

Statement of Jason Peltier
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U.S. Department of the Interior
Before the
Subcommittee on Water and Power
House Committee on Natural Resources
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Madam Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today to discuss H.R. 24, the San Joaquin River Restoration Settlement Act. H.R. 24 provides authorization and funding for the Secretary of the Interior to implement the terms and conditions of the Stipulation of Settlement (Settlement) dated September 13, 2006, in *Natural Resources Defense Council, et al. v. Kirk Rodgers, et al.*, which was approved by the U.S. District Court on October 23, 2006. The Department supports HR 24.

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

Brief Background

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

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

In 1988, a coalition of environmental groups led by NRDC filed suit challenging the federal defendants' compliance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA) in connection with the renewal of the long-term water service contracts between the United States and the Central Valley Project, Friant Division contractors. Most of the Friant Division long-term contractors intervened as additional defendants.

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

From 1998 to 2003, without direct involvement by Federal defendants, FWUA and NRDC attempted to settle the remanded issue. In 2003, those discussions were terminated, and on July 19, 2003, the plaintiffs amended their complaint by adding the Secretary of Commerce

and the National Marine Fisheries Service as additional defendants and adding claims asserting that the long-term renewal contracts do not conform to the requirements of the Central Valley Project Improvement Act (CVPIA). In an Order issued on August 27, 2004, Judge Karlton concluded that Reclamation violated California Fish and Game Code § 5937, and scheduled a trial on the issue of remedy for that violation.

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

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

Restoration Goal

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

Chinook salmon and other fish in the 153-mile stretch of the river between Friant Dam and the confluence of the Merced River.

Water Management Goal

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

Phased Approach

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

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

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

Importance of Legislation

As the implementation of this historic Settlement begins, I can't emphasize enough how important it is for Federal authorizing legislation to be approved and signed into law. Passing this legislation soon will demonstrate the kind of support and commitment from the Federal government that is necessary to prove we are serious about making this settlement and its twin goals a reality. Some initial funding and authority exists for Interior agencies to work with our State partners to initiate planning and environmental review activities, which we have already begun to do. Without authorizing legislation such as H.R. 24, however, we lack sufficient authority to implement the actions in the Settlement. Moreover, beginning in fiscal year 2008 we will have insufficient funding to stay on the aggressive schedule called for in the Settlement to complete the necessary planning and environmental reviews for initiating construction activities and ultimately restoring flows into the San Joaquin River from Friant Dam. Such delays would send the wrong message regarding the Federal support for implementation.

Restoration Funding

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

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

(\$40 million over the 20-year period) would also be directed for implementation of the Settlement.

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

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

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

Although the Settling Parties have agreed on a suite of actions to be taken to restore flows and salmon runs, the total cost and the specificity of those actions still contain significant uncertainty. The Parties anticipate that a multi-agency technical team established to implement the Settlement would develop additional design details typically found in a Feasibility-level study needed to take the proposed actions. The Parties also anticipate that the estimated costs projected to be required to meet the restoration goal (i.e. \$250 million-\$800 million) would be further refined during the initial phase of implementation.

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

Status of Implementation

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

San Joaquin Restoration Fund. However, these actions in the Budget presume enactment of the legislation.

Third Parties

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

Since the Settlement was signed and the legislation was drafted, the Bureau of Reclamation has been working closely with a group of Third Parties with downstream

concerns on a Memorandum of Understanding (MOU), which was reviewed by the Settling Parties and was signed on February 26, 2007 by Reclamation and the Third Parties involved.

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

In supporting this settlement, the Administration remains committed to implementing other salmon restoration programs along the Pacific coast. The San Joaquin settlement that would be implemented by H.R. 24 provides a model of how stakeholders can come together to rebuild historic salmon populations and restore communities. We are open to exploring how this model could be used to help implement other similar restoration programs.

Conclusion

This monumental agreement ends an 18-year legal dispute over the operation of Friant Dam and provides increased certainty to Friant Division farmers who rely on CVP water deliveries while returning flows and salmon runs back to the San Joaquin River. H.R. 24 would provide the federal authorization and funding needed to move into implementation. We believe that this historic agreement is the start of a truly collaborative process that will result in a restored river for all. I strongly recommend that this committee act swiftly on this legislation to allow the Federal government to move forward without delay and to send a message of support to the Parties and our implementing partners.

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