding instream flows in the lower Klamath River.

Conclusion

Based on the analysis above, I conclude that the legislation authorizing the TRD contains separate and independent limitations on the TRD's integration with, and thus diversion of water to, the CVP. To the extent prior memoranda of the Solicitor's Office could be interpreted to reach contrary conclusions in this regard, those memoranda are hereby superseded.

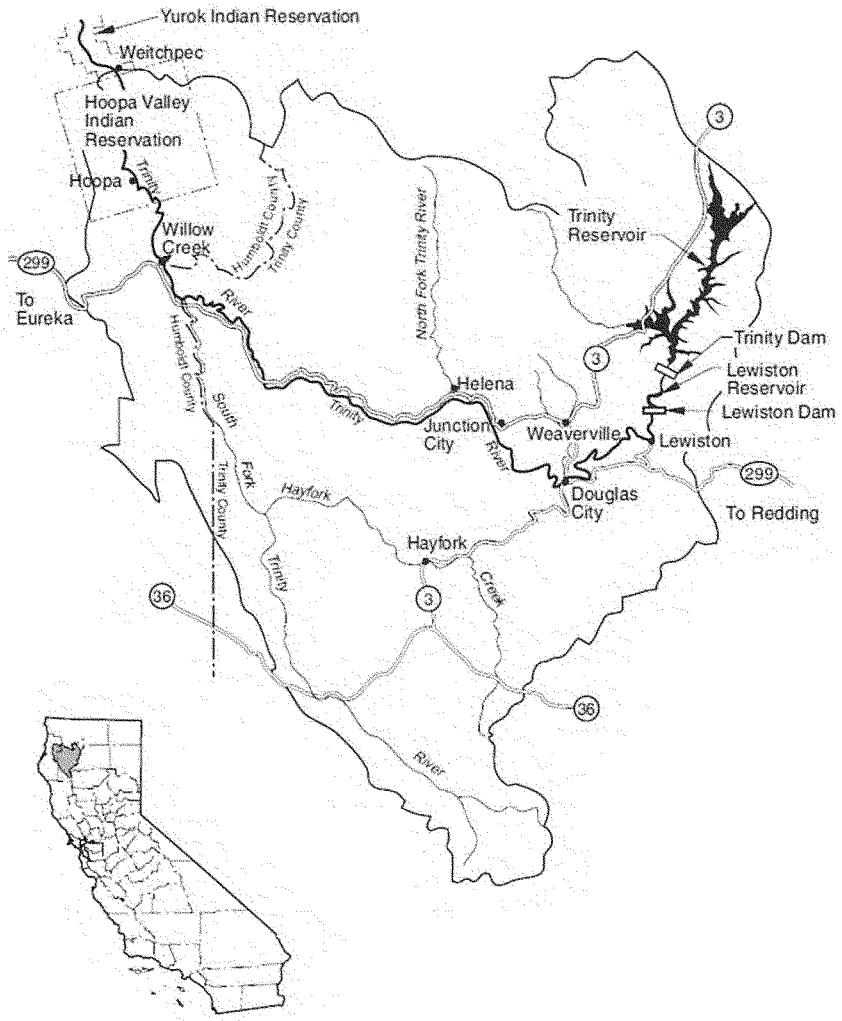
Attachments

Hilary C. Tompkins

[55] 1979 Grasslands Memorandum, *supra* at 3-4; 2000 ROD at 6, 25.

[56] The State Water Board also included a separate condition for Trinity County (Condition 10) in the TRD permits to allow for use in the County as provided in California Water Code Section 10505.

ATTACHMENT 1


Yurok Indian Reservation
Weitchpec
Hoopa Valley
Indian
Reservation
Hoopa
Trinity
Willow
Creek
Humboldt County
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299
To
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River
North Fork Trinity River
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Reservoir
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Trinity Dam
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Lewiston Dam
Lewiston
Helena
Junction
City
Weaverville
Trinity
River
Douglas
City
299
To Redding
Humboldt County
South
Fork
Trinity County
Hayfork
Trinity
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Creek
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36
River

ATTACHMENT 2

Public Law 386 CHAPTER 872

AN ACT

August 12, 1955
[H. R. 4563]

To authorize the Secretary of the Interior to construct, operate, and maintain the Trinity River division, Central Valley project, California, under Federal reclamation laws.

Central Valley project, Calif. Trinity River division.

43 USC 371 note.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, for the principal purpose of increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California, the Secretary of the Interior, acting pursuant to the Federal reclamation laws (Act of June 17, 1902, 32 Stat. 388, and Acts amendatory thereof or supplementary thereto), is authorized to construct, operate, and maintain, as an addition to and an integral part of the Central Valley project, California, the Trinity River division consisting of a major storage reservoir on the Trinity River with a capacity of two million five hundred thousand acre-feet, a conveyance system consisting of tunnels, dams, and appurtenant works to transport Trinity River water to the Sacramento River and provide, by means of storage as necessary, such control and conservation of Clear Creek flows as the Secretary determines proper to carry out the purposes of this Act, hydroelectric powerplants with a total generating capacity of approximately two hundred thirty-three thousand kilowatts, and such electric transmission facilities as may be required to deliver the output of said powerplants to other facilities of the Central Valley project and to furnish energy in Trinity County: *Provided*, That the Secretary is authorized and directed to continue to a conclusion the engineering studies and negotiations with any non-Federal agency with respect to proposals to purchase falling water and, not later than eighteen months from the date of enactment of this Act, report the results of such negotiations, including the terms of a proposed agreement, if any, that may be reached, together with his recommendations thereon, which agreement, if any, shall not become effective until approved by Congress. The works authorized to be constructed shall also include a conduit or canal extending from the most practicable point on the Sacramento River near Redding in an easterly direction to intersect with Cow Creek, with such pumping plants, regulatory reservoirs, and other appurtenant works as may be necessary to bring about maximum beneficial use of project water supplies in the area.

SEC. 2. Subject to the provisions of this Act, the operation of the Trinity River division shall be integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project, as presently authorized and as may in the future be authorized by Act of Congress, in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available: *Provided*, That the Secretary is authorized and directed to adopt appropriate measures to insure the preservation and propagation of fish and wildlife, including, but not limited to, the maintenance of the flow of the Trinity River below the diversion point at not less than one hundred and fifty cubic feet per second for the months July through November and the flow of Clear Creek below the diversion point at not less than fifteen cubic feet per second unless the Secretary and the California Fish and Game Commission determine and agree that lesser flows would be adequate for maintenance of fish life and propagation thereof; the Secretary shall also allocate to the preservation and propagation of fish and wildlife, as provided in the Act of August 14, 1946 (60 Stat. 1080), an appropriate share of the

16 USC 661-666c.

costs of constructing the Trinity River development and of operating and maintaining the same, such costs to be non-reimbursable: *Provided further*, That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users.

SEC. 3. The Secretary is authorized to investigate, plan, construct, operate, and maintain minimum basic facilities for access to, and for the maintenance of public health and safety and the protection of public property on, lands withdrawn or acquired for the development of the Trinity River division, to conserve the scenery and the natural, historic, and archeologic objects, and to provide for public use and enjoyment of the same and of the water areas created by these developments by such means as are consistent with their primary purposes. The Secretary is authorized to withdraw from entry or other disposition under the public land laws such public lands as are necessary for the construction, operation, and maintenance of said minimum basic facilities and for the other purposes specified in this section and to dispose of such lands to Federal, State, and local governmental agencies by lease, transfer, exchange, or conveyance upon such terms and conditions as will best promote their development and operation in the public interest. The Secretary is further authorized to investigate the need for acquiring other lands for said purposes and to report thereon to the Committees on Interior and Insular Affairs of the Senate and House of Representatives, but no lands shall be acquired solely for any of these purposes other than access to project lands and the maintenance of public health and safety and the protection of public property thereon without further authorization by the Congress. All costs incurred pursuant to this section shall be nonreimbursable and nonreturnable.

Report to Congress.

SEC. 4. Contracts for the sale and delivery of the additional electric energy available from the Central Valley project power system as a result of the construction of the plants herein authorized and their integration with that system shall be made in accordance with preferences expressed in the Federal reclamation laws: *Provided*, That a first preference, to the extent of 25 per centum of such additional energy, shall be given, under reclamation law, to preference customers in Trinity County, California, for use in that county, who are ready, able and willing, within twelve months after notice of availability by the Secretary, to enter into contracts for the energy: *Provided further*, That Trinity County preference customers may exercise their option on the same date in each successive fifth year providing written notice of their intention to use the energy is given to the Secretary not less than eighteen months prior to said date.

Payments to Trinity County, Calif.

SEC. 5. The Secretary is authorized to make payments, from construction appropriations, to Trinity County, California, of such additional costs of repairing, maintaining, and constructing county roads as are incurred by it during the period of actual construction of the Trinity River division and as are found by the Secretary to be properly attributable to and occasioned by said construction. The Secretary is further authorized and directed to pay to Trinity County annually an in-lieu tax payment out of the appropriations during construction and from the gross revenues of the project during operation an amount equal to the annual tax rate of the county applied to the value of the real property and improvements taken for project purposes in Trinity County, said value being determined as of the date such property and improvements are taken off the tax rolls. Payments to the public-school districts in the project area affected by construction activities shall be made pursuant to existing law.

Payments to public-school districts.

SEC. 6. There are hereby authorized to be appropriated for construction of the Trinity River division $225,000,000, plus or minus such amounts, if any, as may be justified by reason of ordinary fluctuations in construction costs as indicated by engineering cost indexes applicable to the type of construction involved herein, and, in addition thereto, such sums as may be required to carry out the provisions of section 5 of this Act and to operate and maintain the said development.

Appropriation.

Approved August 12, 1955.

Public Law 387 CHAPTER 873

AN ACT

To reemphasize trade development as the primary purpose of title I of the Agricultural Trade Development and Assistance Act of 1954.

August 12, 1955
[S. 2253]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 103 (b) of the Agricultural Trade Development and Assistance Act of 1954 is amended by striking out "$700,000,000" and inserting in lieu thereof "$1,500,000,000. This limitation shall not be apportioned by year or by country, but shall be considered as an objective as well as a limitation, to be reached as rapidly as possible so long as the purposes of this Act can be achieved within the safeguards established."

Agricultural trade development.
68 Stat. 456.
7 USC 1703 (b).

SEC. 2. Section 106 of such Act is amended by adding the following: "The Secretary of Agriculture is also authorized to determine the nations with whom agreements shall be negotiated, and to determine the commodities and quantities thereof which may be included in the negotiations with each country after advising with other agencies of Government affected and within broad policies laid down by the President for implementing this Act."

68 Stat. 457.
7 USC 1706.

Approved August 12, 1955.

Public Law 388 CHAPTER 874

AN ACT

To amend the Federal Property and Administrative Services Act of 1949 to make temporary provision for making payments in lieu of taxes with respect to certain real property transferred by the Reconstruction Finance Corporation and its subsidiaries to other Government departments.

August 12, 1955
[H. R. 6182]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the table of contents contained in the first section of the Federal Property and Administrative Services Act of 1949 is hereby amended by inserting immediately below "Sec. 605. Effective date." the following:

Federal property transferred from RFC.
63 Stat. 377; 64 Stat. 583.
40 USC 471 note.

"TITLE VII—PROPERTY TRANSFERRED FROM THE RECONSTRUCTION FINANCE CORPORATION

"Sec. 701. Declaration of Policy.
"Sec. 702. Definitions.
"Sec. 703. Property transferred by the Reconstruction Finance Corporation.
"Sec. 704. Limitations.
"Sec. 705. Effective date."

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ATTACHMENT 3

UNITED STATES
DEPARTMENT OF THE INTERIOR
BUREAU OF RECLAMATION

Central Valley Project, California

CONTRACT BETWEEN THE UNITED STATES AND
HUMBOLDT COUNTY

1. THIS CONTRACT, made this 19th day of June 1959, in pursuance generally of the act of Congress approved June 17, 1902 (32 Stat. 388), and all acts of Congress amendatory thereof or supplementary thereto, including the act of Congress approved August 12, 1955 (69 Stat. 719), all of which are commonly known and referred to as the Federal reclamation laws, between THE UNITED STATES OF AMERICA, hereinafter referred to as the "United States," represented by the officer executing this contract, and HUMBOLDT COUNTY, a political subdivision of the State of California, duly organized and existing pursuant to the laws thereof, with its principal place of business in the town of Eureka, State of California, hereinafter referred to as the "County";

WITNESSETH, THAT:

EXPLANATORY RECITALS

2. WHEREAS, the Bureau of Reclamation, of the United States Department of the Interior, has been duly authorized to construct and operate the Trinity River Division of the Central

Valley Project, which Division will include Trinity and Lewiston Dams and appurtenant works, for the purpose of the conservation of water resources, which dams are to be located respectively in the County of Trinity, State of California, on the Trinity River, at or about N. 34° 42' E., 2,308 feet from the Southwest corner of Section 15, T. 33 N., R. 8 W., M.D.B.&M., and at or about N. 73° 56' E., 3,777 feet from the Southwest corner of Section 8, T. 33 N., R. 8 W., M.D.B.&M., and which dams will affect flows of the Trinity River; and

3. WHEREAS, the County has appeared as an interested party at the hearing on the 29th day of December 1958, before the State Water Rights Board of the State of California with reference to the issuance of permits on Applications No. 5627, 5628, 15374, 15375, 15376, 16767, 16768, and 17374 for the appropriation of unappropriated water of the Trinity River, which have been filed by the United States; and

4. WHEREAS, Section 8 of the said Reclamation Act of June 17, 1902, provides as follows:

> "That nothing in this act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder and the Secretary of the Interior, in carrying out the provisions of this act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of

any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right to the use of water acquired under the provisions of this act shall be appurtenant to the land irrigated and beneficial use shall be the basis, the measure, and the limit of the right."

and

5. WHEREAS, the said act of August 12, 1955, provides in Section 2 thereof in part as follows:

". . . That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users."

and

6. WHEREAS, it is desired to establish by terms of this contract operating criteria the observance of which will not impair rights to the reasonable and beneficial use of water originating above Trinity Dam;

NOW, THEREFORE, in consideration of the provisions hereinabove set out and in compliance with the hereinabove quoted provisions of the said acts, it is hereby agreed by and between the parties hereto as follows:

7. The United States shall have the right to divert and store the waters of the Trinity River and its tributaries, and the right to use the water so stored for beneficial use for irrigation and other purposes and for the generation of electric energy in connection with the Central Valley Project.

8. The United States agrees to release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users.

9. Authorized representatives of the County shall have access at all reasonable times during office hours to records and computations pertaining to releases from said reservoirs and, upon reasonable request, shall be furnished copies of such records and computations.

EFFECT OF WAIVER OF BREACH

10. The waiver of a breach of any of the provisions of this contract shall not be deemed to be a waiver of any other provisions hereof or of a subsequent breach of such provisions.

RESPONSIBILITY FOR INTERRUPTION

11. In the event the performance, in whole or in part, of the obligations of the respective parties under this contract is hindered, interrupted, or prevented by war, strikes, lockouts, fires, acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the control of the respective parties hereto, whether similar to the causes herein specified or not, such obligations of the respective parties under this contract shall be suspended to the extent and for the time that performance thereof is prevented or affected by such hindrance,

interruption, or prevention, but due diligence shall be observed by the respective parties hereto, so far as lies in their power, in performing their respective obligations under this contract.

OFFICIALS NOT TO BENEFIT

12. No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this restriction shall not be construed to extend to this contract if made with a corporation or company for its general benefit.

SUCCESSORS AND ASSIGNS BOUND

13. This contract shall be binding upon and inure to the benefit of the successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the parties hereto, by their respective officers thereunto duly authorized, have duly executed these presents on the day and year first hereinabove written.

THE UNITED STATE OF AMERICA

By [illegible]
Regional Director, Region 2
Bureau of Reclamation

ATTEST:

[illegible]
County Clerk of the County of Humboldt

HUMBOLDT COUNTY

By [illegible]
Chairman of the Board of Supervisors

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT, STATE OF CALIFORNIA

Certified copy of portion of proceedings, Meetings of May 1, 1959

IN THE MATTER OF EXECUTING CONTRACT BETWEEN DEPARTMENT OF THE INTERIOR, BUREAU OF RECLATION, AND THE COUNTY OF HUMBOLDT:

Upon the motion of Supervisor Pettersen, seconded by Supervisor Robertson, Sam B. Merryman, Jr Chairman of this Board of Supervisors, is hereby authorized and directed to sign a contract between the United States Department of the Interior, Bureau of Reclamat on, and the County of Humboldt regarding the Trinity River Division of the Central Valley Project.

AYES: Supervisors— Lindley, Robertson, Pettersen, Merryman
NOES: Supervisors— None
ABSENT: Supervisors— Bareilles

STATE OF CALIFORNIA, County of Humboldt } ss.

I, FRED J. MOORE, JR., County Clerk of the County of Humboldt, State of California, and ex-officio Clerk of the Board of Supervisors of the County of Humboldt, do hereby certify the foregoing to be full, true and correct copies of the original orders made in the above entitled matters by said Board of Supervisors, at a meeting held in Eureka, California, on May 1, 1959 and as the same now appears of record in my office.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Board of Supervisors this 4th day of May, 1959.

County Clerk and ex-officio Clerk of the Board of Supervisors of the

ATTACHMENT 4

1. The amount of water appropriated shall be limited to the amount which can be beneficially used and shall not exceed 1500 cubic feet per second by direct diversion from January 1 to December 31 of each year; all as more explicitly set forth under Paragraph 2 of the supplement to this approved application. The amount of water directly diverted under this permit and permits issued pursuant to Applications 5628, 15374 and 15375 shall not exceed a total of 3200 cubic feet per second.

2. The maximum amount herein stated may be reduced in the license if investigation so warrants.

3. Construction work shall be completed on or before December 1, 1964.

4. Complete application of the water to the proposed use shall be made on or before December 1, 1990.

5. Progress reports shall be filed promptly by permittee on forms which will be provided annually by the State Water Rights Board until license is issued.

6. All rights and privileges under this permit including method of diversion, method of use and quantity of water diverted are subject to the continuing authority of the State Water Rights Board in accordance with law and in the interest of the public welfare to prevent waste, unreasonable use, unreasonable method of use or unreasonable method of diversion of said water.

7. Permittee shall maintain a daily record of inflow into and outflow from Trinity Reservoir, volumes in storage and water surface elevations. Permittee shall maintain like records with respect to Lewiston Reservoir. Permittee shall provide and maintain such measuring facilities as may be necessary for the formulation of said records. Permittee shall make said records of inflow, outflow, volumes in storage and water surface elevations available to the State Water Rights Board and shall allow authorized representatives of said Board access to its project works and properties for the purpose of securing supplemental information.

8. Permittee shall at all times bypass or release over, around or through Lewiston Dam the following quantities of water down the natural channel of Trinity River for the protection, preservation and enhancement of fish and wildlife from said dam to the mouth of said stream;

L. K. Hill
L. K. Hill
Executive Officer

October 1 through October 31 - 200 cfs

November 1 through November 30 - 250 cfs

December 1 through December 31 - 200 cfs

January 1 through September 30 - 150 cfs

Any water released through said Lewiston Dam for use in the fish hatchery now under construction adjacent thereto shall be considered as partial fulfillment of the above schedule.

9. Permittee shall release sufficient water from Trinity and/or Lewiston Reservoirs into the Trinity River so that not less than an annual quantity of 50,000 acre-feet will be available for the beneficial use of Humboldt County and other downstream users.

10. This permit shall be subject to the prior rights of the county in which the water sought to be appropriated originates to use such water as may be necessary for the development of the county, as provided in Section 10505 of the Water Code of California.

11. The Board retains continuing jurisdiction for the purpose of coordinating terms and conditions with other applications of the United States in furtherance of the Central Valley Project including but not limited to Applications 5625, 5626, 9363, 9364, 9365, 9366, 9367, 9368 and 10588, when acted upon, and for a period of two years thereafter, which period may be extended upon hearing and further order of the Board.

12. Subject to the existence of long-term water delivery contracts between the United States and public agencies and subject to the compliance with the provisions of said contracts by said public agencies, this permit is further conditioned as follows:

(a) The right to the beneficial use of water for irrigation purposes, except where water is distributed to the general public by a private agency in charge of a public use, shall be appurtenant to the land on which said water shall be applied,

L. K. Hill
L. K. Hill
Executive Officer

subject to continued beneficial use and the right to change the point of diversion, place of use, and purpose of use as provided in Chapter 10 of Part 2 of Division 2 of the Water Code of the State of California and further subject to the right to dispose of a temporary surplus.

(b) The right to the beneficial use of water for irrigation purposes shall, consistent with other terms of this permit, continue in perpetuity.

L. K. Hill
L. K. Hill
Executive Officer

ATTACHMENT 5

United States Department of the Interior
OFFICE OF THE SOLICITOR
SACRAMENTO REGION
2800 COTTAGE WAY
ROOM E-2753
SACRAMENTO, CALIFORNIA 95825

Cat.

July 1, 1974

Memorandum

To: Regional Director, Bureau of Reclamation, Sacramento

From: Assistant Regional Solicitor

Subject: Request for opinion re authority of the Secretary of the Interior to alter present functions and accomplishments of Trinity River Division, Central Valley Project

I.

The question has been raised by your office as to whether operations of the Trinity River Division might legally be altered to provide flood control benefits downstream from Trinity and Lewiston Dams.

Any authority of the Secretary of the Interior to release water from Trinity or Lewiston Dams for the purpose of flood control downstream must be found in the statutory grant of power to the Secretary to operate the Trinity River Division. Federal Trade Comm. v. Raladam, 283 U.S. 643. It is my opinion that such authority cannot be found in the purpose of the Trinity River Division Act, nor in its integration into the Central Valley Project either directly through the operational provisions of Section 2 of the Trinity River Division Act, or indirectly through incorporation of the stated purposes of the Central Valley Project Act, and that no such releases of water can lawfully be made.

Section 1 of the Trinity River Division Act, 69 Stat. 719 (P.L. 386, 84th Cong., 1st Sess.), gives the purpose of the Division as ". . . increasing the supply of water available for irrigation and other beneficial uses in the Central Valley of California . . . ." (emphasis supplied). All other provisions of the Act are wholly consistent with this purpose. The Division is authorized "as an addition to and an integral part of the Central Valley Project." (Section 1, 69 Stat. 719) whose purpose is to provide benefits specifically to the Central Valley of California, and the integration is directed to be made in the "fullest, most beneficial, and most economic" (Section 2, 69 Stat. 719) manner possible. Utilizations

of water benefitting the Trinity Basin, on the other hand, are set forth as exceptions to full integration. The release of water into the Trinity River Basin does not further the stated purpose of use in the Central Valley and is, therefore, not authorized by the purpose clause of the Division Act.

Moreover, the specifically authorized downstream releases provided for in Section 2 of the Act do not give any authorization for other generally beneficial releases. The maxim of statutory construction is that express mention of one thing excludes all unmentioned things from the scope of the legislation. The enumeration of exclusions from the operation of a statute indicates that it should apply to all cases not specifically excluded. Herzberg v. Finch, 321 F.Supp. 1367 (S.D.N.Y., 1971).

The lack of Congressional intent to authorize general beneficial releases downstream, especially for flood control, is accurately reflected in the legislative history of the Trinity River Division Act. No significant flood control benefit had been foreseen at any time since the Project was originally conceived. State Water Plan of 1931, Bulletin No. 25 (Engle, Central Valley Project Documents, Vol. I, pp. 282-284, 295-297) (Trinity Dam Project excluded from flood control element of State Water Plan); Finding of Feasibility, House Document No. 53, 83d Cong., 1st Sess. (Engle, Central Valley Project Documents, Vol. I, p. 853) (no allocation of cost to flood control benefit due to the Project); Hearings before the Subcommittee of the Committee on Interior and Insular Affairs, House of Representatives, 84th Cong., 1st Sess., on H.R. 4663, pp. 51-52 (Testimony that any flood control benefits would be so minor that they could be ignored); Report of House Committee on Interior and Insular Affairs, House Report No. 602, 84th Cong., 1st Sess., p. 5 (no recognition of flood control benefits, though other nonreimbursable costs are cited); Report of Senate Committee on Interior and Insular Affairs, Senate Report No. 1154, 84th Cong., 1st Sess., p. 6 (no recognition of flood control benefits, though other nonreimbursable costs are cited). In the committee reports and in debate the only concern expressed for downstream interests was that they receive a minimum adequate supply of water for their needs, not that they be protected from any overabundance. Report of House Committee on Interior and Insular Affairs, House Report No. 602, 84th Cong., 1st Sess., pp. 5, 9; Report of Senate Committee on Interior and Insular Affairs, Senate Report No. 1154, 84th Cong., 1st Sess., p. 8; 101 Cong. Rec. 8880-8881, remarks of Representative Scudder (Humboldt-Del Norte); 101 Cong. Rec. 12315, remarks of Senator Kuchel (California). Therefore, any omission of mention of flood control releases or other releases beneficial to downstream interests from the downstream releases authorized by the Act would appear to be entirely conscious and intentional.

Section 2 of the Act provides for the manner in which the operation of the Trinity River Division is integrated into the Central Valley Project. It directs that "the operation of the Trinity River Division shall be integrated and coordinated . . . with the other features of the Central Valley Project . . . in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available." Section 2, 69 Stat. 719 (P.L. 386, 84th Cong., 1st Sess.) The words "fullest, most beneficial, and most economic utilization" describe the manner of integration with the Central Valley Project, not the general utilization of the impounded water. The directive does not authorize any use or any manner of use of water which is not or cannot be integrated into the Central Valley Project, hence no authorization for flood control in the Trinity Valley.

Even if the purposes of the Central Valley Project as a whole are incorporated into the Trinity River Division authorization by the language of integration, the flood control purposes set forth in the Central Valley Project Act, 50 Stat. 844 (P.L. 392, 75th Cong., 1st Sess.) still would not authorize flood control in the Trinity River Basin. The legislative history of the Central Valley Project indicates clearly that the flood conditions meant to be corrected by the Project were those occurring in the Sacramento and San Joaquin River Basins, not flood conditions existing generally in the State. This intention is reflected in the total lack of discussion of flood problems in other basins, the detailed discussion of the causes and possible solutions to the problem of floods in the Central Valley, and the fact that the Trinity Dam Project was never seen to contribute any flood control benefit at all to the Project. State Water Plan of 1931, Bulletin No. 25 (Engle, Central Valley Project Documents, Vol. I, pp. 281-284, 294-297); Finding of Feasibility, House Doc. No. 53, 83d Cong., 1st Sess. (Engle, Central Valley Project Documents, Vol. I, p. 853).

Therefore, since no statutory source of power can be found for the Secretary to alter operation of the Division for flood control or other purposes generally beneficial to downstream interests, it is my conclusion that the Secretary has no authority to make such releases of water.

II.

Your office has also requested interpretation of the last proviso of Section 2 of the Act as it relates to releases authorized for

fish preservation. The proviso reads:

> ". . . That not less than 50,000 acre-feet shall be released annually from the Trinity Reservoir and made available to Humboldt County and downstream water users." Section 2, 69 Stat. (P.L. 386, 84th Cong., 1st Sess.)

The water released for fishery purposes is not consumed, but remains available later for use by other downstream users. In addition, the term "downstream water user" is not specific, but appears to refer to all downstream users generally, including the fishery.

Therefore, it is my opinion that since the purpose of the Division is to provide as much water as possible to the Central Valley, Section 1, 69 Stat. 719 (P.L. 386, 84th Cong., 1st Sess.) the 50,000 acre-feet referred to in the last proviso of Section 2 should be construed to include the water necessary to maintain minimum specified flows for fish preservation and propagation rather than being considered to be in addition to such flows.

Rita Singer

Rita Singer
Assistant Regional Solicitor
Sacramento Region

JGoldsmith:RSinger:br

ATTACHMENT 6

SACRAMENTO REGION
2800 COTTAGE WAY
ROOM E-2753
SACRAMENTO, CALIFORNIA 95825

WRS INTERPRETATION OF PL 84-386 REF 50,000 AF SET ASIDE FOR DOWN STREAM US ELS.

JAN 21 1977

Memorandum

To: Field Supervisor, Division of Ecological Services
USFWS, Sacramento

From: Regional Solicitor

Subject: Trinity River Division, CVP - Reconsideration of July 1, 1974 Memorandum to Regional Director, Bureau of Reclamation, Concerning Section 2 of the Trinity River Division Act

Pursuant to your December 13, 1976 request, I have reconsidered this office's previous interpretation of Section 2 of the Trinity River Division Act (69 Stat. 719; P.L. 84-386) as set forth in the memorandum identified above (copy attached). That Act clearly states that the Trinity River Division was intended to serve multiple purposes including (1) enhancement of fish and wildlife resources by maintaining the flow of the Trinity River below the applicable point of diversion (i.e. Clear Creek Tunnel) at a minimum of 150 c.f.s. and by maintaining the flow of Clear Creek below the applicable point of diversion (i.e. Spring Creek Tunnel) at a minimum of 15 c.f.s.; and (2) providing a water supply to Trinity River users downstream from Trinity Reservoir by making a minimum annual release from that Reservoir of 50,000 acre-feet. As stated in our July 1, 1974 memorandum to the Regional Director, these are not necessarily conflicting purposes. Rather, releases from Trinity Reservoir for downstream use coincides with the requirement to maintain flows downstream from the diversion points set forth above. It is possible, however, that the flow of the Trinity River will drop below the 150 c.f.s. minimum at points downstream from diversions made by downstream users, thereby causing harm to fish resources. However, should that reduction in the flow of the Trinity River occur, the Act grants the Secretary of the Interior broad authority to increase the size of the releases

from the Trinity facilities should such additional releases be deemed necessary in order to serve fish and wildlife enhancement purposes. (See our December 6, 1973 memorandum to the Regional Director concerning this issue, a copy of which is attached.)

In summary, we cannot find specific terminology in the Act itself or any reference in the legislative history relating to the Trinity River Division Act which supports the premise stated in your memorandum of December 13, 1976 that the Act does or was intended to provide separate and distinct "blocks of water" for fish preservation and propagation purposes and we cannot, therefore, support your interpretation. We do, however, find the authority mentioned hereinabove whereby the Secretary may make such additional releases for this purpose as he deems necessary.

In order to clarify treatment of this issue in our July 1, 1974 memorandum to the Regional Director, it is hereby amended by addition of the following at the end of the last paragraph on page 4 of that memorandum:

> ; however, it should be noted that the proviso quoted above does not limit downstream use to 50,000 acre-feet annually. Rather, as pointed out in our memorandum of December 6, 1973, the Secretary has discretionary authority to release additional water for the purpose of preserving or propagating fish resources.

Charles R. Renda
Regional Solicitor
Sacramento Region

Enclosures - 2

cc: Regional Director, Bureau of Reclamation (w/o encl.)

JETurner/cb

ATTACHMENT 7

UNITED STATES
DEPARTMENT OF THE INTERIOR
OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

DEC 7 1979

Memorandum

To: Assistant Secretary, Land and Water Resources

From: Solicitor

Subject: Proposed Contract with Grasslands Water District

A question has been raised whether the Department may amend its contract with the Grasslands Water District in the Central Valley Project (CVP) to provide that, in critically dry years, the District be accorded equal priority with agricultural contractors. The District is usually delivered 50,000 acre-feet of water primarily for waterfowl management, under the terms of the Act of August 27, 1954, Pub. L. No. 83-674, 68 Stat. 879, 16 U.S.C. § 695d, et seq., which was recently amended by the Fish and Wildlife Improvement Act of 1978, Pub. L. No. 95-616, 92 Stat. 3115.

The question is whether equal priority is consistent with the applicable CVP authorizations which establish general categories of priorities for CVP operations, as follows: (1) river regulation, improvement of navigation, and flood control; (2) irrigation and "domestic uses;" (3) power; and (4) fish and wildlife and "other beneficial uses."1/

The 1954 Act provides that the "entire Central Valley Project" theretofore authorized and reauthorized, "is hereby reauthorized and declared to be for the purposes set forth in said acts, and also for the use of the waters thereof for fish and wildlife purposes, subject to such priorities as are applicable [under previous authorizations]." One of my predecessors held that the express reference to the use of waters for fish and wildlife in the 1954 Act is "simply a more definitive specification" of "other beneficial uses" which were an authorized project purpose (and lowest priority) ever since the 1937 reauthorization of the project. See 50 Stat. 844, 850; Opinion by Acting Solicitor Armstrong, "Allocations for fish and wildlife conservation on Central Valley Project," Nov. 15, 1954, p. 3. The Solicitor went on to point out: "The condition in [section 1 of] Public Law 674 that the use

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1/ See Pub. L. No. 75-392, 50 Stat. 844 (Aug. 26, 1937).

of such waters for wildlife conservation purposes shall be subject to such priorities as are applicable under prior authorizations also is simply a specific recognition by the Congress of the existence of the priorities originally specified."

I agree with and reaffirm this opinion. It does not, however, directly address the question here presented. For the same reason, the provisions of section 6 of the 1954 Act, which authorized contracts to supply CVP water to certain wildlife areas on an "if and when available" basis, begs the question presented here of how much water can be made "available" by the Secretary under general CVP priorities. As noted above, the 1954 Act was amended in 1978, but in a way not relevant here.

A narrow, technical reading of the CVP statutory priorities might suggest that in every situation throughout the CVP deficiencies shared equally by irrigation and fish and wildlife are unlawful; in other words, to require that a higher priority must be totally satisfied before a lower one can be met. I am unaware of any legislative history of CVP statutory authorities which supports such a theory.

The Secretary has never applied the priorities or operated the project that way. Rather, the allocation of relative shortages or benefits among priorities in any specific situation has been regarded as a discretionary matter within the Secretary's judgment.

For example, this kind of narrow interpretation — placing total emphasis on flood control (the highest priority) — would reduce water storage in reservoirs for irrigation. Maximizing flood protection would dictate that reservoirs be kept nearly empty certain times of the year in the event massive precipitation and runoff occurred. Operation that way would limit storage of water for irrigation and other uses later in the year. But reservoirs are not operated to wring every conceivable bit of flood storage capability out of the storage space; instead, they are operated according to Corps of Engineers criteria which strike a reasonable balance between the need for stored water and the remote possibility of huge storms.

To give a specific example, the Folsom Reservoir on the American River above Sacramento is not sufficient, in the judgment of the Corps of Engineers and the Bureau, to protect Sacramento from the worst conceivable flood (the so-called "standard project flood"). Additional flood control is one justification for the proposed Auburn dam, authorized to be built upstream from Folsom. Yet Folsom reservoir is not, in advance of completion of the Auburn dam, kept at its lowest possible storage level in the spring even though additional protection from

an unexpected, and highly improbable, standard project flood (estimated to occur once every thousand years) might be obtained if it were.2/

To take another example, many CVP contracts provide that municipal and industrial uses are cut in critically dry years after irrigation is cut, even though irrigation and "domestic uses" are of equal statutory priority. To take a third, more immediate example, in the 1976-77 drought Grasslands was delivered water on an equal priority with municipal and industrial users, and ahead of irrigators, because of very serious threat to migratory waterfowl.

Operating a huge, multi-purpose project like the CVP is a complicated undertaking, which precludes applying the order of priorities in any individual situation in an absolute, inflexible way. Rather, the Bureau has strived to coordinate disparate functions in a way which serves them all in the project as a whole, while maintaining a balance which fairly reflects the authorized priorities of purpose. The fact that Congress has typically provided, in adding new features to the project, that the new features shall be integrated into the overall project reinforces this view that it is the project as a whole which supplies the context for applying the statutory priorities.3/

On occasion the Congress has specifically limited the Secretary's discretion in meeting the general CVP priorities. For example, in authorizing the Trinity River Division of the CVP in 1955, Congress specifically provided that in-basin flows (in excess of a statutorily prescribed minimum) determined by the Secretary to be necessary to meet in-basin needs take precedence over needs to be served by out-of-basin diversion. See Pub. L. No. 84-386, §2. In that case, Congress'

2/ While Congress specifically provided that the Auburn Project be operated for flood control in accordance with Corps of Engineers criteria, 43 U.S.C. § 616bbb, Congress made no such direction in the Folsom authorization. See 58 Stat. 900.

3/ See, e.g., Pub. L. No. 84-386, 69 Stat. 719 (Aug. 12, 1955) (Trinity River Division authorization), § 2, 43 U.S.C. § 616bbb; Pub. L. No. 89-161, 79 Stat. 615 (Sept. 2, 1965) (Auburn-Folsom South Unit authorization), § 2. The Auburn-Folsom South provision is typical, providing in pertinent part that the unit be "integrated and coordinated, from both a financial and an operational standpoint, with the operation of other features of the Central Valley project . . . in such manner as will effectuate the fullest, most beneficial, and most economic utilization of the water resources hereby made available." 43 U.S.C. § 616bbb.

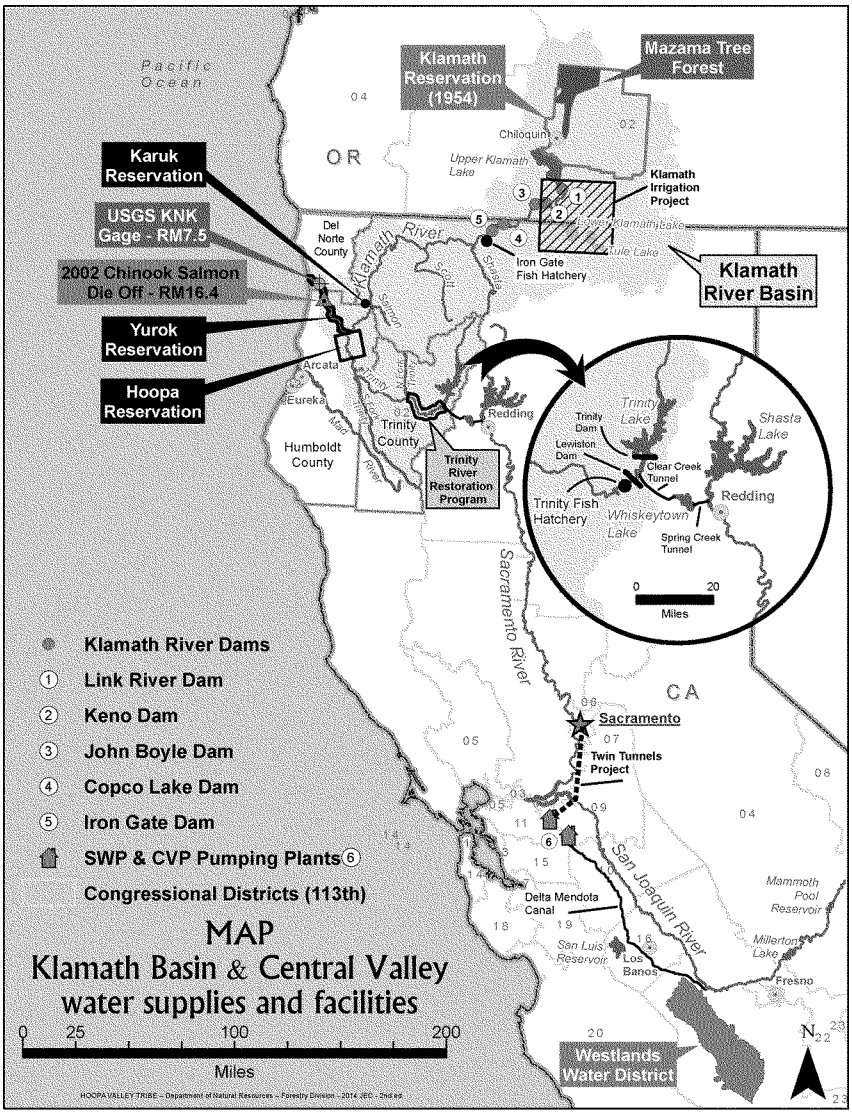
usual direction that the Trinity River Division be integrated into the overall CVP, set forth at the beginning of section 2, is expressly modified by and made subject to the provisos that follow giving specific direction to the Secretary regarding in-basin needs.

Applying the general statutory priorities in the context of the project as a whole accords both with past practice and Congress' intent. The priorities have meaning in the sense that it would be improper for the Secretary to devote most CVP-stored water primarily to power production or fish and wildlife protection while shorting other purposes of a higher priority. The record shows that the vast bulk of the CVP yield of nearly 8 million acre-feet is devoted to irrigation and other uses of a higher statutory plane than fish and wildlife protection. Thus the statutory priorities are fairly being met, even if they have not slavishly dictated every individual decision in the thousands of operating judgments that must be made in a project this large and complex.

In short, the congressional priorities must not be applied in the context of a single contract or a single small facet of an enormous project, but from the perspective of project operation as a whole. For this reason, it is plain that the Grasslands contract is consistent with the statutory priorities.

(sgd) Leo Krulitz

SOLICITOR


Pacific Ocean
Klamath Reservation (1954)
Mazama Tree Forest
Chiloquin
Upper Klamath Lake
OR
Karuk Reservation
USGS KNK Gage - RM7.5
2002 Chinook Salmon Die Off - RM16.4
Yurok Reservation
Hoopa Reservation
Klamath Irrigation Project
Klamath Lake
Tule Lake
Iron Gate Fish Hatchery
Klamath River Basin
Del Norte County
Klamath River
Salmon
Scott
Shasta
Arcata
Eureka
Mad River
Trinity River
Redding
Trinity County
Humboldt County
Trinity River Restoration Program
Trinity Lake
Trinity Dam
Lewiston Dam
Clear Creek Tunnel
Shasta Lake
Trinity Fish Hatchery
Whiskeytown Lake
Spring Creek Tunnel
Redding
0 20
Miles
Sacramento River
Klamath River Dams
Link River Dam
Keno Dam
John Boyle Dam
Copco Lake Dam
Iron Gate Dam
SWP & CVP Pumping Plants
Congressional Districts (113th)
CA
Sacramento
Twin Tunnels Project
San Joaquin River
Delta Mendota Canal
San Luis Reservoir
Los Banos
Mammoth Pool Reservoir
Millerton Lake
Fresno
Westlands Water District
MAP
Klamath Basin & Central Valley water supplies and facilities
0 25 100 200
Miles
N
HOOPA VALLEY TRIBE – Department of Natural Resources – Forestry Division - 2014 JEC - 2nd ed.

KODIAK ELECTRIC ASSOCIATION

KODIAK ELECTRIC ASSOCIATION, INC.
P.O. BOX 787, KODIAK, AK 99615-0787
(907) 486-7700

October 5, 2015

Energy and Natural Resources Committee Office
304 Dirksen Senate Building
Washington, DC 20510

RE: Senate Bill S.1583
A Bill to Authorize the Expansion of an Existing Hydroelectric Project

Dear Senators,

The community of Kodiak greatly appreciates your consideration and support for Senate Bill S.1583 to authorize the expansion of an existing hydroelectric project at Terror Lake. This legislative action is necessary for a viable renewable energy project to proceed on Kodiak Island, Alaska.

Kodiak Electric Association, Inc. (KEA) is a community-owned, rural electric cooperative that supplies electricity to the nation's largest US Coast Guard Base and one of the nation's largest commercial fishing ports. KEA powers the Kodiak community with a 99.7% renewable energy portfolio that has effectively eliminated diesel fuel as a primary energy supply. The success of developing an affordable and emission-free source of power with KEA's innovated hydro-wind electric grid has created a new challenge of increased demand for more electricity as the community shifts from diesel oil to renewable electricity to meet their energy needs. Kodiak is experiencing an overall community-wide shift of heat systems, repowering of the City's shipping port crane from diesel fuel to renewable electricity, and expansions in the local seafood processing industry. Without additional sources of renewable energy to meet this growing demand, KEA will need to utilize diesel-based power generation. Returning to a reliance on expensive, barged-in diesel fuel in our remote community is not an acceptable option.

Diverting water from the upper reaches of the Hidden Basin watershed is the solution to this energy challenge. This hydropower expansion was considered during the original design and construction of the Terror Lake Project decades ago, but the power was not needed for the community at that time, but now it is. It is now the most feasible energy project available to KEA. The additional water resources added to Terror Lake from the Upper Hidden Basin Diversion increases the Project's average annual generation by an additional 33 million kilowatt-hours, which is a 25% boost to the community's hydropower supply. The renewable energy provided by this expansion saves over two million gallons of diesel fuel annually, and the resulting 23,744 metric tons of greenhouse gas emissions from the diesel-powered generation that otherwise would be needed to power KEA's growing electrical loads. Construction and operation of the diversion is not anticipated to result in significant environmental impact, and the hydropower generated from the additional water optimizes existing infrastructure.

KEA is ready to move forward with the Upper Hidden Basin Diversion as the next necessary step in our renewable energy vision, and we are actively engaged in the permitting process. KEA filed a Draft Application for Non-Capacity Amendment to Federal Energy Regulatory Commission (FERC) License No. 2743 requesting authorization of the diversion expansion. Public and agency scoping meetings were held on July 21, 2015, and these meetings were well attended by resource agency staff and community

stakeholders. No statements of opposition were expressed during the scoping meetings or the public comment period. KEA intends to construct the Upper Hidden Basin Diversion in 2019 and have the additional water resource available to the Terror Lake Hydroelectric Project in 2020.
Most of the Upper Hidden Basin Diversion area is located on land owned and managed by the State of Alaska, except for the tunnel outlet that connects the water from the new diversion to the Terror Lake reservoir. That small portion of the diversion expansion is located on federal lands owned by the United States and managed under ANILCA. The existing Terror Lake Hydroelectric Project is already authorized under ANILCA Section 1325.

Senate Bill S.1583 provides the necessary clarity for including this diversion expansion into the previously authorized ANILCA Section 1325 for the overall Terror Lake Hydroelectric Project. This legislative action is needed to provide timely and clear authorization for the Upper Hidden Basin Diversion project to proceed in its permitting, construction and operation on federal lands through the FERC licensing process. The successful passing of Senate Bill S.1583 averts the risk of burning millions of gallons of diesel fuel for KEA's electric power needs while the Upper Hidden Basin Diversion project undergoes delay during the lengthy ANILCA approval process, in redundancy to the FERC licensing process.

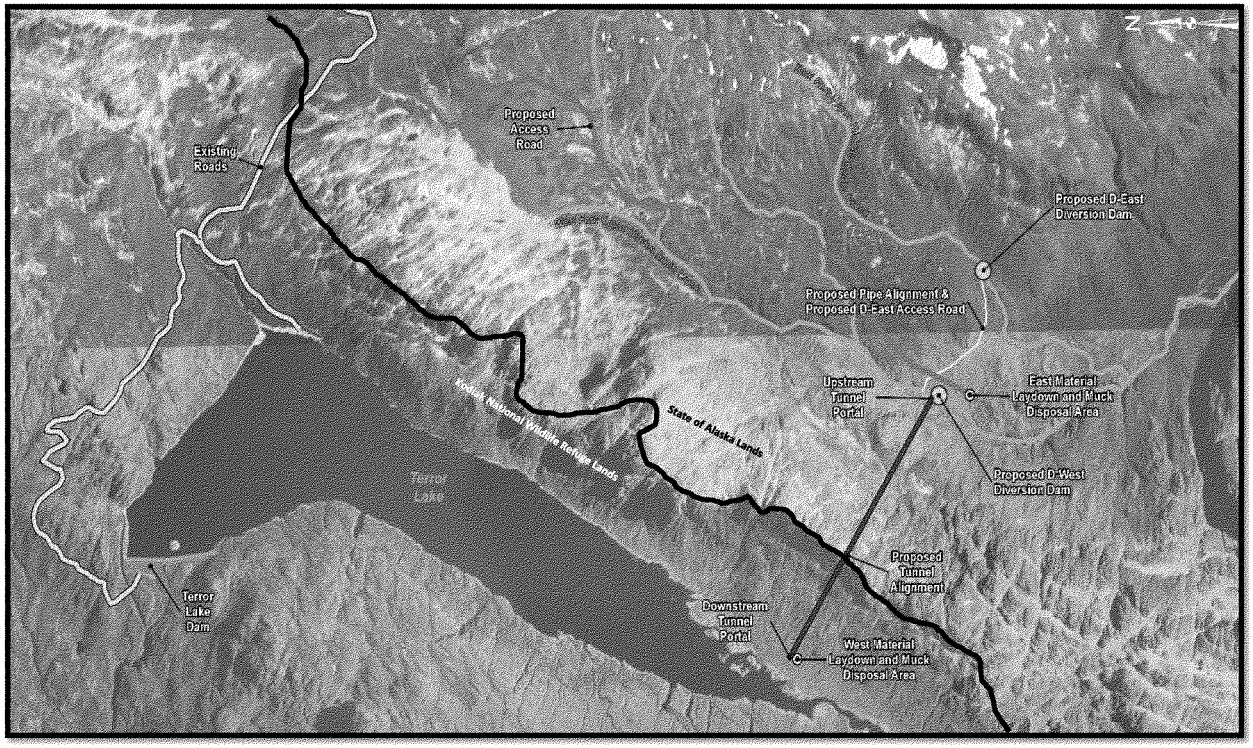
KEA is greatly appreciative of the leadership exhibited by Chairman Murkowski and her staff in introducing and supporting this important legislative initiative for KEA and our cooperative member-owners. Chairman Murkowski's expertise in Alaska's unique energy needs and federal land management issues is extremely helpful to the advancement of renewable energy solutions that provide meaningful economic and environmental benefits to the Kodiak community.

KEA respectfully requests that the Senate please approve Senate Bill S.1583 to authorize the Upper Hidden Basin diversion expansion to the existing Terror Lake Hydroelectric Project.

Thank you,

Darron Scott
President/CEO

Kodiak Electric Association, Inc.
Terror Lake Hydroelectric Project
Proposed Upper Hidden Basin Diversion 5-18-2015



Statement Re: S. 2046:
Mahoney Lake Hydroelectric Stay, License Extension Bill

Submitted Jointly by:
The City of Saxman, Alaska
Cape Fox Corporation
Alaska Power & Telephone Company

9-21-15

The Mahoney Lake hydropower project is being undertaken by a unique partnership comprised of: the City of Saxman, the first Alaska Native village to incorporate as a municipality under Alaska Territorial Law; Cape Fox Corporation, the Alaska Native Claims Settlement Act (ANCSA) Village Corporation founded to provide for the socioeconomic well-being of Alaska Native people from Saxman; and Alaska Power & Telephone Company, a successful Alaska utility business since 1957, just prior to statehood.

Our three entities jointly support passage of S. 2046, which authorizes the Federal Energy Regulatory Commission to issue an order continuing the stay of the hydroelectric license for the Mahoney Lake hydroelectric project, located in rural southeast Alaska. The additional timing flexibility created by S. 2046 will help support development of Mahoney Lake in a financially feasible manner that coincides with the region's growing energy needs, and rural economic development. S. 2046 also helps prevent the Mahoney Lake project's license from expiring; expiration would result in a loss of over $4m of private investment in our region's economic future, and would require an entity to repeat the licensing process, which would likely take 9+ years, at a cost of over $4m in additional, new expenditures.

The Mahoney Lake project is a small, 9.6 megawatt "low impact" lake tap hydro project at a perched alpine lake, which does not require construction of a dam, and will not inundate lands. The project is located on Alaska Native Claims Settlement Act of 1971 (ANCSA) lands provided to Cape Fox Corporation to assure the socioeconomic well-being of its members, in exchange for their extinguishment of indigenous land claims.

Cape Fox was distinctly disadvantaged in its land selections under ANCSA because of special selection restrictions unique to Ketchikan; the location of the Annette Island Indian reservation; the presence of waterways and barren mountaintops with no economic value; and the then long-term timber contracts in the area owned at the time by the Ketchikan Pulp Corporation. All three issues prevented Cape Fox from selecting most of its lands inside its core selection areas. The Mahoney Lake project site was one of few local economic opportunities available to Cape Fox Corporation, and was selected for this very reason. Cape Fox Corporation, especially, is deserving of an extension given its unique position under terms of ANCSA.

Together, AP&T and Cape Fox invested over $4,000,000 in private capital in the Mahoney Lake project, resulting in issuance of a FERC license, and construction of roads to the project's future powerhouse. This $4m in investment, while modest in comparison to energy investments in the

lower 48, is the largest private sector pre-construction investment in renewable energy development made in the Ketchikan region's rural economy. The City of Saxman, while challenged by a 33% poverty rate, has devoted considerable resources to supporting advancement of the project. Without an extension for the project, our three entities' substantial investment in our rural region's economic future, and access to clean energy, will be wasted.

Mahoney Lake is well-supported throughout the community, with formal support provided by:

- Southeast Conference (the regional economic development district for southeast Alaska);
- The Ketchikan Chamber of Commerce (which represents over 200 businesses in Ketchikan);
- Ketchikan Indian Community;
- The Ketchikan School District
- The Alaska Native Brotherhood / Alaska Native Sisterhood;
- The Organized Village of Saxman;
- The City of Ketchikan;
- The Ketchikan Gateway Borough;
- Alaska Ship & Drydock;
- and more.

Because the Ketchikan region continues to lack a transmission connection to the remainder of the North American utility grid, the market for power from Mahoney Lake is limited to local needs. Development of the Mahoney Lake project must be timed to coincide with the energy requirements of the community – a challenge which is not unique to our three entities, but would be faced by any other developer. The extension proposed by S. 2046 will provide the additional time required to assure that clean, renewable energy from Mahoney Lake can be developed in a financially feasible manner coinciding with the growing energy needs of our region's rural economy. Very importantly, the project will help Cape Fox Corporation realize the promise and benefits it received through ANCSA, in exchange for extinguishing its indigenous land claims.

Jason Custer
Chairman, Mahoney Lake Partnership
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W: 907-225-1950 x 29
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October 7, 2015

Senator Tom Udall
531 Hart Senate Office Building
Washington D.C., 20510

Senator Martin Heinrich
303 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Udall and Senator Heinrich:

The National Audubon Society and The Nature Conservancy write to express our support for the New Mexico Drought Preparedness Act (S.1936), because we believe it will strengthen New Mexico's water security and resiliency in the face of drought.

After witnessing the impacts of a decade-long drought, westerners are acutely aware of the aridity of the American West. The available water supply is increasingly stressed by the cumulative and unsustainable use by cities, farms, and nature, which are compounded by global mechanisms such as drought and climate change. While we recognize that water scarcity is felt with the greatest urgency at the local level, the connectivity of water requires solutions that work at a basin scale and balance the needs of cities, farms, and nature. Although states have the primary authority to manage water resources, the federal government has a significant role to play in advancing innovative, collaborative, and widely-supported water conservation measures and creative-financing to meet water demands and protect and restore healthy river flows.

The New Mexico Drought Preparedness Act accomplishes this by providing vital funding and program authorizations that enable urban, agricultural, and ecosystem sectors to thrive in a shared water system. Key provisions of the legislation include:

- Section 2, which establishes a voluntary water acquisition program across New Mexico to be managed by the Bureau of Reclamation, in coordination with other federal agencies, the state, and water districts. The program aims to benefit fish and wildlife, water quality, and river ecosystem restoration, along with the stewardship and conservation of working lands, water, and watersheds. Incentives and cost-shares are available to water districts and producers to improve irrigation systems and efficiency and to establish water leasing programs. Voluntary water leasing is a collaborative, flexible solution for achieving substantial benefits during times of drought and generating a financial return for farmers while preserving agricultural water rights and rural economies in perpetuity.

- Section 8, which strengthens WaterSMART, a major component of the Bureau of Reclamation's water conservation efforts, which has led to expected savings of over 860,000 acre-feet per year. There is significant untapped potential for WaterSMART, as

only 1 in 5 grants are currently funded. S.1936 would increase its authorized funding, greatly increasing the available grants and extending the program, which could expire by the end of 2016. The bill expands the scope of grants to include planning for the impacts of drought. It also provides discretionary authority for the Commissioner to waive cost-share requirements for emergency drought situations, and allows for prioritizing projects with multiple benefits, or those that include innovative tools, such as water conservation and markets.

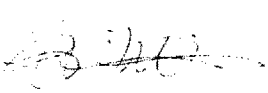
- Section 9, which reauthorizes the Reclamation States Emergency Drought Relief Act, presently the best available programmatic statute authorizing the Bureau of Reclamation to act for the benefit of fish and wildlife. The Reclamation States Emergency Drought Relief Act also provides a broad array of drought relief to states, tribes, and water districts. At the request of states or tribes, the Drought Relief Act authorizes the Bureau of Reclamation to help prepare and implement drought contingency plans, designed to prevent or mitigate the adverse effects of drought. These plans can draw on innovative and flexible mechanisms such as water banks, water conservation, use of Reclamation's project facilities to store and convey nonproject water, and water supplies for fish and wildlife. S.1936 would extend authorization through 2018 and more than doubles the amount of funding that can be appropriated from $90 million to $190 million.

The bill also authorizes additional programs and studies focused on improving flexibility, efficiency, and optimization of water supply, storage, and delivery through reservoir management and reoperation in the Upper Rio Grande Basin. In consultation with water users and tribes, reservoirs constructed and authorized 50 to 100 years ago would be fully reviewed to meet current needs, including environmental purposes, and future conditions. Modernizing water management would benefit all water users by enhancing water productivity, conservation, and drought resiliency while reducing conflict over water for ESA-listed species.

S.1936 focuses on sustainable solutions that optimize supply and benefits for cities, agriculture, and nature across multiple scales from districts to river basins. We recognize and appreciate that S.1936 was developed through a transparent process that solicited input from all interested parties helping to create legislation that has the support of major water stakeholders throughout the state.

For these reasons, we support S.1936.

Sincerely,



Julie Weinstein
VP, Executive Director
Audubon New Mexico

Laura McCarthy
Director of Conservation, New Mexico Field Office
The Nature Conservancy

To advance the economic, social and environmental sustainability of Northern California by enhancing and preserving the water rights, supplies and water quality.

Testimony of David Guy
Representing
The Northern California Water Association
Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing
On
"Western and Alaska Water Legislation"
Washington, D.C.
October 8, 2015

Chairwoman Murkowski, Ranking Member Cantwell and Members of the Committee, thank you for the opportunity to submit this statement for the record. My name is David Guy, and I am President of the Northern California Water Association (NCWA).

NCWA was formed in 1992 to present a unified voice to ensure that the Sacramento Valley has reliable and affordable water supplies–both now and into the future. Our members, who represent water districts, water companies, small towns, rural communities, and landowners that beneficially use both surface and groundwater water resources in the Sacramento Valley, greatly appreciate the Committee convening this legislative hearing on legislation, H.R. 2898, S. 1894, and related legislation, all of which seek to address the challenging drought issues facing California and the Western United States.

The fourth consecutive year of drought has led to less water available for the economy and the environment in the Sacramento Valley. There have been significant surface water cutbacks throughout the Sacramento Valley, with some areas receiving no surface water as shown on "Planning for a Dry Year" (*See* http://www.norcalwater.org/wp-content/uploads/drought-flows-infographic-062215.pdf). Reduced water supplies result in fallow fields. Fewer crops will directly impact rural communities, our economy and the related wildlife habitat. Family farmers in the Sacramento Valley grow a wide variety of crops on two million acres, generating $10 billion in economic activity each year. Reduced water supplies also mean less water for wildlife refuges and ricelands, which affect the food for millions of ducks and geese that migrate through the Sacramento Valley each winter, as well as important shorebird habitat. During the drought, there is less water in the rivers for migrating salmon in the region.

455 Capitol Mall, Suite 335, Sacramento, California 95814-4496 Telephone (916) 442-8333 Facsimile (916) 442-4035 www.norcalwater.org

There are important provisions for Northern California in the bill passed by the House of Representatives (H.R. 2898), the bill introduced by Senators Feinstein and Boxer (S. 1894), as well as several other related bills. To help avoid drought impacts in the future, Northern California urges Congress and the Administration to advance the following as important priorities in drought legislation for California and the Western United States.

Water Rights – The Foundation for the Economy and the Environment. Water rights and contracts are the foundation for water operations in California and provide the stability necessary for the state and federal administrations to help California and the West through this challenging time and future droughts. We support the express recognition of the important water rights foundation and the assurances that there will be no redirected impacts to Northern California. The water rights provisions in both the Senate and House bills are helpful. At this time, Title V in H.R. 2898 is more direct, clear and provides important details for Northern California. Title I, Subtitle B of S. 1894 also contains similar, important provisions that could be improved by more direct and specific language.

New Water Supplies. Water infrastructure and storage projects that improve the operation of the state water system are critical to advancing water supply reliability throughout California, particularly during dry periods. Smart storage projects with dedicated environmental benefits and yield, such as the proposed Sites Reservoir, would give state and federal agencies greater flexibility to manage water during dry periods for all beneficial purposes.

Specifically with respect to Sites Reservoir, we strongly support the bi-partisan H.R. 1060 (LaMalfa and Garamendi) and the inclusion of Sites Reservoir in the storage sections of both drought bills. We fully support the federal investments in storage and language that will help accelerate the feasibility work and environmental review in a practical manner. (*See* H.R. 2898, Title IV; S. 1894, Title III, Subtitle B.)

Additionally, we support and encourage congressional support for a portfolio of financing provisions in federal drought legislation that will complement funding in California's Proposition 1 to assist with new and improved water infrastructure throughout California. S. 1894 specifically includes important provisions for federally-backed financing and increased grants for water infrastructure. These provisions, if passed and funded, will assist local and regional agencies build improved water infrastructure in California, including surface water storage, by substantially reducing the costs and time necessary for completion. The financing portfolio we support includes: 1) authorization for the Reclamation Infrastructure Finance and Innovation Act (RIFIA), which will provide local agencies access to federally-backed, low-cost, long-term financing that could be very beneficial for water storage projects (S. 1894, Title IV, Subtitle A); 2) WaterSMART grants for water efficiency initiatives and small-scale storage and conveyance projects; and 3) additional federal grants under Title XVI for water recycling and reuse. A robust and well-funded portfolio of financing opportunities is important to jump start water infrastructure improvements to better prepare for future droughts in California.

Salmon Recovery: A Time for Action. The Sacramento Valley and its fisheries will greatly benefit from the provisions in the drought bills that assist with salmon recovery. In the Sacramento Valley, water suppliers are partnering with American Rivers, California Trout, Golden Gate Salmon Association, and The Nature Conservancy TNC on the "Sacramento Valley Salmon Recovery Program," (http://www.norcalwater.org/efficient-water-management/fisheries-

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enhancements/) which is a partnership of our organizations and others to promote passage and habitat for salmonid species in the Sacramento Valley. Each of these projects support priorities in expert fisheries biologist Dave Vogel's 2011 comprehensive report, *Insights into the Problems, Progress and Potential Solutions for Sacramento River Basin Native Anadromous Fish Restoration* (http://www.norcalwater.org/wp-content/uploads/2011/07/vogel-final-report-apr2011.pdf), which serves as the foundational document for the recovery program. Importantly, these projects have all been designed to help advance and support objectives contained in the California Water Action Plan and the National Marine Fisheries Service's "Recovery Plan for the Evolutionary Significant Units of Sacramento River Winter-run Chinook Salmon and Central Valley Spring-run Chinook Salmon and the Distinct Population Segment of California Central Valley Steelhead."

We support the provisions in S. 1894, Section 201 to benefit Sacramento Valley salmon. Additionally, to assist salmon, we support the provisions in both bills to reduce and remove invasive species in the Delta and upstream tributaries.

Birds and the Pacific Flyway. California serves as the winter home to millions of waterfowl, shorebirds and other wetland dependent species. Specifically, the Sacramento Valley contains considerable terrestrial habitat that makes up the Pacific Flyway. This habitat consists of varied land uses including agriculture, managed wetlands and wildlife refuges, all of which need water to provide these important habitat values.

We support the various provisions in both bills that recognize the tremendous value of waterfowl and bird populations along the Pacific Flyway. The water rights provisions mentioned above are critical to assure reliable water supplies for ricelands, managed wetlands and refuges in the Sacramento Valley. In the Sacramento Valley, the allocations under the settlement contracts and the federal refuge contracts have been treated similarly and we urge that the legislation recognize the importance of both of these supplies to the Sacramento Valley and the Pacific Flyway. Additionally, we support the provisions in S. 1894, §204 to benefit refuges. Funding for infrastructure improvements and to purchase water supplies is necessary for the wildlife refuges, as well as the other land uses identified in the Central Valley Joint Venture 2006 Implementation Plan to ensure the water supply reliability necessary to meet habitat targets in the Plan.

Regional Self-Sufficiency - Integrated Water Management. California is a diverse state—one of the most effective ways to achieve statewide reliability is to ensure regional water sustainability and self-sufficiency by facilitating integrated water management within hydrologic regions to maximize the reasonable and beneficial use of water within these regions. To promote regional sustainability and partnerships, we support congressional efforts to encourage and direct federal agencies to implement their policies and programs to facilitate regional sustainability and self-sufficiency through regional and local water management actions, including water use efficiency, water supply projects, water transfers, water banking, ecosystem restoration, and recycling that maximize and provide for the full utilization of water within the region for water supply, water quality and ecosystem purposes. (*See* S. 1894, Title IV, Subtitle B.)

Thank you for your consideration of this testimony on the provisions of H.R. 2898 and S. 1894 important to Northern California.

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P.O. Box 983
Lincoln City, OR 97367

Ph/Fax 541-994-2647
nancy@oregonsalmon.org

OREGON SALMON COMMISSION

June 2, 2015

Senator Wyden

The Oregon Salmon Commission is a state commodity commission under the Oregon Department of Agriculture and represents the ocean commercial salmon troll fishermen and the industry.

At its February 26, 2015 meeting, the Oregon Salmon Commission approved a motion opposing any bill that would negatively affect our salmon fisheries.

We understand that there are several bills being considered that may reduce key protections for Central Valley salmon runs. As you know, the health and productivity of California's Central Valley salmon runs have a direct impact on the economic health of the Oregon salmon fisheries and therefore the Oregon coast and its communities. We know that there is a serious drought in California and solutions need to be found, but these solutions cannot harm the salmon that both California and Oregon communities depend on.

We remember that last year you stood up for the fisheries when this issue was raised and we appreciate your support. We again ask for your support to ensure that our fisheries are not impacted by drought legislation.

Thank you for your consideration of this request.

If you have questions, please let me know.

Sincerely yours,

Nancy Fitzpatrick

Nancy Fitzpatrick, Executive Director
Oregon Salmon Commission

Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384
Phone 503-820-2280 | Toll free 866-806-7204 | Fax 503-820-2299 | www.pcouncil.org
Dorothy M. Lowman, Chair | Donald O. McIsaac, Executive Director

September 28, 2015

The Honorable Jared Huffman
United States House of Representatives
1630 Longworth House Office Building
Washington, D.C. 20515

The Honorable Mike Thompson
231 Cannon Office Building
Washington, D.C. 20515

Dear Mr. Huffman and Mr. Thompson:

Thank you for your letter of August 20, 2015 requesting Pacific Fishery Management Council's (Pacific Council) analysis and comment on the three drought-related bills currently under consideration (HR 2898: Western Water and American Food Security Act; S 1894: California Emergency Drought Relief Act; and HR 2983/S 1837: Drought Recovery and Resilience Act of 2015). The Pacific Council and its Legislative Committee met September 9-16, 2015 in Sacramento, California and reviewed these bills as well as your request. The Pacific Council would like to express the following general observations and has tasked staff with more detailed analytical review, with the intention to provide additional comments at a later date.

As you know, HR 2898 would override the Endangered Species Act protections for salmon, steelhead, and other species in the Bay-Delta in order to allow increased pumping from the Delta in excess of levels that we do not believe will always provide sufficient remaining water for adequate salmon production. These measures also protect salmon stocks not currently listed under the ESA (and not addressed by the bill), which are a primary source of healthy sport, commercial, and tribal fisheries from Central California to Northern Oregon.

The Pacific Council is concerned that measures in this bill that weaken protections for both ESA-listed and the non-listed salmon stocks could greatly damage the salmon stocks and the West Coast sport and commercial fisheries that depend on them. This includes measures that override California water law, reduce or eliminate review of water storage projects, blur the distinctions between hatchery and wild stocks, and threaten tribal fisheries in the Trinity and Klamath rivers. The water situation in California is exceptionally complicated; adding another layer of complexity and potential litigation reduces the state and Federal agencies' flexibility and authority to take immediate action to protect salmonids.

The California Emergency Drought Relief and the Drought Recovery and Resilience Acts both emphasize water conservation though water recycling and other measures, including

desalinization. Measures such as these have the potential to sustain favorable freshwater conditions for fish stocks that are vital to west coast fisheries and are generally viewed as positive measures. However, the Council is concerned about the marine habitat implications of salt disposal sites for desalinization plants, but has not had sufficient time to complete a thorough analysis of these proposals to see if additional language providing appropriate safeguards is needed. The Council believes that increased communication and coordination between state and Federal agencies regarding water management and its implications for salmon, particularly during the driest years, would be beneficial to the stocks and the communities that depend on them.

The proposed drought legislation is complex, extensive, and substantially different than drought legislation previously reviewed by the Council. The Council intends to further analyze the implications of these drought bills, and provide a more detailed response subsequent to its November 14-19 meeting in Garden Grove, California.

Thank you again for the opportunity to comment on this legislation; please don't hesitate to contact me or Ms. Jennifer Gilden of the Pacific Council office if you have any further questions.

Sincerely,

D. O. McIsaac, Ph.D.
Executive Director

JDG:kma

Cc: The Honorable Senator Dianne Feinstein
The Honorable Senator Barbara Boxer
The Honorable Representative Bob Bishop, Chairman, House Committee on Natural Resource
The Honorable Lisa Murkowski, Chairman, Senate Committee on Energy and Natural Resources
Pacific Fishery Management Council Members
PFMC Habitat Committee
PFMC Salmon Advisory Subpanel

PLACER COUNTY WATER AGENCY
SINCE 1957
BOARD OF DIRECTORS
Gray Allen, District 1
Primo Santini, District 2
Mike Lee, District 3
Robert Dugan, District 4
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WWW.PCWA.NET

October 6, 2015

Honorable Lisa Murkowski
Chairman
Energy and Natural Resources Committee
U.S. Senate
Washington, DC 20510

SUBJECT: Comments on Upcoming Hearing Regarding Senate Bill S. 1894 and House Bill H.R. 2898

Dear Chairman Murkowski:

The Placer County Water Agency (PCWA) joins with millions of residents, businesses, municipalities and farmers throughout the American West in urging timely enactment of federal legislation to address the devastating effects of the current four-year drought and protect against future dry year cycles. We appreciate your leadership in that regard and hope that the upcoming hearing on pending drought-related legislation in the Energy and Natural Resources Committee (Committee), specifically Senate Bill S. 1894 and House Bill H.R. 2898, results in meaningful action.

PCWA owns and operates the American River Middle Fork Project and other critical infrastructure within the American River watershed of California. In addition to our 200,000 customers in Placer County, we deliver water under long-term contracts to agencies in surrounding counties, and through transfers to cities and farms in central and southern California. PCWA also holds a long-term contract with the Bureau of Reclamation (Reclamation) for Central Valley Project (CVP) water supply. Because of the significance of PCWA's water resources locally and statewide, especially during drought conditions, we are committed along with our partner agencies in promoting water supply reliability and natural resource protection within the American River watershed and the broader Sacramento and San Joaquin River Basins.

In order to meet critical water supply demands during increasingly frequent dry-year cycles, PCWA believes that west-wide drought legislation must at a minimum authorize and require the following:

1. Additional Surface Water Storage. Reclamation must complete within a timely period previously authorized studies and construct or assist in constructing new surface water storage projects in an economically feasible and environmentally responsible manner. PCWA advocates inclusion of authorities and requirements represented by S. 1894 Sections 312 and 313, and H.R. 2898 Title IV, as a main component of the Committee's final drought bill.

2. Area of Origin and Water Rights Protections. Drought assistance by the United States must recognize and be premised upon state water law. Water rights protections represented in S. 1894 Sections 112 and 113, and H.R. 2898 Sections 502, 503, 1102 and 1103 must be a main component of the final drought bill.

3. Technical and Financial Assistance. Federal technical and financial assistance in the form of grants and cooperative agreements is essential to sustaining local agencies' efforts to plan and implement drought resiliency projects and other regional water supply reliability projects. PCWA advocates inclusion and expansion of program authorities and funding levels represented in S. 1894, Section 421, as a main component of the final drought bill.

4. Optimized Reservoir Operations. Federal, State and local water agencies must collectively re-evaluate historical practices and institute adaptive, technology-based policies for reservoir operation in light of changing hydrologic patterns. PCWA supports amending the Reclamation Dam Safety Act and reviewing and revising Corps of Engineers water control manuals for that purpose, as represented in S. 1894 Sections 314 and 315 respectively.

From a regional perspective, PCWA and local partners believe strongly that H.R. 2898, Section 311 must be included in the final drought bill. Section 311 requires Reclamation to collaborate with the Sacramento Water Forum in finalizing and implementing a modified flow management standard for the lower American River for application in operating the CVP Folsom Dam and Reservoir.

5. Flexibility in Managing Contract Water Allocations. Reclamation must honor and implement in good faith existing CVP water contracts' provisions that facilitate efficient and beneficial use of contract water allocations. PCWA concurs with CVP contractors project-wide that H.R. 2898, Section 314, must be included in the final drought bill. Section 314 requires Reclamation to timely develop and implement guidelines for use by all CVP water service and repayment contractors system-wide when requesting to reschedule portions of their water supply allocations from one year to the next, as provided by their contracts.

In addition, PCWA advocates inclusion of H.R. 2898, Section 603, in any final legislation. Section 603 prohibits Reclamation from indirectly prioritizing agencies' water supply

portfolios by asserting that as a matter of policy CVP allocations are considered supplemental to contactors' other sources of water supply.

6. Enhanced Special Study Authority. The Sacramento-San Joaquin Basin Study and other comprehensive basin studies conducted by Reclamation pursuant to Public Law 111-11 provide an important foundation for drought contingency planning and mitigation. PCWA advocates inclusion of H.R. 2898, Section 607 in the final drought bill. Section 607 expands authority for watershed-specific special studies as an important supplement to final approved basin studies.

7. Streamlined Permitting Procedures. In general, PCWA supports provisions of S. 1894 and H.R. 2898 that require federal agencies to streamline critical permitting processes, without amending existing federal environmental statutes, in order to facilitate timely implementation of critical drought mitigation projects and actions.

PCWA believes support of these priority elements maintains a balance between water supply reliability for continued, sustainable economic growth, and protection of the aquatic ecosystems that our citizens enjoy and value. While we recognize reconciling the House and Senate bills is a significant undertaking, PCWA remains hopeful that Congress expedites a bill this year that helps alleviate the continuing human, economic and environmental consequences of the current drought.

Thank you for your consideration.

Respectfully,

PLACER COUNTY WATER AGENCY

Andrew Fecko
Director of Resource Development

cc: The Honorable Diane Feinstein
United States Senate
331 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Barbara Boxer
United States Senate
112 Hart Senate Office Building
Washington, D.C. 20510-0505

The Honorable Maria Cantwell
United States Senate
511 Hart Senate Office Building
Washington, D.C. 20510-4705

The Honorable Tom McClintock
United States House of Representatives
2331 Rayburn House Office Building
Washington, D.C. 20515-0504

The Honorable Doug LaMalfa
United States House of Representatives
322 Cannon House Office Building
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The Honorable Doris Matsui
United States House of Representatives
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The Honorable Ami B. Bera
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President, Board of Trustees
Reclamation District 108

Before the Committee on Energy and Natural Resources
United States Senate

Legislative Hearing
On
"Western and Alaska Water Legislation"
Washington, D.C.
October 8, 2015

Chairwoman Murkowski, Ranking Member Cantwell and Members of the Committee, thank you for the opportunity to submit this statement for the record.

I am Fritz Durst, a fourth-generation farmer and conservationist in Yolo and Colusa Counties, and the President of the Board of Trustees of Reclamation District No. 108 (RD 108).

RD 108, formed in 1870, is located along the western edge of the Sacramento River and delivers water to nearly 48,000 acres of farmland within southern Colusa County and northern Yolo County. RD 108 receives water from the Sacramento River under riparian water rights, licenses for appropriation of surface water, and a Settlement Contract with the U.S. Bureau of Reclamation (Reclamation).

I appreciate the opportunity to provide RD 108's views on two of the drought bills that are the focus of today's hearing: S. 1894, sponsored by Senators Feinstein and Boxer, and H.R. 2898, sponsored by Representatives Valadao and others, including Representative Doug LaMalfa, who represents part of our region. Both bills contain provisions that will provide meaningful, essential assistance to our region, California and the west as a whole.

And both bills contain several provisions that will benefit the Sites Project, a water storage project that is projected to yield approximately 500,000 acre-feet of water annually and would increase the amount of water that can be stored north of the Delta from year to the next by approximately 1,300,000 acre-feet, 1,000,000 acre-feet in Sites Reservoir and another 300,000 acre-feet of water, due to coordinated operations and integration efficiencies, in the existing Trinity, Shasta, Oroville, and Folsom reservoirs. ***The Sites Project has the largest projected water yield of any reservoir currently under review anywhere in the State of California.***

Both S. 1894 and H.R. 2898 contain identical language that seeks to mandate the completion of the Calfed storage project studies, including essential planning work on the Sites Project. That language, which mandates completion of the draft feasibility study and the required environmental studies by November 2016 is essential. RD 108 and others in the Valley have joined together to form the Sites Joint Powers Authority to build and operate the Sites Project as a non-federal reservoir. But we need Reclamation to work with the Sites JPA to complete these studies in a timely manner so that the Sites Project can compete for funds that are available under California Proposition 1. The language in the bills is helpful to ensuring that work is completed, so the Sites Project can compete for these essential non-federal funds, as well as position the project to compete for any federal resources made available to support non-federal water supply projects.

H.R. 2898 also includes important language that will streamline the environmental review process for both non-federal and federal storage projects, and to set up a Reclamation Surface Storage Account that would provide a source of funds to support non-federal surface water storage projects. These provisions would both be very helpful to advancing the Sites Project. And, H.R. 2898 and S. 1894 include language that is important to reaffirming the federal commitment to the state granted water rights and priorities. We strongly support the concept that there should be no redirected impacts on one group of water users as the Federal Government seeks to help those facing water shortages. We prefer the water rights protection language in H.R. 2898 over similar language in S. 1894. We think it is clearer and provides stronger protections.

RD 108 also strongly supports the package of federal water assistance included in S. 1894. These new opportunities for federal assistance for non-federal water projects are essential to enable the Sites Project to move forward on an expedited, cost-effective basis.

Specifically, our District and others in the region strongly support the provisions of S. 1894 authorizing the Reclamation Infrastructure Finance and Innovation Act (RIFIA). If RIFIA is in place when Sites is ready to go to construction, we could shave our annual debt service costs by more than 20 percent. If RIFIA were in place today, the partners in the Sites project would have access to loans with a repayment period of up to 35 years at a rate of 2.89 percent. The lower interest rate and extended repayment period would lower the annual debt service costs on any funds borrowed under RIFIA by 29.24 percent. If the Sites JPA could borrow 49 percent of the total project costs, estimates are that RIFIA would drive down the cost of water by approximately $131 an acre-foot, dropping the cost from $571 dollars an acre-foot to $440 an acre-foot, an overall 23 percent reduction in the cost of water from the project. And, I think we could save even more than that, because the federal backing would likely lower the cost of financing that is not covered by RIFIA.

I would also like to point out that these benefits, the lower interest rates and reductions in annual debt service, are really being provided at no cost to the Treasury. The Federal Government is standing behind the loans, but if there is no default, then RIFIA will not cost the Treasury, anything. Historically, water projects nationwide have a very low default rate, .04 percent. And, under TIFIA, the transportation version of this program that has lent out

$70 billion dollars since it was created in 1998 and has not suffered a single default. So, federally backed financing offers an opportunity to provide meaningful assistance to advance water supply projects west-wide, at little to no cost to the Treasury.

RD 108 also supports the provisions of S. 1894 authorizing Reclamation to participate in a non-traditional way in non-federal projects like Sites. S. 1894 authorizes Reclamation to contribute up to 25 percent of total project costs in non-federal projects like Sites. This would allow Reclamation to work the Sites JPA as a project partner. Reclamation could acquire water directly to help it meet its contractual obligations or to provide water for the salmon or waterfowl benefits, without taking on the responsibility of building and operating the project. Reclamation and the Department of the Interior have said they want a new model to support non-federal water infrastructure development, and we think this is one of the tools Reclamation needs to accelerate investments in needed water infrastructure west-wide.

Finally, RD 108 strongly supports the provisions of S. 1894 that call for the implementation of the National Oceanic and Atmospheric Administration's (NOAA) Salmon Recovery Plan. The bill creates an expanded opportunity for non-federal entities to partner with NOAA Fisheries on salmon recovery projects. The bill provides NOAA Fisheries with additional resources, $4 million annually, to partner with non-federal entities to implement salmon recovery projects on an expedited basis. RD 108 and other water users in the Valley are already making investments of their own resources in these projects. Reclamation is as well through the Central Valley Project Restoration Fund and other sources. And support from NOAA Fisheries will provide another opportunity to accelerate this important work.

We urge the Committee to include language mandating that the Department of the Interior work with NOAA Fisheries and other federal agencies to ensure that all federal reviews, permits and approvals required for salmon recovery projects that are part of the Sacramento Salmon Recovery Program are completed on an expedited basis, consistent with current Federal law. That language, too, will be helpful to institutionalizing the kind of cooperation we have seen on Knights Landing Outfall Gates project, a $2.5 million project that will keep salmon from straying out of the mainstem of the Sacramento River. Reclamation District 108 is the lead on the project and has funded the planning, permitting and design work. The construction costs are being paid for by several agencies including the U.S. Bureau of Reclamation, the California Department of Fish and Wildlife and the California Department of Water Resources. Again, we need NOAA Fisheries to have some resources to support these projects, and S. 1894 provides that essential authority.

Thank you for the opportunity to submit these comments regarding these two important pieces of legislation. I encourage you to reach agreement on drought relief legislation as soon as practicable. Thank you for your consideration of our views.

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GRACE ROBINSON HYDE
Chief Engineer and General Manager

October 5, 2015

The Honorable Lisa Murkowski, Chair
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510-6150

The Honorable Maria Cantwell, Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, D.C. 20510-6150

Dear Chairwoman Murkowski and Ranking Member Cantwell:

October 8, 2015 Hearing on Western and Alaska Water Legislation:
Support for S. 1894 -- California Emergency Drought Relief Act of 2015

Thank you for holding a legislative hearing on proposed Western and Alaska water legislation. On behalf of the Santa Clarita Valley Sanitation District, I am writing to convey our support for S. 1894, the California Emergency Drought Relief Act of 2015 by Senators Feinstein and Boxer, which includes important water recycling provisions that can assist California in addressing current and future drought conditions. Key issues that we believe that Congress must address are to substantially increase funding for the Bureau of Reclamation's Title XVI Water Recycling Program, and to either drop the requirement for an eligible water recycling project to first be Congressionally authorized before being able to compete for Title XVI Program funds or to find another way to identify potentially eligible projects. S. 1894 would address both of these issues.

By way of background, the Santa Clarita Valley Sanitation District treats wastewater and supplies recycled water in the City of Santa Clarita and unincorporated areas in the Santa Clarita Valley, which is in northern Los Angeles County. The Sanitation District currently is pursuing a multibenefit project that includes 3 main components: advanced treatment (microfiltration/reverse osmosis), ultraviolet disinfection, and brine management. This project will provide water quality benefits, as well as produce water resource benefits by making surplus advanced treated recycled water available for potential reuse.

S. 1894 lists the Santa Clarita Valley Sanitation District as a potentially eligible project sponsor in Section 301(b), which, as we understand it, would allow the district to compete for federal funding in a competitive grant program for water recycling and reuse projects that meet specified eligibility and feasibility criteria, which are specified in Section 431. This program is critically important to leverage state and local investments in water recycling and water quality infrastructure that will create more sustainable and "drought-proof" water supplies in California, and can provide a model for other parts of the nation.

Recycled Paper

We strongly urge the Committee on Energy and Natural Resources to retain, at a minimum, the portions of S. 1894 related to water recycling, including Section 301(b) and Sections 411, 421 and 431, when it considers this important legislation.

Please contact Sharon Green of my staff at sgreen@lacsd.org or John Freshman, our Washington representative, at john.freshman@bbklaw.com if you or your staff has any questions.

Very truly yours,

Grace R. Hyde

Grace Robinson Hyde

GRH:SNG:djm

cc: Members, Senate Energy and Natural Resources Committee
Senator Dianne Feinstein
Senator Barbara Boxer

SITES PROJECT JOINT POWERS AUTHORITY
Post Office Box 1266 - Willows, CA 95988
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James C. Watson,

General Manager

Sites Project Authority

Before the Committee on Energy and Natural Resources,
United States Senate

Legislative Hearing On: "Western and Alaska Water Legislation"
Washington, D.C.
October 8, 2015

Chairwoman Murkowski, Ranking Member Cantwell and Members of the Committee, thank you for the opportunity to submit this statement for the record. I am James C. Watson, General Manager of the Sites Project Joint Powers Authority (Sites Project JPA).

I appreciate the opportunity to submit comments, for the record, regarding S. 1894 and H.R. 2898. Both bills have provisions that will support the work of the Sites Project JPA to accelerate the planning, design and construction of the Sites Project, one of five surface water projects authorized for investigation under the CALFED Program, as a non-federal water storage project.

Sites, is an offstream storage reservoir with a projected yield of approximately 500,000 acre-feet of water annually. In a year like the one we have just experienced, if Sites were in place, it is estimated that we would have had an extra 400,000 acre feet of water in storage north of the Delta to meet the water needs of agriculture and our cities as well help meet the Central Valley Project obligations for environmental water for fish and waterfowl. The Sites Project has the largest projected water yield of any reservoir currently under review anywhere in the State of California. To expedite work on Sites, we need a new kind of partnership with the Bureau of Reclamation, one that provisions of these two bills will help create.

H.R. 2898 and S. 1894 both contain identical language that mandates the completion of the federal draft feasibility study no later than November 30, 2016. That is a deadline that must be met in order for the Sites Project to be in a position to compete effectively for storage funds being made available under California Proposition 1, the water bond.

H.R. 2898 also includes language that seeks to streamline the environmental review and permitting processes for storage projects, including those being developed as non-federal projects, like the Sites Project. And, H.R. 2898 authorizes a new "Surface Storage Account" in Reclamation that could be used as a source of funds to help construct both federal and non-federal surface water storage projects alike.

S. 1894 contains two provisions, in particular that I would like to highlight, that will benefit Sites. First, S. 1894 authorizes the Reclamation Infrastructure Finance and Innovation Act (RIFIA). If RIFIA were in place today, and we were ready to go to construction on the Sites

Leigh W. McDaniel, Chair ■ Fredrick J. Durst, Vice Chair ■ Kim Dolbow Vann, Secretary/Treasurer
Donald R. Bransford ■ Mary Kimball ■ Greg Mensik ■ Kenneth LaGrande

Project, the JPA and its partners could reduce the annual debt service costs associated with building Sites by more than 20 percent. Under RIFIA, today our interest rate would be 2.89 percent and the non-federal project sponsors would have up to 35 years to repay the debt. The lower interest rate and extended repayment period would lower the annual debt service costs on any funds borrowed under RIFIA by 29.24 percent, in comparison to the interest rate of five percent assumed in our planning documents. If the Sites JPA could borrow 49 percent of the total project costs, estimates are that RIFIA would drive down the cost of water by approximately $131 an acre-foot, dropping the cost from $571 dollars an acre-foot to $440 an acre-foot, an overall 23 percent reduction in the cost of water from the project. RIFIA is the kind of new tool that Reclamation needs to update its historic role in financing water storage projects.

RIFIA is a good use of the limited federal dollars available to invest in public infrastructure. Every $10 million invested in RIFIA will support $100 million in long-term, low cost financing and leverage another $104 million in non-federal investment (RIFIA will finance no more than 49 percent of total project costs). And the risk of default is minimal. The historic rate of default on water projects nationwide is .04 percent. Evidence of the low risk of federally backed financing can be seen in the transportation version of this authority, the Transportation Infrastructure Finance and Innovation Act (TIFIA). Established in 1998, TIFIA has lent out more than $70 billion in financing, and there has not been a single default in the program.

S. 1894 also includes $600 million for Reclamation to participate in water storage projects, both federal and non-federal. Under the provision, Reclamation would have the authority, for example, to invest up to 25 percent of the total cost of a non-federal project, like Sites. Reclamation could acquire water for the water users, the environment or both, all without assuming the full responsibility to construct, own and operate the entire facility. This, again, is the kind of new tool Reclamation needs to transition from a water project developer to a water project partner.

Thank you for your consideration of our views and thank you for all that you are doing to support non-federal investments in water storage.

The Honorable Lisa Murkowski
Chairman
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Office Building
Washington, DC 20510

October 8, 2015

Dear Chairman Murkowski and Ranking Member Cantwell:

We write today to express, for the record, the views of the Sonoma County Water Agency (SCWA) on Section 315 of S. 1894, the California Emergency Drought Relief Act, introduced by Senators Feinstein and Boxer. SCWA strongly supports Sec. 315, entitled "Reservoir Operations Improvement." If enacted, Sec. 315, would help in predicting major weather events, and translate that predictive capacity into on-the-ground responses, including water savings, storm water management, and water availability for users.

Sonoma County Water Agency has been an active participant in a collaborative effort known as the Forecast Informed Reservoir Operations (FIRO) Work Plan. Other participants in FIRO include the Army Corps of Engineers, the Department of the Interior, Scripps Institution of Oceanography, the State of California and NOAA. The goal of FIRO is to improve all aspects of managing reservoir levels by incorporating advances in weather and precipitation data and modeling, especially "atmospheric rivers", which provide about half the yearly rainfall in California in just a few episodes.

Section 315 would advance efforts to apply the latest in forecasting and other data to the operation of the reservoirs.

Thank you for your consideration of this statement.

Sincerely,

Grant Davis
General Manager, SCWA

cc: Members of the Senate Energy and Natural Resources Committee

MIKE THOMPSON
5TH DISTRICT, CALIFORNIA

COMMITTEE ON WAYS AND MEANS
SUBCOMMITTEE ON HEALTH
SUBCOMMITTEE ON SOCIAL SECURITY

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October 13, 2015

The Honorable Lisa Murkowski
Chairwoman
Energy and Natural Resources Committee
304 Senate Dirksen Building
Washington, DC 20510

The Honorable Maria Cantwell
Ranking Member
Energy and Natural Resources Committee
304 Senate Dirksen Building
Washington, DC 20510

Dear Chairwoman Murkowski and Ranking Member Cantwell:

As you know, California is in a state of drought emergency. I appreciate the hearing that your Committee held on October 8th to discuss drought relief legislation and the steps necessary to respond to current conditions and to improve resilience to future droughts.

In this discussion, it is imperative that the impacts of drought legislation on all stakeholders, including the fishing industry, are taken into account. Chinook salmon from the Sacramento River form the backbone of California's commercial ocean salmon fishery, which supports tens of thousands of jobs and nearly $10 million in annual revenue. Salmon are critical to both California's economy and ecosystems; therefore, thoughtful consideration should be given to any actions that may impact inland spawning and rearing habitat and the long-term viability of salmon populations.

As such, we recently requested the input of the Pacific Fisheries Management Council, the body charged with managing and protecting these resources, on H.R. 2898 and S. 1894. We submit the Council's preliminary comments for your consideration and look forward to reviewing the full comments when they are finalized at the Council's November meeting.

Again, thank you for your thoughtful consideration of these comments. I look forward to working with you as consideration of drought legislation continues.

Sincerely,

MIKE THOMPSON
Member of Congress

Printed on recycled paper.

Steve Moyer
Vice President of Government Affairs

October 14, 2015

Sen. Lisa Murkowski, Chair
Senate Energy and Natural Resources Committee

Sen. Maria Cantwell, Ranking Member
Senate Energy and Natural Resources Committee

Dear Chairman Murkowski, Ranking Member Cantwell and Members of the Committee,

On behalf of our more than 155,000 members nationwide, including more than 10,000 in California, Trout Unlimited provides comment for the record of the October 8, 2015 Full Committee legislative hearing on western water legislation.

Throughout our western communities, Trout Unlimited works with farmers and ranchers to improve irrigation practices while improving stream flows – providing drought resiliency for water supplies and fisheries. Against the backdrop of brutal drought in California and across the West, cooperation among agricultural producers, conservation interests, and municipal users is essential.

With this background and experience in mind, Trout Unlimited offers the following comments on H.R. 2898, S. 1894 and S. 1936, highlighting positive concepts, identifying areas of concern, and suggesting additional or alternative solutions for consideration as the committee continues its work on this important and complex topic.

S. 1894 – The California Emergency Drought Relief Act (Senators Feinstein and Boxer)

The California Emergency Drought Relief Act crafted by Senators Feinstein and Boxer contains useful measures to improve the state's drought resiliency. For example, we welcome the legislation's focus on water recycling projects, desalination, groundwater recharge, stormwater capture and reuse, habitat restoration, improvements in water supplies for wildlife refuges, and emergency projects for communities whose water supplies have run out or become contaminated.

The legislation would also support improved agricultural water conservation paired with watershed benefits, which is a priority for Trout Unlimited. TU supports WaterSMART and appreciates Senators Feinstein's and Boxer's leadership in extending the program and adding a

strong prioritization for funding the expanded list of eligible projects.[1] This prioritization language will favor funding projects that show benefits across multiple sectors, so that those projects that generate environmental benefits for aquatic systems, in addition to increasing the availability of usable water supplies for agricultural or municipal uses, will be prioritized for project funding. Finally, TU supports the increase in WaterSMART funding authorization to $400 million.

Trout Unlimited is particularly grateful for the Senators' stated commitment to ensure that federal drought legislation must be consistent with state and federal mandates, including endangered species protections and state water law. ***However***, we are concerned that some of the provisions in the legislation could be interpreted in a way that interferes with the state and federal agencies' ability to manage the Central Valley Project or State Water Project in a manner that meets the needs of other water users and communities that depend on fisheries (see, e.g., section 101(a) stating that the Secretaries of the Interior and Commerce shall operate the CVP to "provide the maximum quantity of water supplies possible"). We encourage the Senators to continue discussions with the federal agencies, the state, and other stakeholders to ensure that other water users and instream beneficial uses such as fisheries are protected.

Finally, we oppose language in the bill that would support federal investment in feasibility studies related to raising Shasta Dam.[2] The State has made clear the importance of this river by prohibiting any state spending on raising Shasta Dam, based in part on the finding "that the McCloud River possesses extraordinary resources in that it supports one of the finest wild trout fisheries in the state."[3]

Raising Shasta Dam would inundate even more of the McCloud, Sacramento, and Pit Rivers and negatively impact the already stressed fisheries that call those waters home. These rivers are the birthplace of rainbow trout, prized by fishermen and women throughout the region and protected by State law based on these extraordinary resources. Trout Unlimited members value those rivers immensely and view them almost as sacred places, and could never support such an action.

H.R. 2898 – The Western Water and American Food Security Act of 2015 (Valadao)

Trout Unlimited opposes H.R. 2898, the Western Water and American Food Security Act of 2015. This bill would weaken protections for steelhead and salmon, undercut California's drought response efforts, and create conflicts for senior water right holders.

Particular among our concerns, H.R. 2898 does not equitably address California's complex water challenges and would, if enacted, hinder the State's drought response without providing additional water to hard hit communities. The bill would dictate operational decisions for water suppliers without regard to the needs of others who rely on the rivers, create new mandates that conflict with other state and federal laws, elevate some junior water right holders' interests above those of other water right holders in contradiction of state water law, and almost certainly trigger a new round of litigation among basin stakeholders.

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[1] Section 421(c)(2).
[2] Section 313.
[3] Cal. Pub. Res. Code § 5093.542.

We are also concerned that the bill would constrain the federal government's ability to protect tribal and commercial fisheries in the Klamath and Trinity River basins, which will have impacts not only in California but in Oregon and throughout the West. H.R. 2898 would repeal the San Joaquin River Restoration Settlement Act, expressly preempting California State water law. Additionally, the bill imposes unwarranted restrictions on existing management authorities of the U.S. Departments of Interior and Agriculture to protect water resources on federal lands (or as needed to protect a federal resource – eg: listed species). Arguably, this language intends to ensure state primacy over state water rights, however, the language is unreasonably broad and would create confusion about federal authority to protect federal resources – for example, the ability of the US Fish and Wildlife Service to require protections for fish and wildlife in California's watersheds.

Finally, we oppose the approach to project streamlining outlined in H.R. 2898, which sets strict deadlines and arbitrary cost-caps for inter-agency consultation, study and environmental review associated with Bureau of Reclamation projects. Faster is not always better, and we strongly oppose weakening of environmental review simply in the name of expediency.

S. 1936 – The New Mexico Drought Preparedness Act (Senators Udall and Heinrich)

Trout Unlimited supports several provisions of S. 1936, the New Mexico Drought Preparedness Act. S. 1936 provides new program authorizations and studies that will enable local communities to better coordinate and optimize water supply, storage, and delivery, helping a range of user constituencies to better coordinate and succeed in a shared water system.

In particular, we support the provision strengthening the WaterSMART program by increasing authorized funding. We also strongly support language that would allow for prioritization of projects with multiple benefits. As discussed previously in these comments, the WaterSMART program provides a critical source of support for drought-stricken communities, helping to leverage federal dollars on the ground to solve water scarcity conflicts in a cost-effective way.

Drought-related Legislative / Policy Efforts

As the Committee and others continue to hone these proposals, we encourage consideration of the following general comments.

On the ground throughout the West partners are coming together to find innovative solutions to water scarcity challenges that modernize infrastructure, benefit producers and restore fisheries. Congress should encourage cooperative stakeholder processes to solve storage challenges, and provide adequate funding for cost-effective programs that catalyze cooperative solutions, such as key Farm Bill programs, and the Bureau of Reclamation's competitive grant and basin study programs. These programs support not only individual projects, but also multi-faceted, collaborative approaches developed at the basin scale.

Specific actions that Congress could take to support drought preparedness and response include:

- Invest in upgrades and replacements to irrigation infrastructure. Aging irrigation infrastructure has reached epidemic levels throughout the West, and the cost of retrofitting or upgrading this infrastructure often exceeds the capacity of individual

operators, or even organized irrigation districts. With assistance from Farm Bill conservation programs like the Environmental Quality Incentives Program (EQIP), Regional Cooperative Conservation Partnership program (RCCP); Conservation Technical Assistance (CTA), and Conservation Reserve Program (CRP), farmers and conservationists have been able to partner to work together to solve these problems.

- Support funding and authorization for federal programs that catalyze cooperative solutions through investment in infrastructure improvements and or support of watershed-level processes, helping to bring coherence and collaboration among local stakeholders and federal actors in a river basin:
    - Provide full funding for the Farm Bill so that conservation programs like the EQIP, RCPP, and CTA, mentioned above, will be available to irrigators;
    - Expansion of and additional investment in the Bureau of Reclamation's Basin Study, WaterSMART, and Cooperative Watershed Management programs;
    - Provide adequate funding for the U.S. Fish and Wildlife Service's Fish Passage Program so that it can help with irrigation infrastructure upgrades that benefit fish and water users;
- Continue investing in and supporting public access to federal data collection programs such as the USGS streamflow gauging system and research and modeling tools and resources of the National Labs.
- Pass currently proposed legislation needed to implement locally-driven, basin-scale water management solutions in Washington's Yakima Basin (S.1694) and California and Oregon's Klamath Basin.

New Storage

As the impacts of drought grow increasingly severe, it has become clear that new storage solutions must be considered, but must be approached carefully and in a proper basin-level context. Trout Unlimited is not opposed to new storage. New, small-scale storage can implement water supply strategies that TU supports, such as water re-use and flexible water sharing arrangements developed between agriculture, municipalities, and fishery groups. However, we firmly believe that new storage should be evaluated in the context of an overall watershed management perspective that includes a system-level consideration of water needs, availability, and opportunities for increased efficiencies in use, retention and storage of water across the watershed. This perspective may include consideration of adding or expanding storage in some instances, and possibly removing or replacing structures in other instances.

For example, the Yakima River Basin collaborative plan in Washington State, supported by TU and a wide range of other basin stakeholders recommends new storage as one solution among a range of other elements - such as fish passage construction, water use efficiency measures, and salmon habitat investments - all designed to allow communities, fish, and farming to thrive in an arid land.

As this Yakima example underscores, no single approach can address water scarcity –it is the multi-stakeholder, basin-study process that considers a variety of alternatives, looks carefully at

hydrology and future water supply forecasts, and embeds storage into a multi-pronged approach for addressing water scarcity that will provide resiliency to water scarcity in river basins across the west.

In considering legislation, policies or other investments related to new storage, Trout Unlimited recommends consideration of the following principles:

- Upgrading irrigation infrastructure in the context of projects with benefits to agriculture and the environment is a cost-effective source of new water supply;
- Expanding or re-allocating storage at existing facilities is most often a cheaper, faster, and smarter approach to new supply than constructing new storage facilities;
    - For example, Trout Unlimited and other conservation partners together have identified more than 100,000 acre feet of new potential water supply in Colorado to meet the Front Range's growing demand for water by focusing on an array of expansions and re-allocations of existing projects in combination with other water conservation and re-use strategies.[4]
- Shifting focus from "storage" as an infrastructure-dependent solution to "water retention," which looks at reservoirs in a broader picture of watershed functionality, supporting a wider range of options through which to address water supply and drought resiliency.[5]
- Any new storage project should be designed and operated to deliver multiple benefits – to irrigation, municipalities, and to stream flows.
- Planning in a multi-stakeholder, basin-level, collaborative context is essential to producing the best drought solutions.

Climate Change Will Bring New Challenges to the West's Water Supply

The strongest expression of climate change predicted for the West will be through water. This makes the kind of comprehensive, collaborative planning process exemplified by the Yakima basin especially important. The only thing we know for sure about the West and climate change is that the weather is going to get more unpredictable. With less snow, more rain, and more frequent droughts and storms predicted, if you plan on building a bigger bathtub, you want to know that you'll be able to fill it, given predicted changes in precipitation. In addition, Yakima's proposed investments in floodplain restoration, headwaters habitat preservation, and tributary restoration mean that the basin will be more resilient to both droughts and storms, able to soak up high storm flows while slowly releasing water during a drought. A multi-stakeholder, basin-

[4] "Filling the Gap: Commonsense Solutions for Meeting Front Range Water Needs," at pp. 11 – 15, which include the discussion of what we view as acceptable new storage and a listing of potentially acceptable storage projects (including both Chatfield and Windy Gap and others). Available at: http://westernresourceadvocates.org/publications/filling-the-gap-front-range/

[5] California Roundtable on Water and Food Supply, "From Storage to Retention: Expanding California's Options for Meeting Its Water Needs," (Nov. 2012) – describing a transition from thinking about "storage" to thinking about "water retention" Available at: http://www.aginnovations.org/result/2015-05-10/from-storage-to-retention-expanding-california-s-options-for-meeting-its-water-needs.

study process looking at a whole range of alternatives stacks the deck in favor of coming up with solutions to water scarcity that will be more resilient to predicted climate change impacts. The approach taken in the Yakima River basin plan to pursue seven distinct pathways toward water security means that agriculture, fisheries, and communities will all be more resilient to the impacts of climate change, and better prepared to adapt to the changes it brings.

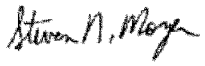
Conclusion

We continue to believe that the best drought response is to make investments early and often in building drought resilience for future droughts and that locally-driven solutions, supported by State and Federal resources and tools, are the best approach to finding the complicated balance needed for these communities.

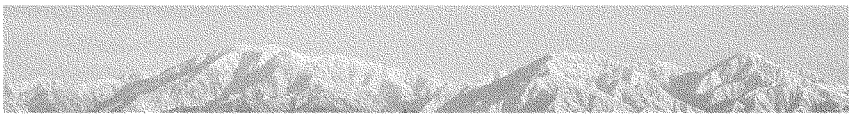
Congress can help our drought-stricken communities by making resources available to these locally and regionally driven processes; not proscribing or restricting actions through one-size-fits-all legislative approach. It is the existing room for flexibility and creativity that allowed TU and others to develop unique basin-specific collaboratives in the Klamath Basin and the Yakima River Basin with state, federal and local engagement that respond to water shortages through methods and measures supporting agriculture, fisheries, and other basin interests.

Trout Unlimited is deeply invested in working with partners, regulators, and policy-makers to identify and implement constructive and collaborative solutions to mitigate the impacts of drought on fisheries, economies, and communities throughout the west. We appreciate the attention given by this Committee to this critical topic and thank you for the opportunity to provide comment on these legislative proposals.

Sincerely,



Steve Moyer



UPPER SAN GABRIEL VALLEY MUNICIPAL WATER DISTRICT

Board of Directors:
Anthony R. Fellow, Ph.D., *Division 1*
Charles M. Treviño, *Division 2*
Ed Chavez, *Division 3*
Michael Touhey, *Division 4*
Bryan Urias, *Division 5*

October 8, 2015

Chairman Lisa Murkowski
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Ranking Member Maria Cantwell
Senate Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairman Murkowski and Ranking Member Cantwell:

On behalf of the Upper San Gabriel Valley Municipal Water District (Upper District), we would like thank you for holding a legislative hearing on "Western and Alaska Water Legislation." As you consider several bills that address the devastating drought facing California and other western states, we want to express our support for S. 1894, the California Emergency Drought Relief Act of 2015, introduced by Senators Feinstein and Boxer.

Upper District's mission is to provide a reliable, sustainable, diversified and affordable portfolio of high quality water supplies to the San Gabriel Valley; including water conservation, recycled water, storm water capture, storage, water transfers and imported water. Upper District services nearly one million people in its 144 square mile service territory. Annually, more than 78 billion gallons of water is used in Upper District's service area.

In S. 1894, Upper District is listed as a potentially eligible project sponsor to compete for federal funding for water recycling and water quality infrastructure projects. This new program, which provides $200 million in competitive grants, will be a critical component in leveraging local and state investments and ensuring that we can invest in innovative and sustainable water supplies for the sustainability of the Main San Gabriel Basin. For this reason, we strongly support S. 1894 and look forward to working with your committee on this legislation.

Thank you again for your leadership on this important issue. Please contact John Freshman, our Washington representative, at john.freshman@bbklaw.com or Patty Cortez at patty@usgvmwd.org if you have any questions.

Sincerely,

Michael R. Touhey
Board President
Upper San Gabriel Valley MWD

cc: Senator Dianne Feinstein
Senator Barbara Boxer

602 E. Huntington Drive, Suite B | Monrovia, CA 91016 | (626) 443-2297 (phone) | (626) 443-0617 (fax) | www.upperdistrict.org

October 8, 2015

The Honorable Lisa Murkowski, Chairwoman
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

The Honorable Maria Cantwell, Ranking Member
Committee on Energy and Natural Resources
United States Senate
304 Dirksen Senate Building
Washington, DC 20510

Dear Chairwoman Murkowski, Senator Cantwell and Members of the Committee:

Thank you for holding this legislative hearing on proposed Western and Alaska water legislation and for the opportunity to provide the views of the WateReuse Association (WateReuse) concerning potential solutions to the current and future drought conditions that plague the West. Our association represents nearly 400 organizational members, including water utilities and corporations throughout the United States who actively practice and support water reuse and recycling to provide sustainable water supplies to water-short communities. WateReuse is the premier nonprofit organization dedicated solely to creating sustainable sources of freshwater through water reuse and recycling.

Water is our nation's most precious resource, especially in the western U.S. where water scarcity is the norm. In many western watersheds, fresh water supplies are quickly coming under increasing stress as climate change and drought, growing competition for limited supplies, and conflict between users continues to inject uncertainty into water resource development and management.

The severity and likely impacts of the epic western drought of the past few years are potential indicators of future chronic conditions throughout the west. The need is great for reliable water supplies that are resilient to the impacts of predicted future changes in our climate such as extreme periods of drought, diminished snowpack levels, sporadic and locally intense precipitation events, and extreme heat waves.

Our ability to meet municipal and industrial water demands, grow enough food for our nation and protect our environment will be challenged by these persistent water supply extremes. Therefore, the nation cannot afford to overlook any opportunities to reuse, recycle and desalinate water that can create drought- and shortage- resilient supplies of fresh water for urban, rural, and agricultural needs.

In 2013, WateReuse, the Association of Clean Water Agencies, California Association of Sanitation Agencies, National Association of Clean Water Agencies, and the Western Recycled Water Coalition collaborated on a needs survey for recycled water projects. At that time, 92 organizations/agencies in 14 states responded that they are developing recycled water projects totaling more than $6.2 Billion. This

summer, a follow up survey was conducted and in California alone, more than $5.26 Billion was identified. It is clear that alternatives to traditional water supplies are critical to the future resiliency of our nation's water supply and water reuse and desalination are viable options.

The worst time to prepare for drought conditions is during the drought itself. We must **plan and develop water reuse, recycling and desalination technologies to provide reliable water supplies in the West and other water-short regions of the country for both today and tomorrow. The federal government should be our partner in this effort.**

WateReuse has identified the following actions that will, if implemented, create new, resilient water supplies in critical areas to combat the effects of drought and chronic water shortages. Some of the legislation before the Committee today addresses some of these issues. We support those measures to the extent that they advance these goals and intend to support other proposals that support reuse efforts.

Additional investment in water reuse, recycling, and desalination infrastructure for the future

Over the past 20 years, water treatment technologies have been developed that allow for the cost-effective reuse, recycling and desalination of water that, in the past, was not fit for human consumption or use. These technologies and projects did not just spring up overnight. Past investments in research and development of water treatment applications have provided important technologies that are used to reduce the stressors on our fresh water supplies, help to stretch water supplies to meet unmet needs and protect other users reliant on existing water development projects.

In February 2010, the Secretary of the Interior issued Secretarial Order 3297 establishing the WaterSMART (Sustain and Manage America's Resources for Tomorrow) Program within the Bureau of Reclamation (Reclamation). Reclamation's WaterSMART Program allows all bureaus of the Department of the Interior to work with States, Tribes, local governments, and non-governmental organizations to pursue a sustainable, drought and climate resilient water supply for the west and the nation. WaterSMART establishes a framework to provide federal leadership and assistance on the efficient use of water, integrating water and energy policies to support the sustainable use of all natural resources, and coordinating the water conservation activities of the various Interior offices.

In 1992, Congress passed Title XVI of P.L. 102-575, which provides authority for Reclamation's water recycling and reuse program (Title XVI). Through the Title XVI program, Reclamation identifies and investigates opportunities to reclaim and reuse wastewaters and naturally impaired ground and surface water in the 17 western states and Hawaii. Funding is budgeted through WaterSMART Title XVI Program competitive grants which include funding for planning studies (50 percent federal) and the construction of water recycling projects (25 percent federal), on a congressionally authorized project-specific basis, in partnership with local governmental entities. **Since 1992, approximately $639 million in Federal cost-share has been leveraged with more than $2.4 billion in non-Federal funding to design and construct**

water recycling projects. In 2014, an estimated 378,000 acre-feet of water was recycled through Title XVI projects.[1]

While we understand the fiscal constraints Congress is dealing with, we must **incentivize and leverage** state and local investments in water reuse and recycling infrastructure through a measure of financial support from the federal government. Without those initial federal investments and incentives, the impact of the current drought we are facing today would be much, much worse. **Reclamation and Congress should substantially increase funding for the WaterSMART Title XVI Program to better meet the many water reuse, recycling, and desalination projects that are currently awaiting funding assistance.**

WateReuse also supports reforming the WaterSMART Title XVI Program through legislation that would drop the requirement for an eligible water reuse, recycling, and desalination project to first be Congressionally authorized before competing for Title XVI Program grant funds. While the select few projects that are already authorized by statute are worthy, there are many projects being planned and designed today that could help address unmet demands for water during future droughts. The problem is that these additional projects have not been authorized and therefore cannot receive funding under Title XVI.

Moreover, new authorizations have been informally considered "earmarks" under current congressional rules which is a barrier that seems insurmountable for most of these project proponents. The Title XVI Program should be authorized as a program, and new projects should be able to compete for budgeted grant funding without additional Congressional authorization. Of course, Congress should provide oversight and guidance to ensure that federal grants are invested in projects that produce valuable water supplies for their water-short communities.

There are also other financial programs that are being proposed, including low interest loans. In 2014, Congress established WIFIA, under WRDA authorization.

We also believe that increased funding of the state revolving fund (SRF) capitalization grants from the Environmental Protection Agency (EPA) can assist in providing low cost, long-term financing to communities in need of water reuse, recycling, and desalination projects nationwide. And, WateReuse has long supported other innovative financing tools, such as the new Water Infrastructure Finance and Innovation Act (WIFIA) authorized in the Water Resource Reform and Development Act (WRRDA) passed in the last Congress. Unfortunately, to date, money spent on WIFIA has been limited to developing the program framework and not to funding projects. WateReuse believes it is essential to fund WIFIA to determine its effectiveness in getting water supply projects, including reuse, constructed.

Finally, protecting the existing tax exemptions on interest from municipal bond financing will be imperative in maintaining this important and widely used public infrastructure financing tool.

- [1]Bureau of Reclamation/*WaterSMART/Title XVI - Water Reclamation and Reuse*

Research partnerships to find the next generation of water technologies.

Today, as water stressors such as drought and climate change continue to pressure our limited supplies, we must find the next generation of water treatment technologies. Only through the development of sustainable, "drought-proof" and climate resilient supplies of fresh water can we begin to meet our future water demands amidst drought conditions such as those we are experiencing. Applied research partnerships with federal, state, local, and private entities can help achieve this goal.

In a new study entitled "*The Opportunities and Economics of Direct Potable Reuse*" (WRRF-14-08), Drs. Robert S. Raucher of Stratus Consulting and George Tchobanoglous of the University of California – Davis found that potable water reuse is one of the most economically feasible potential sources of new water supply available. We must continue to pursue this new potable water source and will need additional applied research to ensure that we do it properly and safely.

For example, the California legislature has adopted a number of goals with respect to greater integration of recycled water into municipal, industrial and agricultural applications. The state has established goals of recycling 1.5 million acre-feet of water by the year 2020, and 2.5 million acre-feet by the year 2030, amounts that would be impossible to attain through current supply methods, including increased water conservation and storage. By setting these goals, California is leading the nation in expanding water reuse, as well as ensuring the long-term preservation of its economic, social and environmental assets.

More high-quality and independent research is necessary in order to find the "next generation" of water reuse, recycling and desalination technologies, such as the implementation of direct potable reuse (DPR). The research to develop the technologies that will allow the safe and publicly-accepted direct potable reuse of wastewater is a top priority in many water-short regions.

WateReuse, in partnership with WateReuse California, launched the Direct Potable Reuse (DPR) Initiative in June, 2012 to advance DPR as a water supply option. The DPR Initiative was built upon existing DPR research that started in 2011 when WRRF began funding research identified in the Foundation's groundbreaking report, *Direct Potable Reuse: A Path Forward,* as well as research identified in the 2012 National Research Council report on potable reuse and at a DPR Workshop held in December, 2012 in which a panel of experts identified 22 high-priority research projects. The first six DPR projects, initiated in 2011 and 2012, represented a $3.8 million investment in cutting-edge/leading-edge research.

By the end of 2012, $2.6 million had been pledged to the initiative and by the end of 2013, the total amount pledged increased to $5.4 million. To date, more than 50 public water agencies, consulting engineering firms, and suppliers have pledged funds to advance DPR as a water supply option. Their contributions directly funded four DPR projects initiated in 2013, totaling $1 million. Altogether, WateReuse' DPR Research Program since 2011 totals more than $6 million, and continues to grow with every new partnership.

Leveraging research funding from many partners, such as the DPR Initiative, should be the model for future federal drought and climate resilient water reuse and recycling research partnerships at

Reclamation. Reclamation could (and should) participate in these partnerships through competitive cost-shared applied water reuse and recycling research grants. Making a commitment through leveraged partnerships to research the next generation of water reuse and recycling technologies in the near term will provide benefits for several generations to come. It will ease the pressure on the limited water available from natural systems, and ensure the sustainable drought-proof water supply provided through reuse is available for current and future generations.

Conclusion

Water reuse, recycling, and desalination creates a drought proof, sustainable supply of water for the long-term, creating water supplies that will not impact irrigated agriculture or the environment. Water reuse technology is well-established, readily available and used effectively in water distribution systems around the world. Drought stricken states would undoubtedly receive the greatest benefits from water reuse technologies so support for water reuse, recycling, and desalination projects should be part of legislative efforts. Additionally, water reuse systems enable our communities to be prepared for future drought impacts and uncertainties in advance of a crisis situation.

On behalf of our membership, many of whom are located in the western United States, the WateReuse Association thanks you for taking a leadership role in holding this hearing. This drought is of epic proportions and will deprive many westerners of their basic water needs. We must work together with the Congress to find creative solutions to the ongoing water crises.

Water reuse is an important tool to increase the availability of fresh water and thus should be included as part of a comprehensive plan to manage the impacts of drought in both the short- and the long-term. The country needs innovative options to address limited water availability and we would like to work with you and your staff to ensure that western communities have the water they need every year. Water reuse, recycling, and desalination projects that can be brought online quickly and effectively are an important component of achieving that goal.

Respectfully submitted,

Melissa L. Meeker, Executive Director
WateReuse Association
1199 North Fairfax Street
Suite 410
Alexandria, VA 22314
www.watereuse.org

TESTIMONY OF RICHARD NAGEL
GENERAL MANAGER, WEST BASIN MUNICIPAL WATER DISTRICT
BEFORE THE
COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE
OCTOBER 8, 2015

Chairwoman Murkowski, Ranking Member Cantwell, and Members of the Committee, I am submitting this testimony on behalf of the undersigned coalition of 34 water agencies, utilities, and organizations from nine Western States regarding the drought legislation that the Senate Energy and Natural Resources Committee is considering today. Our message is simple and straightforward. We request that any drought legislation approved by this Committee include specific provisions to revamp and revitalize the Bureau of Reclamation's Title XVI water reclamation and reuse program as an earmark free competitive grant program.

The Title XVI program has a demonstrated record of success in developing new, safe and reliable water supplies throughout the West. It is the only Federal program specifically designed to fund water recycling, brackish water desalination, ocean water desalination, and groundwater clean up projects. Since Title XVI was first authorized in 1992, 53 projects have been authorized and have added hundreds of thousands of acre-feet to the West's water supply every year. In 2014 alone, Title XVI projects added nearly 400,000 acre-feet of safe and reliable new water to the dwindling water supplies in the West. This is enough water to serve approximately 3,200,000 residents annually. Unfortunately, due to the Congressional "earmark" ban, new projects currently cannot be authorized or funded under Title XVI. If the Title XVI program is revitalized and revamped as a competitive grant program, the Federal government could once again help water agencies reclaim hundreds of thousands of acre-feet of water to counteract the effects of the devastating drought in the Western United States.

Attached for your consideration is draft legislative language to revitalize Title XVI by converting it to a competitive grant program with Congressional oversight. Similar language is contained in Subtitle C of Title III of S. 1894, The California Emergency Drought Relief Act, recently introduced by Senator Dianne Feinstein. We hope that you will consider including the attached language in any drought legislation that you are developing. Title XVI can play a significant role in helping to alleviate drought conditions throughout the West, and accordingly, an earmark free Title XVI program should be the path forward to encourage additional water reclamation and reuse.

We are aware that some have suggested establishing a new loan and loan guarantee program as an alternative to the Title XVI program. While such a program may be beneficial to smaller agencies without access to the tax exempt capital bond markets, many medium-to-large sized water agencies believe that revamping and revitalizing Title XVI makes far more sense than replacing it with a new program that will provide few – if any – benefits to agencies with access to the tax exempt bond markets.

Most of the water agencies that possess the capability to develop significant water

recycling, brackish and ocean desalination, and groundwater clean up projects have ready access to the municipal bond markets at very favorable interest rates. In fact, these agencies can borrow at rates lower than projected Federal lending rates. For example, the average AA rated agency currently enjoys low rates on both fixed and variable issuances. The all-in cost of debt (credit support, issuance costs, and administration) is equivalent to - or in many cases - lower than Federal lending rates. Even lower rated agencies are experiencing historically low interest rates.

Another concern that we have with replacing Title XVI with a loan guarantee program is that Federal loan guarantees currently cannot be utilized in conjunction with tax-exempt borrowing. This is a major concern; and, while some have proposed changes to the IRS Code, the Treasury Department has historically resisted any use of Federal loan guarantees on top of tax-exempt borrowing. At a time when tax-exempt financing is under vigorous attack, we believe that utmost caution should be taken when considering a new program that could establish a dangerous precedent regarding tax-exempt financing.

Thank you for your consideration of these views. Should you or your staff have any questions or need additional information, please feel free to contact me.

Signatures by State

Multi-States Associations (Arizona, California, Colorado, Idaho, New Mexico, Nevada, Oregon, Texas)

Kelly A. Collins
Vice President
Western Coalition of Arid States

Arizona

Jeff B. Biggs
Strategic Initiatives Administrator
Tucson Water

William M. Garfield
President and CEO
Arizona Water Company

California

Susan B. Mulligan
General Manager
Calleguas MWD

General Manager
Carlsbad Municipal Water District

Christopher W. McKinney
Director of Utilities
City of Escondido

Martin L. Adams
Senior Assistant General Manager - Water System
Los Angeles Department of Water & Power

Jason Dafforn
Interim Water Utilities Director
City of Oceanside

Halla Razak
Public Utilities Director
City of San Diego

Paul D. Jones, II, P.E.
General Manager
Eastern MWD

Phil Williams
Board of Directors
Elsinore Valley MWD

Paul A. Cook
General Manager
Irvine Ranch Water District

David W. Pedersen, P.E.
General Manager
Las Virgenes MWD

Paul Bushee
General Manager
Leucadia Wastewater District

Kimberly A. Thorner
North San Diego Water Reuse Coalition

Kimberly Thorner
General Manager
Olivenhain Municipal Water District

Michael R. Markus, P.E.
General Manager
Orange County Water District

Greg Thomas
General Manager
Rincon del Diablo MWD

Maureen Stapleton
General Manager
San Diego County Water Authority

Michael Thornton, P.E.
General Manager
San Elijo Joint Powers Authority

Kenneth R. (Ken) Manning
Executive Director
San Gabriel Basin Water Quality Authority

Richard W. Hansen, P.E.
General Manager
Three Valleys MWD

Shane O. Chapman
General Manager
Upper San Gabriel Valley MWD

Dennis Lamb
General Manager
Vallecitos Water District

Rich Nagel
General Manager
West Basin MWD

Colorado

Richard Leger
Treatment Plant Supervisor
Aurora Water

Wayne Vanderschuere
General Manager Water Services
Colorado Springs Utilities

Nevada

Thomas A. Minwegen
General Manager
Clark County Water Reclamation District

New Mexico

Mark Sanchez
General Manager
Albuquerque Benalillo County Water Utility Authority

Justin A. Howalt, P.E.
Executive Director
Eastern New Mexico Water Utility Authority

Texas

John Balliew
President/CEO
El Paso Water Utilities
Public Service Board

James M. Oliver
General Manager
Tarrant Regional Water District

Leroy Goodson
General Manager
Texas Water Conservation Association

Washington

Morgan Johnson
General Manager
Silverdale Water District

*Signatures Added After September 28, 2015
- Eastern New Mexico Water Utility Authority

Sec. ____ Water Recycling and Reuse Projects

(a) Section 1602 of the Reclamation Wastewater and Groundwater Study and Facilities Act (Title XVI of Public Law 102-575; 43 U.S.C. 390h et. seq.) is amended by adding at the end the following new subsection:

"(e) Authorization of New Water Recycling and Reuse Projects.—

"(1) Submission to the Secretary. –

"(A) In General -- Non-Federal interests may submit proposals for projects eligible to authorized pursuant to this Section in the form of completed feasibility studies to the Secretary.

"(B) Eligible Projects – A project shall be considered eligible for consideration under this Section if the project reclaims and reuses –

"(i) municipal, industrial, domestic, or agricultural wastewater; or

"(ii) impaired ground or surface waters.

"(C) Guidelines – Within 60 days of the enactment of this Act the Secretary shall issue guidelines for feasibility studies for water recycling and reuse projects to provide sufficient information for the formulation of the studies.

"(2) Review by the Secretary. – The Secretary shall review each feasibility study received under subsection (1)(A) for the purpose of determining whether the study and, and the process under which the study was developed , each comply with Federal laws and regulations applicable to feasibility studies of water recycling and reuse projects.

"(3) Submission to Congress. – Not later than 180 days after the date of receipt of a feasibility study received under subsection (1)(A), the Secretary shall submit to the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report that describes –

"(A) the results of the Secretary's review of the study under subsection (2), including a determination of whether the project is feasible;

"(B) any recommendations the Secretary may have concerning the plan or design of the project; and

"(C) any conditions the Secretary may require for construction of the project.

"(4) Eligibility for Funding. – The non-Federal project sponsor of any project determined by the Secretary to be feasible under subsection (3)(A) shall be eligible to apply to the Secretary for funding for the Federal share of the costs of planning, designing and constructing the project pursuant to subsection (f).

"(f) Competitive Grant Program for the Funding of Water Recycling and Reuse Projects.

"(1) Establishment. – The Secretary shall establish a competitive grant program under which the non-Federal project sponsor of any project determined by the Secretary to be feasible under subsection (e)(3)(A) shall be eligible to apply for funding for the planning, design, and construction of the project.

"(2) Priority. – When funding projects under subsection (f)(1), the Secretary shall give funding priority to projects that meet one or more of the criteria listed in paragraph (3) and are located in an area that –

"(A) has been identified by the United States Drought Monitor as experiencing severe, extreme, or exceptional drought and any time in the 4-year period before such funds are made available; or

"(B) was designated as a disaster area by a State during the period 2014 to 2018.

"(3) Criteria. – The project criteria referred to in Paragraph (2) are the following:

"(A) Projects that are likely to –

"(i) provide a more reliable water supply for States and local governments; and

"(ii) protect, restore, or enhance the ecosystems including groundwater basins and tributaries.

"(B) Projects that are likely to increase the water management flexibility and reduce impacts on environmental resources from projects operated by Federal and State agencies.

"(C) Projects that are regional in nature.

"(D) Projects with multiple stakeholders.

"(E) Projects that provide multiple benefits, including water supply reliability, eco-system benefits, groundwater management and enhancements, and water quality improvements.

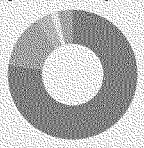
The Bureau of Reclamation's

Title XVI Program

Introduction

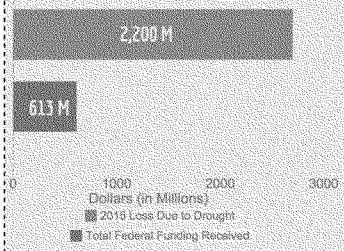
- The Bureau of Reclamation administers Title XVI, the only Federal program that is specifically designed to fund water reuse projects
- Since its inception in 1992, Congress has authorized 53 water reuse and reclamation projects through the Title XVI program
- Before the Earmark Moratorium, The Bureau of Reclamation funded the lesser of either 25% of the project or $20 Million for eligible projects approved by Congress

Types of Projects

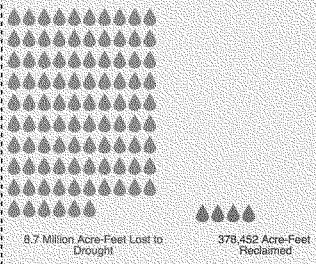


Water Reuse & Recycling (77%) · Desalination (13%) · Natural Treatment (4%) · Groundwater Remediation (2%) · Other (4%)

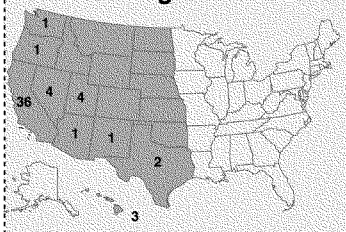
Estimated CA Economic Loss Due to Drought in 2015 vs. Total Funding to Date for ALL 53 Title XVI Projects



2015 Water Lost Due to Drought in California* vs. 2014 Water Reclaimed by Title XVI Projects



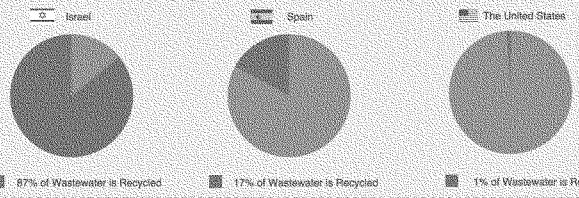
Currently Authorized Projects from Eligible States



Why Revitalize Title XVI?

- Only Title XVI projects that were approved before 2012 are currently receiving funding, despite the fact that the program is well managed and has a proven record of success
- While two other Federal programs for water reuse exist through the U.S. Army Corps and the EPA, Title XVI is the only water reuse program that currently receives funding; and moreover, the Bureau of Reclamation's mission is to manage, develop, and protect water resources, and thus, it is well suited to oversee this type of program
- Congress should begin to authorize new Title XVI projects again in order to help mitigate the devastating effects of the drought in the Western United States

The U.S. is Far Behind in Water Recycling



For more information, visit the Bureau of Reclamation's Title XVI website: www.usbr.gov/WaterSMART/title/

* Source: UC Davis study: watershed.ucdavis.edu/files/biblio/2015Drought_PrelimAnalysis.pdf

The Furman Group
water • infrastructure • advisors

PROPOSED AUTHORIZATION PROCESS FOR

TITLE XVI

Under the legislative proposal, water recycling and reuse projects would be able to seek Federal competitive grant funding through the Bureau of Reclamation's Title XVI program. This new, revitalized process would create an 'earmark' free means to respond to crippling drought conditions in the West by providing millions of Americans with clean, safe, sustainable water.

1 The Feasibility Study

A non-Federal interest may submit a proposal in the form of a completed feasibility study to the Secretary of the Interior. Eligible Projects include projects that reclaim or reuse municipal, industrial, domestic, or agricultural wastewater as well as impaired ground or surface water.

2 Review by the Secretary

The Secretary of the Interior will review each feasibility study and will have 180 days to submit an assessment to Congress. The Secretary's report will include the results of the review, any recommendations, and any conditions the Secretary may require for construction.

3 Review by Congress

The Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources will review the Secretary's report. The Committees will ensure that qualified projects comply with all Federal laws.

4 Competitive Grant Process

Once approved, a qualified project will be able to compete for competitive grants administered through the Bureau of Reclamation. Priority will be given to projects in extreme drought regions and/or designated disaster areas.

Title XVI projects have already provided millions of Americans with clean, reliable water, but lost funding as a result of the Earmark Ban. This new process would allow water recycling and reuse projects to receive Federal funding without being considered an earmark. Title XVI would have minimal new administrative costs and could quickly be utilized. Once enacted, the Secretary of the Interior would have 60 days to issue guidelines for the process; therefore, Title XVI would be the fastest way to mitigate drought conditions in the West through safe, reliable water.

The Furman Group
water • infrastructure • advocacy

Western Recycled Water Coalition
Statement for the Record
Senate Committee on Energy and Natural Resources
Full Committee Hearing on "Western and Alaska Water Legislation"
Held on October 8, 2015

Madam Chairwoman and Members of the Committee, my name is Gary W. Darling. I am the General Manager of Delta Diablo of Antioch, California. Delta Diablo is the lead agency for the Western Recycled Water Coalition (WRWC). On behalf of the Coalition, I am pleased to submit this statement for the record regarding the October 8 Full Committee hearing on "Western and Alaska Water Legislation" and the Committee's anticipated consideration of drought related legislation.

The Western Recycled Water Coalition is a collaboration among cities, water and wastewater districts, and investor owned water utilities, pursuing highly leveraged, locally managed projects that will help ensure the security of water supplies in the western United States for years to come. Originally formed with seven agencies, the group has grown to 24 members, representing over 4 million people. Since 2009, the Coalition has secured over $38 M in Federal funding, which was leveraged with State and local funding to construct eight Coalition projects producing a new 30,000 acre-feet per year (AFY), and also to prepare feasibility studies for 14 new projects. The new shovel-ready projects will provide 100,000 AFY of reliable, sustainable, drought-tolerant water supply. This is enough water to provide a population the size of San Francisco with their daily water needs. In addition, these projects will provide multiple benefits: reducing diversions from natural waterways and aquifers; providing drought tolerant, sustainable water supplies for industry, agriculture, landscape, and wetlands enhancement; improving surface water quality; saving energy; attracting green projects; increasing economic development; and, supporting more than 10,000 jobs.

As this hearing begins the Committee's process of considering drought legislation, we are writing to urge including provisions in that legislation that would revamp and revitalize the Bureau of Reclamation's Title XVI water recycling program as a national program consisting of both a new earmark free competitive grant program and a new investment attractive loan and loan guarantee program. Enactment of such provisions would immediately incentivize recycled water, which is especially critical in areas throughout the United States that are regularly impacted by drought.

A 2013 nationwide recycled water project survey undertaken by the National Association of Clean Water Agencies, WateReuse Association, Western Recycled Water Coalition, California Association of Sanitation Agencies, and the Association of California Water Agencies showed that a number of States, including the non-Western States of Florida, Illinois, Missouri, North Carolina, Pennsylvania, South Carolina and Virginia, are currently developing recycled water projects that will provide approximately 900,000 acre-feet of new water annually. This volume of water is equivalent to meeting the water needs for approximately 8 million people – such as the populations of Los Angeles, California; Chicago, Illinois; and Dallas, Texas combined. This is a significant amount, and yet it doesn't represent the complete picture of recycled water projects in the nation since the survey results came only from the email memberships of the

sponsors. The fact is that notwithstanding the geographic focus of various drought situations, water shortage is a national problem. It needs a national solution and the drought bill affords the opportunity to provide one.

This nationwide survey specifically asked respondents to limit the projects they wanted to include in the survey to real, near term projects. These are projects that they had already made significant local investment in (i.e., not projects that were envisioned as a part of a long term water management plan). These are projects that could be quickly developed in response to drought. These public agencies are investing in recycled water projects totaling $6.4 billion, and are in need of $2.8 billion in financial support. Many agencies are in need of obtaining 50% of the project cost through state and federal subsidies in order to reduce the payback period to a length that public officials will support (~20 years), and to provide a sustainable water supply at costs comparable with current potable water supplies, which have been heavily subsidized. The survey asked what the likelihood would be if they did not receive any partnerships in the form of grants or low interest loans. The response back showed that over a third would never get to construction without financial assistance and partnership.

Until 2011, the Title XVI program had a demonstrated record of success in developing new, safe and reliable water supplies from reclaimed wastewater throughout the West. It is the only Federal program specifically designed to fund water recycling and reuse projects. Since it was first authorized in 1992, 53 Title XVI authorized water recycling projects have added hundreds of thousands of acre-feet to the West's water supply, totaling nearly 400,000 acre-feet to date. Unfortunately, due to the Congressional "earmark" ban, new water recycling projects currently cannot be authorized or funded under Title XVI – in fact, no new projects have been able to pursue Title XVI since 2011, despite there being many agencies preparing and receiving approval of feasibility studies by the Bureau of Reclamation in order to develop these reliable new water supplies and seek a federal funding partnership. Additionally, Title XVI is limited to the 17 Western States and Alaska and Hawaii. It is not national in scope, and is not supported by the Bureau of Reclamation, especially in regard to annual budget requests (~$20 million for the entire western United States).

A drought bill could provide the funding mechanisms that facilitate the construction of recycled water projects. We commend Senator Boxer and Congressman Huffman for their efforts to provide critical funding opportunities for water recycling projects. Both Senator Boxer and Congressman Huffman have introduced bills (S.1837 and H.R.2983, the "Drought Recovery and Resilience Act of 2015") that contain a competitive grant program for water recycling administered by the Environmental Protection Agency, which the Coalition drafted (see attached), requested and supports without reservation given Title XVI's procedural constraints and funding inadequacy. This competitive grant approach would be nationwide in scope. In addition, S.1894, the "California Emergency Drought Relief Act of 2015" introduced by Senator Feinstein and co-sponsored by Senator Boxer, includes a competitive grant program housed in the Bureau of Reclamation and procedurally streamlined to provide for the selection of projects on the basis of merit via a competitive process that does not require prior congressional project approval. We commend the Senators for their initiative as a positive reform step. We would suggest as modifications, in addition to restructuring the grant program as a national program, specifying as one of the criteria for project approval that a project be shovel-ready; requiring that

the Secretary of the Interior via the Bureau of Reclamation submit a report to the Congress every year summarizing the performance of the projects that are receiving or have received assistance; and, deleting the $200 million authorization in favor of the current Title XVI such sums authorization that is already in law that could be offset by de-authorizing unfunded backlog projects. Regarding the latter, the survey showed current project funding needs of $2.8 billion in financial assistance. Both the Feinstein and the Boxer/Huffman competitive grant approaches mirror the successful Transportation Investment Generating Economic Recovery (TIGER) program, which from 2009 through 2014 has provided six annual grant awards, totaling $4.185 billion to fund 310 projects.

Another mechanism for advancing water projects is a loan and loan guarantee program. Again, the Boxer/Huffman bills contain an attractive loan program that we fully support. While the Feinstein bill includes a new loan and loan guarantee program, it is not as attractive as other proposals given that as currently drafted the program would limit the Federal share for any loan at 49%; require that total project cost be at a minimum $20 million; set interest rates at the prevailing Treasury rate; and, specify the final loan maturity date at not later than 35 years. We would suggest as modifications to the Feinstein loan and loan guarantee program 100% project financing; a $5M de minimus total project cost requirement; allow the Secretary to set an interest rate to near zero percent just as was done for the 2009 American Recovery and Reinvestment Act for projects that are shovel ready and will add new water supplies in response to drought; and, a 40 year final loan maturity date (water supply projects have benefits well in excess of 40 years). A new investment attractive loan and loan guarantee program is a true win-win. The federal government gets paid back money loaned while only foregoing interest earnings (a relatively small investment to help develop new water supplies); and the water developers are able to capitalize on financing that is the equivalent in many cases to a 50% grant program. This approach is patterned after the existing Transportation Infrastructure Finance and Innovation Act (TIFIA) program, which was created in 1998 and since then has received over $13.5 billion in authorizations, allowing financing of over $44 billion in projects.

Lastly, a few comments on H.R.2898, the "Western Water and American Food Security Act of 2015," the House-passed bill introduced by Congressman Valadao. While I'm sure well intentioned, the bill fails to provide necessary and critical solutions to meeting the drought. Most notably, it is silent on the issue of drought related projects such as shovel-ready recycled water projects. It does not offer these or other drought related projects as a solution. None are mentioned in the bill; no funds are authorized to support projects like these; and, no streamlined modifications or increased authorizations are included for existing generic drought assisted programs like the Clean Water State Revolving Fund. Much more than H.R. 2898 needs to be done to ensure that the final drought legislation is as effective as possible.

Madam Chairman, immediate assistance for water agencies seeking to expand their water supplies, especially in drought prone areas, is critically needed. We applaud your leadership in advancing investments in water supply reliability and we look forward to working with you on a successful outcome.

Thank you.

NATIONAL WATER RECYCLING AND RECLAMATION ACT

SEC. 1. Short title - This Act may be cited as the "National Water Recycling and Reclamation Act."

SEC. 2. Program Establishment

There is established within the United Stated Environmental Protection Agency (EPA) the National Water Recycling and Reclamation Program to distribute funds appropriated pursuant to this Act as discretionary grants to be awarded to eligible entities on a competitive basis for water recycling and reclamation projects.

SEC. 3. Definitions

1. ELIGIBLE PROJECT COSTS. - The term "eligible project costs" means amounts substantially all of which are paid by, or for the account of, an eligible entity in connection with a project, including the cost of -
    A. development phase activities, including planning, feasibility analysis, revenue forecasting, environmental review, permitting, preliminary engineering and design work, and other preconstruction activities;
    B. construction, reconstruction, rehabilitation, replacement, and acquisition of real property (including land related to the project and improvements to land), environmental mitigation, construction contingencies, and acquisition of equipment;
    C. capitalized interest necessary to meet market requirements, reasonably required reserve funds, capital issuance expenses, and other carrying costs during construction; and,
    D. reimbursement for eligible project costs incurred prior to the enactment of this Act.
2. ELIGIBLE ENTITIES. -The term "eligible entities" means a corporation, partnership, joint venture, trust, public or investor-owned utility, private entity, governmental entity, agency, or instrumentality, or any other reclamation and reuse entity.
3. PROJECT. - The term "project" means a project carried out by the EPA and an eligible entity for water recycling or water.
4. EPA - The term "EPA" means the Environmental Protection Agency of the United States.

SEC. 4. Determination of eligibility and project selection

a. ELIGIBILITY. - To be eligible to receive financial assistance under this Act, a project shall meet the following criteria:
    1. APPLICATION. - An eligible water reclamation and reuse entity undertaking the project shall submit a project application to the EPA.
    2. MINIMUM ELIGIBLE PROJECT COSTS. - To be eligible for assistance under this Act, a project shall have eligible total project costs that are reasonably anticipated to exceed $1,000,000.
    3. DEDICATED REVENUE SOURCES. - To be eligible for assistance under this Act, a project shall have a demonstrated source of non-Federal revenues to satisfy the non-Federal share.

b. SELECTION AMONG ELIGIBLE PROJECTS. -
    1. ESTABLISHMENT. - The EPA shall establish criteria for selecting among projects that meet the eligibility requirements specified in subsection (a).
    2. SELECTION CRITERIA. -
        A. IN GENERAL. - The selection criteria shall include the following:
            i. The extent to which the project addresses near and long term water demand and supplies, protects the environment, increases water supply, or otherwise enhances the overall water reclamation and reuse system
            ii. The extent to which the project enhances the return on the Federal investment through the production of new, highly renewable water supplies.
            iii. The likelihood that assistance under this Act would enable the project to proceed at an earlier date than the project would otherwise be able to proceed.
            iv. The extent to which the project uses measures and that enhance the efficiency of the project.
            v. The amount of budget authority required to fund the Federal credit instrument made available under this Act.

        B. TIMING. –The EPA shall (1) publish criteria on which to base the competition for any grants awarded under this Act not later than 90 days after enactment of this Act; (2) require applications for funding to be submitted not later than 180 days after publication of such criteria; and, (3) announce all projects selected to be funded

from such funds not later than one year after enactment of this Act.

SEC. 5. Federal Share

In recognition of the return on investment of a project through the production of new, highly renewable water supplies, the Federal share shall be 80 percent of the reasonable anticipated eligible project costs.

SEC. 6. Regulations

The EPA may issue such regulations as the EPA determines appropriate to carry out this Act.

SEC. 7. Funding

a. FUNDING. -
    1. IN GENERAL. - There is authorized to be appropriated $500 million for each of FY16-20 to carry out this Act.
    2. AVAILABILITY. - Amounts made available to carry out this Act shall remain available until expended.
    3. ADMINISTRATIVE COSTS. - From funds made available to carry out this Act, the EPA may use, for the administration of this Act, not more than 2 percent for each year.

SEC. 8. Funding Offset

a. SUBMISSION OF PROJECT LIST.- On or before October 1, 2015, the EPA shall submit to Congress a list of recycled water projects or separable elements of such projects that have been authorized but that have received no obligations during the 5 full fiscal years preceding the submission of that list.
b. ADDITIONAL NOTIFICATION. - On submission of the list under subparagraph (A) to Congress, the EPA shall notify -
    1. Each Senator in whose State and each Member of the House of Representatives in whose district a project (including any part of a project) on that list would be located; and,
    2. Each applicable non-Federal interest associated with a project (including any part of a project) on that list.
c. DEAUTHORIZATION. - A project or separable element included in the list under subparagraph (A) is not authorized after the last date of the fiscal year following

the fiscal year in which the list is submitted to Congress, if funding has not been obligated for the planning design, or construction of the project or element of the project during that period.

SEC. 9. Reports to Congress

On October 1, 2016, and every 2 years thereafter, the EPA shall submit to Congress a report summarizing the financial performance of the projects that are receiving, or have received, assistance under this Act.

WESTERN STATES WATER COUNCIL

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Web Page: www.westgov.org/wswc

August 1, 2011

The Honorable Tom McClintock, Chairman
Subcommittee on Water and Power
House Committee on Natural Resources
1522 Longworth House Office Building
Washington, DC 20515

The Honorable Grace Napolitano, Ranking Member
Subcommittee on Water and Power
House Committee on Natural Resources
H2-186 Longworth House Office Building
Washington, DC 20515

Dear Chairman and Ranking Minority Member,

On behalf of the Western States Water Council and our eighteen member states, I am writing to express our strong opposition to H.R. 1837 as an unwarranted intrusion on the rights of the states to allocate and administer rights to the use of state water resources. Moreover, it is inconsistent with evolving principles of successful management of our water resources to achieve a sustainable balance between important economic and environmental goals.

Specifically, Section 202 of H.R. 1837 would set aside Section 8 of the Reclamation Act of 1902 and effectively preempt California state law setting requirements for protection of the San Joaquin River. Section 108(b) would preempt state law as applied to water project operations affecting endangered species, including both the federal Central Valley Project and the State owned and operated State Water Project. The preemptive effect of Sections 108(b) and 202 would apply notwithstanding the absence of any conflict between state and federal law.

The Council opposes any weakening of the deference to state water law as now expressed in Section 8 as inconsistent with the policy of cooperative federalism that has guided Reclamation Law for over a century. This is a threat to water right and water right administration in all the Western States.

The water planning, development, management and protection challenges in the Sacramento-San Joaquin Bay-Delta System are serious, but not unique to California, as similar economic and environmental needs must be balanced across the West and the Nation. Any effective solution to California's water and environmental needs must be addressed at the state and local level, in collaboration with federal agencies under existing federal authorities.

Clean, reliable water supplies are essential for communities throughout the West and the Nation to maintain and improve their citizens' quality of life. Sufficient supplies of good quality water are essential for strong state and national economies, and require achieving a balance protection of water supply sources and the environment.

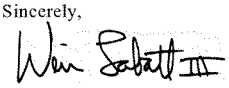
The States are responsible for allocating and administering rights to the use of water for myriad uses; and are in the best position to identify, evaluate and prioritize their own needs. States and their political subdivisions also share primary responsibility for planning and managing our Nation's surface and ground water resources, both quantity and quality.

Successful environmental protection policy and implementation is best accomplished through balanced, open and inclusive approaches at the ground level, where interested stakeholders work together to formulate critical issue statements and develop locally-based solutions to those issues. Collaborative approaches more often result in greater satisfaction with outcomes and broader support, and increase the chances of involved parties staying committed over time to implementing agreed upon solutions. Both the State of California and the Department of Interior have testified before this subcommittee in opposition to H.R. 1837 and specifically those sections preempting state law.

In conclusion, the Council cannot support H.R. 1837. It is an ill-advised attempt to circumvent ongoing efforts to define and implement sustainable solutions to myriad complex challenges that must be addressed in the context of balancing current and future economic and environmental needs and demands – recognizing the importance of intergovernmental partnerships – and respecting our diverse roles and responsibilities through maintaining the historic deference to state water law embodied in Section 8 of the Reclamation Act. Legislation preempting or discharging requirements for compliance with state law is not consistent with principles of federalism and a balanced approach to resolving conflicts.

We welcome the subcommittee's attention to these very serious and often intractable problems and hope to be able to continue to work together on effective and lasting solutions.

Sincerely,



Weir Labatt, III
Chairman

Wilkesboro Hydropower, LLC

HYDRO DEVELOPMENT

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October 5, 2015

Senator Lisa Murkowski
Chairman
Senate Energy and Natural Resources Committee
United States Senate
709 Hart Senate Building
Washington, DC 20510

Re: Wilkesboro Hydropower, LLC Support for S. 2083

Dear Chairman Murkowski:

Wilkesboro Hydropower, LLC ("Wilkesboro Hydro"), Federal Energy Regulatory Commission ("FERC") licensee for the W. Kerr Scott Hydropower Project (FERC Project No. 12642), is writing to express support for S. 2083 introduced by Senator Richard Burr. S. 2083 is designed to empower FERC to extend the commencement of construction deadline for Wilkesboro Hydro's W. Kerr Scott Hydropower Project ("Project") in order to ensure that the economic and reliability benefits of this renewable energy resource are attained.

BACKGROUND

On July 17, 2012, FERC granted Wilkesboro Hydro a fifty-year license for the Project proposed to be located at the existing U.S. Army Corps of Engineers' ("Corps") W. Kerr Scott Dam ("WKS Dam"), located on the Yadkin River, in Wilkes County, North Carolina. The WKS Dam was completed in 1962 and was intended to provide flood control and water supply benefits, without provision for producing hydroelectricity. Since 1962, all outflows from the WKS reservoir constitute wasted energy. Pursuant to its FERC license, Wilkesboro Hydro seeks to design, construct, and operate a hydropower facility that uses the existing outflows from the WKS Dam to produce electric power. Wilkesboro Hydro is currently well positioned to successfully develop the Project because it has already obtained the license, procured the generator and turbine, developed a feasible design for the site, and possesses the competencies and funding required to successfully construct and operate the project.

REQUEST FOR CONGRESSIONAL ACTION

In order to ensure that any hydroelectric project proposed for development on Corps facilities does not conflict with the existing authorized purposes of the site, the Corps must review and approve the Project after a FERC license is issued. Wilkesboro Hydro's formal consultation with the Corps, therefore, commenced in July 2012. Coordination with the Corps since license issuance has produced an amended design proposal that is superior in every way to the originally licensed design. Given the steps required to complete engineering development, however, Wilkesboro Hydro will not be able to commence

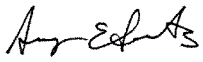
construction within the deadline imposed by Section 13 of the Federal Power Act, which requires licensees to commence construction of hydroelectric projects within four years of license issuance. Congress, however, frequently authorizes FERC to grant extensions of this deadline when circumstances so warrant. Because the Project requires extensive coordination with the Corps, Wilkesboro Hydro seeks relief from Congress in order to extend the commencement of construction deadline, consistent with prior congressional action, and ensure that the benefits of the Project may be realized.

Wilkesboro Hydro's request is consistent with recent congressional action intended to spur hydropower development at Corps facilities. In the Water Resources Reform and Development Act of 2014, Congress declared it a national policy that "the development of non-Federal hydroelectric power at Corps of Engineers civil works projects, including locks and dams, shall be given priority." Pub. L. No. 113-121, 128 Stat. 1193, 1215 (2014). Moreover, in unanimously passing the Hydropower Regulatory Efficiency Act the prior year, Congress found that "only 3 percent of the 80,000 dams in the United States generate electricity, so there is substantial potential for adding hydropower generation to nonpowered dams." Pub. L. No. 113-23, 127 Stat. 493, 493 (2013). In that legislation, Congress also cited a study in finding that, "by utilizing currently untapped resources, the United States could add approximately 60,000 megawatts of new hydropower capacity by 2025, which could create 700,000 new jobs over the next 13 years."

In addition to realizing economic and reliability benefits, completion of the Project would provide a renewable energy resource. Based on the anticipated plant capacity and historical water flows, we estimate energy production of 13,400,000 kWh per year on average. This clean energy will be of great benefit to the end-users of such energy as well as to the overall reliability of the nation's electricity grid. Thus, the Project will convert the Corps' current flow releases, which currently constitute wasted energy, into clean electricity.

Wilkesboro Hydro appreciates the attention of the members of the Committee on Energy and Natural Resources, particularly Senator Burr for bringing this legislation to the Committee. Wilkesboro Hydro appreciates any opportunity it has to discuss the benefits of the W. Kerr Scott Hydroelectric Project with individual members of the Committee or with the public at large. Please do not hesitate to contact us if you have additional questions.

Sincerely,



Amy Edwards
Assistant Manager
Wilkesboro Hydropower, LLC

Statement for the Record
Senator Wyden
Energy & Natural Resources Hearing: Drought
October 8, 2015

The drought across Oregon and other parts of the West this summer is one of the worst I've seen in recent history, and it will likely have far reaching effects that impact farming, ranching, wildfires, and recreation. This year, well over half of Oregon experienced extreme drought and 100% of the state suffered from at least severe drought conditions. All it takes is a view of a bare Mt. Hood, usually capped with snow even in the peak of summer, to be reminded that the lack of snowfall and higher temperatures are going to impact Oregon's water resources now and into the future.

Drought is unfortunately becoming the new normal, so I'm glad that the Committee is holding a hearing to address several drought bills and help facilitate the conversation about how best to manage water for multiple interests – irrigation, power, tribal, fish & wildlife, and recreation. But a conversation about drought is not complete without including the Klamath Basin and the Klamath Agreements – a regional solution to historic water management and drought problems. The Klamath Water Recovery and Economic Restoration Act, which I introduced this Congress and last Congress, authorizes three landmark agreements in the Klamath Basin of Southern Oregon – the Upper Basin Agreement, the Klamath Basin Restoration Agreement, and the Klamath Hydroelectric Settlement Agreement. The Agreements were the result of years of collaboration and compromise and are designed to work for all interested stakeholders, during wet years as well as years of drought.

The commitments the stakeholders made over the years with the interests of the entire Klamath Basin in mind have set a precedent for how to solve future water management problems. Finding a workable solution in the Basin over the last several years has not been easy, and I give a lot of credit to the interested groups who came to the table, made concessions, and found a path forward. Each area of the country is unique, with differing climates, resources, and stakeholders, but the collaborative process that took place in the Klamath Basin demonstrates how even groups with seemingly opposing interests can work together to find real solutions.

The people in the Klamath Basin, like the people in many other regions in California and New Mexico, have seen and felt the severe impacts of drought on their farms, fish and wildlife, and families. The solution the stakeholders worked out, the three Klamath Agreements, will help the region persevere and adapt to the changing landscape and survive future droughts. Their Agreements, as represented in the Klamath legislation, deserve to move forward as a part of any drought package considered by this Committee.

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