

**TESTIMONY OF SAN JOAQUIN RIVER EXCHANGE CONTRACTORS WATER
AUTHORITY**

**TO THE SUBCOMMITTEE ON WATER AND POWER OF THE
SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES**

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Testimony by Steve Chedester, Executive Director

Good morning, Acting Chairperson Cantwell and members of the Subcommittee, my name is Steve Chedester and I am the Executive Director of the San Joaquin River Exchange Contractors Water Authority. We are commonly referred to as the "Exchange Contractors." It is my honor today to address you on a matter of crucial importance to the Exchange Contractors.

I am testifying here today to offer our comments on S. 27, The San Joaquin River Restoration Settlement Act, introduced by Senator Feinstein of California. I previously addressed the House Subcommittee on Water and Power on September 21, 2006 regarding the proposed San Joaquin River settlement. In addition, since I was not able to testify at the March 1, 2007 hearing before the House Subcommittee, I sent a letter to the Subcommittee indicating our support for the legislation and identifying those portions of H.R. 24 that are of particular importance to the Exchange Contractors. Over the past several months, we have diligently worked with the settling parties and other affected third parties to ensure that the adverse impacts of the actions to restore the San Joaquin River are mitigated.

The Exchange Contractors is a joint powers authority comprised of four water entities that irrigate 240,000 acres of prime agricultural land in the San Joaquin Valley. We are located along the San Joaquin River directly downstream from Friant Dam to the confluence of the

Merced River. The four agency members include the Central California Irrigation District, Columbia Canal Company, Firebaugh Canal Water District, and San Luis Canal Company.

The Exchange Contractors are an essential party to the implementation of this legislation as our lands are directly downstream of Friant Dam and about a majority of the San Joaquin River where the fish restoration program will be implemented. In addition, our water supply facilities and the levees that protect our lands are located in this stretch of the river and will be impacted by the new operations required to restore the fisheries.

The comments of the Exchange Contractors are limited to those areas of the proposed legislation that are particularly important to us. When considering this legislation it is important to keep in mind that it will implement a Settlement Agreement negotiated by parties to litigation that did not include the Exchange Contractors or many other parties, including private landowners, affected by the terms of the settlement. Needless to say, while we support the legislation, it is a product of compromise.

The proposed Settlement will obligate the Bureau of Reclamation to release water from Friant Dam in order to protect downstream fisheries. To make this restoration possible, substantial physical changes need to be made both to the river and to facilities downstream of the dam. For instance, it will be necessary to rehabilitate and in some places restore the river channel so the water can flow and fish will have habitat sufficient for their several life stages. In addition, it will be essential to protect the downstream water systems and the adjacent private property and livelihoods of the farmers and other citizens along the river.

Among the changes to the river that will be needed are in-stream improvement measures, rehabilitation of miles of existing levees to prevent flooding and seepage, the

construction of new levees where none exist, reconstruction of water diversion facilities and small dams that were not constructed in a manner consistent with the new operating regimen that will be required under the settlement, improvements to some of the downstream flood by-pass structures, and the construction of fish screens.

The restoration of the San Joaquin River has far reaching impacts for all the residents of the San Joaquin Valley and the State. It is imperative that the third parties have a voice in this complicated, lengthy and costly process. For example, it is of vital importance that the landowners along the San Joaquin River in the area known as Reach 4b have a voice in the restoration process. The San Joaquin River holds to a defined channel in its upper reaches, but in the Reach 4b area historically it would spread into many “braided” channels as it reached the flat valley floor. The flows called for in the Settlement are exponentially greater than the existing capacity of Reach 4b and other reaches and if the river floods in the areas it will severely impact the families that live and farm along this stretch. To address this concern, the bill requires that the impacts of restoration in Reach 4b be studied carefully and completely, and that prior to introducing any high level flows a report on the feasibility of restoring this section of the river be submitted.

Cost-benefit is one measure that will have to be considered when studying the feasibility of using Reach 4b. It is also important that Congress understand the challenge of moving fish through this reach. Among these challenges will be the acquisition of 1000’s of acres of farmlands in order to create a stream channel of sufficient width and depth to convey flow of at least 4500 cfs. In addition, new levees will be have to be constructed to protect the adjacent lands from surface flooding and sub-surface seepage, and a new stream channel will need to be constructed in a fish friendly manner.

The San Joaquin River stretches for miles below the Friant Dam and every reach has its own unique characteristics. The proposed restoration will affect every mile of the San Joaquin River and there are many landowners who will be affected. Therefore, it is essential that adequate funds be appropriated from both the federal government and the State of California. It is also essential that the affected third parties have a place at the table to make sure this program is implemented in a manner that mitigates the impacts it causes on adjacent private property and facilities owned by others.

It was a central condition of the Settlement Agreement that there be no adverse impacts to third parties. The original draft of the proposed legislation accompanying the Settlement Agreement would have adversely impacted the Exchange Contractors and others. Fortunately, we were able to address these concerns in a constructive manner. With the assistance of Senators Dianne Feinstein and Barbara Boxer and House Members Radanovich, Cardoza, Costa and Nunez, and former Member Pombo, the third parties, the settling parties, representatives from the State of California, representatives from agencies of the Departments of Commerce and Interior, and the Justice Department, developed over the course of weeks of intensive negotiations the key terms of the legislation that you are currently considering. As you can appreciate, these negotiations were intensive, but we believe have resulted in a balanced program.

The areas of major concern to the Exchange Contractors were:

- protection of the Exchange Contractors' senior water rights;
- coordination and protection of the continued operation of our water supply facilities in a way that would not conflict with the Endangered Species Act;
- the provision of adequate funding for the proposed restoration program so that there would not be a partially completed program similar to the half-completed drainage program; and

- that the third parties would be given an opportunity, on par with that of the settling parties, to provide input into the development and implementation of the restoration program.

As I stated in my prior testimony before the House Subcommittee, “inclusion of the above protections in the ... legislation is essential for our support...” I believe we have essentially achieved these protections. In addition, in February of this year we completed a memorandum of understanding with the Bureau of Reclamation that will provide us with the opportunities for input into the implementation of the settlement that we seek. Completion of this MOU was an essential component of our support.

In sum, I believe all of the parties to the legislative negotiations and settlement will agree the legislation you are considering is a balanced proposal that addresses both the needs for fishery restoration and reliable water supply. Of course, in order to maintain this balance, it is essential that sufficient funds be appropriated to achieve the goals of the restoration program.

While I will not recite to you here those areas of the legislation that are of particular concern to the Exchange Contractors and downstream landowners, my written testimony does specifically identify those provisions that are essential to our support of this program. I will note that other parties have provisions that are essential to their support, and as such, this legislation is a package. If the substance of the legislation is significantly changed, parties may no longer be in a position to remain supportive.

The provisions of key importance to the Exchange Contractors are:

- Water supplies above that contributed by the Friant Unit will only come from willing sellers and not by eminent domain. (Sec. 4(a)(3))
- The subsequent use of water released from the Friant Unit will be made in a manner consistent with California water law. (Sec. 4(a)(4)(B))

- The Secretary of the Interior will enter into a MOU with the third parties. (Sec. 4(b)(2))
- Prior to implementing measures to construct, improve, operate or maintain downstream facilities, the Secretary will identify the impacts and mitigation measures that must be implemented in order to mitigate impacts on adjacent and downstream water users and landowners. (Sec. 4(d))
- The settlement will not have any impact on, amend or modify the rights of the Exchange Contractors under their exchange contract. (Sec. 4(g))
- If the Secretary needs to acquire property in order to implement the settlement, in the first instance, the Secretary will seek to acquire property from willing sellers. And, if after acquiring property through an eminent domain it is determined that the property is not needed, the Secretary will offer the property back to the owners from whom it was taken. (Sec. 5(b)(1) and (2) and Sec. 5(c)(2))
- The recognition in section 7 that the settlement comprises the comprehensive plan for the reestablishment of fisheries in the San Joaquin River pursuant to Section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992, commonly referred to as the Central Valley Project Improvement Act or CVPIA. (*Public Law 102 -- 575; 106 Stat. 4721*) (Sec. 7)
- The legislation authorizes funds that together with funds from the Friant contractors and the State of California should be sufficient to address rehabilitation of that portion of the San Joaquin River upstream of the area known as Reach 4b. (Sec.9)
- The legislation prohibits the shifting of costs to implement this restoration program to third parties. (Sec. 9(a)(3))
- Reach 4b will not be developed for the passage of fish until a full study of the feasibility and practicality of expanding this stretch of the river is completed, including cost estimates, and addressing the question of whether it is cost-effective. (Sec. 9(g))
- Designation of the spring run Chinook salmon to be reintroduced into the San Joaquin River as an experimental population pursuant to Section 10(J) of the Endangered Species Act. (Sec. 10(b))

One item that I did not list above, but which is relevant to the successful implementation of this legislation is that in the event the Secretary acts in an unreasonable manner, we will have a right to challenge that action under the Administrative Procedures Act. (Sec.8(b))

In conclusion, it is the view of the Exchange Contractors that S.27 is a balanced bill that protects the fish and the farmers. We are appreciative of the Sub-committee's consideration of this legislation and your attention to the issues of concern to us. For your convenience, I ask that both my testimony before the House Subcommittee on Water and Power and my letter of March

1, 2007 be included in the record. I have provided the Subcommittee with both hard copies and an electronic version of those documents.

Thank you again for the invitation to testify before this Subcommittee today. If you or any of the Members have questions I will be happy to answer them.