



NATURAL RESOURCES DEFENSE COUNCIL

TESTIMONY  
OF  
HAMILTON CANDEE  
SENIOR ATTORNEY; CO-DIRECTOR, WESTERN WATER PROJECT  
NATURAL RESOURCES DEFENSE COUNCIL  
BEFORE THE  
SUBCOMMITTEE ON WATER AND POWER  
COMMITTEE ON NATURAL RESOURCES  
UNITED STATES HOUSE OF REPRESENTATIVES  
  
ON THE  
  
SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

H.R. 24 / S. 27

MARCH 1, 2007

Good morning. I would like to thank the Subcommittee for this opportunity to testify once again about restoration of the San Joaquin River. My name is Hamilton Candee and I am a senior attorney with the Natural Resources Defense Council (NRDC) and the Co-Director of NRDC's Western Water Project. I appreciate the opportunity to speak today in strong support of the historic settlement in *NRDC v. Rodgers* and the pending legislation to authorize and approve this settlement, H.R. 24. For the past 18 years, I have been a counsel of record in this case, representing a coalition of 14 environmental and fishing groups which, in turn, represent over 2 million people nationwide, and more than 250,000 Californians. With me today is NRDC senior attorney Kate Poole, who also represents the NRDC Coalition and participated with me in the multi-party negotiation that produced the landmark settlement that is the subject of today's hearing.

I previously appeared before this Subcommittee to discuss the San Joaquin River Restoration Settlement on September 21, 2006. At that time, the Subcommittee heard from two panels: the first comprised of representatives of the Settling Parties and the State of California, and the second comprised of interested third parties. I will not repeat here our earlier testimony which provided considerable background on the Settlement; however I would like to request that my prior testimony and submissions from that hearing be made part of the record for this hearing. I would like to focus my testimony today on the remarkable progress we have continued to make on the Settlement since that hearing last September.

Immediately following the hearing, the Settling Parties were invited by Senator Feinstein to commence negotiations with a wide coalition of third parties who had asked for revisions to the then-pending proposed Settlement legislation to address their concerns about potential impacts of the Settlement. These negotiations included several members of the House Resources

Committee, other interested members of the House, both of California's Senators, as well as the various parties who testified on the third-party panel on September 21, 2006. On September 27, 2006, after extensive and difficult negotiations in Washington, DC and California, the Settling Parties, the State of California, and these numerous third parties agreed on a large number of changes to the proposed legislation that were acceptable to all of the parties. To memorialize this remarkable agreement, all of the parties signed what has come to be affectionately known as "the blood oath" which committed all the signatories to support the Settlement and the revised legislation, and to oppose any amendments to the revised legislation that are not agreeable to all of the parties. A copy of that Pledge of Support document, along with Senator Feinstein's press release announcing the agreement, is submitted with my testimony today as an attachment.

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

On November 7, 2006, the voters of the State of California passed two Initiatives that potentially provide substantial State funding for implementation of the Settlement. First, the voters passed Proposition 84, which contains \$100 million explicitly dedicated to implementation of the Settlement, as well as numerous other potential funding sources. Second, the voters passed Proposition 1E, the flood infrastructure bond, which provides several billion dollars in bond funds to upgrade the State's flood protection. Because the Settlement also calls for flood protection upgrades to be implemented along the San Joaquin River, the State has informed the Settling Parties that Prop 1E could potentially provide tens of millions of dollars in

additional State funding towards Settlement implementation. In the aggregate, the State anticipates providing at least \$200 million towards Settlement implementation, as explained in the November 30, 2006 Letter from California's Resources Secretary Mike Chrisman to Senator Feinstein submitted as an attachment to my testimony.

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

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

This is the background of the legislation that is now pending before you. It is unique legislation in that it has the support of the Settling Parties – who represent 22 water districts, 14 conservation and fishing groups, and 5 federal agencies - as well as a wide array of California water users and landowners who were not parties to the Settlement but who have now pledged their support for the settlement and this legislation, and the State of California (which has committed extensive financial and agency resources to the implementation of the Settlement).

We are also pleased to note that the President's recently-delivered federal budget, and Governor Schwarzenegger's recently delivered State budget, both support increased funding for the relevant government agencies to implement the Settlement.

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

- Restore continuous flows to the San Joaquin River – California's second-longest river and one of two main arteries to the Sacramento-San Joaquin River Delta, the source of drinking water for over 23 million Californians;
- Restore the Central Valley Spring-run Chinook salmon, fall run Chinook salmon, and other fish populations to the San Joaquin, much of which had been destroyed by the operation of Friant Dam over the past 60 years;
- Provide certainty to the Friant Division long-term water contractors through the specified water releases provided for in the Settlement;
- Preserve the San Joaquin Valley's strong agricultural economy, while enhancing environmental values in the Valley through restoration of a living river and associated habitat;
- Provide flexibility to the Friant Division long-term contractors to reduce or avoid the water supply impacts resulting from the Settlement through specified water management techniques such as recirculation, low-cost water in wet years, and other measures;
- Provide protections to the interests of third parties, as included in the current legislation and in the Settlement, and ensuring that all of the settlement provisions will be implemented in accordance with all applicable laws, including

the National Environmental Policy Act, the Endangered Species Act, and State law;

- And provide for myriad opportunities for public input and participation during the implementation of the Settlement.

NRDC, having worked together with the other Settling Parties, the State and those third parties who have signed the attached Pledge of Support, is extremely proud of what we have accomplished in this Settlement and revised legislation. The Federal and State agencies and the Settling Parties have already begun the hard work of Settlement implementation. The State and Federal governments have identified lead agency personnel and teams to execute certain tasks. The Settling Parties are cooperatively developing protocols and agreements for public and third party participation and input. But it is critical for all of us that we obtain passage of this legislation that is pending before you in order to fully implement what Secretary Kempthorne and so many other leaders have correctly described as an “historic settlement.” We ask that Congress promptly pass the San Joaquin River Restoration Settlement Act so that the San Joaquin River can flow once again and all of the benefits of the Settlement can be realized. Thank you.