Testimony of

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Regarding H.R. 1837 –

The San Joaquin Valley Water Supply Reliability Act

Before the

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Good morning Mr. Chairman and members of the subcommittee. My name is Dave Bitts. I am a commercial fisherman, home-ported out of Eureka, California, and I currently serve as president of the Pacific Coast Federation of Fishermen's Associations (PCFFA) a regional umbrella fishing group that represents, through its member organizations, working men and women in the West Coast commercial fishing fleet.

I want to thank the subcommittee for its kind invitation to testify here today to discuss the implications of H.R. 1837 on our fishing industry and specifically on the salmon fishery and the small businesses and communities it supports along our coast.

Background

My background is that I was raised in Stockton, in the Sacramento-San Joaquin Delta. I graduated from Stanford (Class of 1970) and hold a teaching credential. I have been a self-employed commercial fisherman since 1980 and purchased my current vessel, the 45 foot salmon troller/crabber *Elmarue* in 1985. I fish for salmon, Dungeness crab and, occasionally when the fish are available, for albacore tuna and rockfish. In addition to the office I now hold in PCFFA, I have held various offices in my local organization, the Humboldt Fishermen's Marketing Association - including president - since becoming a full-time fisherman. I was the California commercial fishing representative on the Klamath Fisheries Management Council from 1992 to 2006 and on the Klamath River Task Force from 1998 to 2006.

I should note, too, that under my presidency, PCFFA was a member of the Klamath Basin Coordinating Council – made up of agencies, tribes, land owners, conservation groups and fishing organization dealing with FERC relicensing and/or removal of four Klamath River dams and associated water quality/habitat issues associated with the planned removal. PCFFA was also one of the signatories, along with Klamath Basin farm groups, the agencies, tribes and others to the Klamath Basin Resources Agreement and the planned removal of the dams.

My organization, PCFFA, was established just months before Congress passed the Fishery Conservation & Management Act in1976. The FCMA, now known as the Magnuson-Stevens Act, as you know, extended U.S. fishery jurisdiction to 200 miles offshore and established eight

regional fishery councils charged with developing management plans for fisheries within the new federal fishery conservation zones (now called the Exclusive Economic Zone), including that for Pacific salmon. Since 1976, PCFFA staff or officers have represented California fishermen on the Pacific Fishery Management Council's Salmon Advisory Committee.

PCFFA is a trade organization, but, since its inception, we have found it necessary to speak out frequently on behalf of the fish resources that support our members. We have a direct economic tie to the health of our fish and shellfish stocks and an obligation to care for those resources, much the same as a farmer or rancher should feel an obligation to look out for his/her land and crops, or livestock. Salmon, in particular, have required a great deal of our time and effort. Not only are most of members salmon fishing men and women, but salmon - by virtue of their spawning and rearing occurring in freshwater systems and then spending most of their adult life at sea - are subject to much more of the vagaries of nature and impacts of man than just about any other fish.

Unfortunately there are some who seek to disparage the responsible stewardship PCFFA has exercised in the care of salmon as "radical environmental extremism." Mr. Chairman, I know of nothing radical, nor extreme about small business owners – which every commercial fishing boat owner/operator is – working to protect the economic resources that support their livelihoods. Our motivating factor is not some esoteric altruism; it is purely economic – a business-based decision. It is true our industry depends on a healthy aquatic and marine environment to sustain the food resources we harvest, but it is inaccurate to dismiss that as "merely" environmental when our jobs and businesses – along with the public's access to highly nutritious food – are at stake.

The Salmon Disaster – Options and Relief

I would briefly like to address some statements that were made in the last subcommittee hearing by H.R. 1837's principal author. I can personally attest to the fact that when the salmon closures were imposed in 2008 and 2009 and for most of the 2010 season, I, like most salmon fishermen, did not have another fishing option to fall back on.

It is true the closures were made by the government. That is because the run predictions – which turned out to be accurate – were for a very low stock abundance. While our fishing did not cause the resource collapse – as most scientists will attest – fishing on those low numbers could exacerbate an already bad situation, putting the future of our fishery at serious risk. The government's closure decision was the responsible one and we supported it. Moreover, even if they had allowed fishing to occur there were simply not enough fish to provide for viable commercial and recreational fisheries in 2008 and 2009.

For the smaller boats such as my own, the albacore tuna fishery -- that generally begins in July along the Northeastern Pacific coast when the fish begin to appear -- is not something we can depend on. Generally, albacore are accessible to the smaller boats of the salmon fleet in those years – mostly later summer and early fall – when the fish are nearshore. The notion therefore that tuna fishing was an option for the salmon fleet is nonsense. Other fisheries, such as open-access rockfish have highly constrained landing quotas that, at most, can help to supplement salmon and other fisheries. It is not a replacement. The fishery for slime eel is also

too small to support the fleet; it partially mitigated losses for just a few salmon boats. That was it.

Some, such as myself, have crab permits, so we were able to fish crab - as we do most every year from the late fall to the early spring, when the salmon season is traditionally closed. For those who had permits for other fisheries, the salmon closure meant they were out of work for most or all of the time salmon fishing traditionally occurs; for those who historically made their livelihood from salmon fishing alone – they had nothing.

The statement that salmon fishermen had other fisheries available to them is akin to saying growers don't need water, because they can dry farm. We all know how economically feasible that is.

The $250 million in salmon disaster relief money Congress appropriated for the West Coast salmon fishery was intended to compensate for losses attributed to the salmon closures. The money available was not just to fishermen, but to fish processors and other fishery-related businesses, including those in the recreational fishing industry. The formula for allocating the funds was developed by the Oregon Salmon Commission and the California Salmon Council, with the final approval coming from the Office of Management & Budget, attempting to ensure that those whose businesses were harmed by the salmon closure were at least partially compensated for their losses – and no one else. The salmon disaster appropriation ended up covering three years of salmon disaster declarations – 2008, 2009 and 2010.

I am at a loss about the accusations of fraud regarding the disaster money. I have heard of no instance of an individual and/or business being awarded disaster funds due to fraud. I have heard from a lot of people, however, complaining that they did not share in the money because they could not document any loss. If Mr. Nunes has any evidence of the fraud he has claimed then I'd like to know about it, as I'm sure the commission and council would that took great pains to make sure the allocation was fair, and claims were well documented. More important, if Mr. Nunes has evidence of such fraud then I suggest he submit it to the federal and states' attorneys general for prosecution. Absent any evidence or proof, allegations of fraud are wantonly irresponsible, if not libelous.

Finally, the record needs to be made straight about the tuna – specifically the high seas tuna purse seine fishery that once home-ported in San Pedro and San Diego. No political party – Democrat or Republican - drove that fishery out of California. It was rather a combination of factors that caused this fleet to relocate elsewhere. Those factors include the fact this fleet was no longer coastal, fishing just in California and Mexican waters, but truly global fishing offshore South America, Africa and the Western Pacific. It made more sense in many instances to find sites closer to the fishing grounds for unloading and re-supplying. The labor costs at California based canneries were higher than in places such as island territories in the Western Pacific, where canneries were given economic inducements to relocate. At the same time, some of the U.S. fleet was re-flagging in an effort to avoid restrictions put in place on the take of porpoise under the Marine Mammal Protection Act after 1972. And, finally, the U.S. now must share much more of the resource (e.g., Yellowfin and skipjack tuna) with other nations, as those countries develop their own tuna fleets. Our fisheries have traditionally been non-partisan and

we don't appreciate the injection of partisan rancor into the already difficult discussion on ensuring the future viability of America's oldest industry.

Central Valley Salmon

The reason for our concerns with the various sections of H.R. 1837, which I will go into below, is its affect on Central Valley chinook salmon populations – the winter, spring, fall and late fall runs. Two of these runs, as you know are listed under the Endangered Species Act, while the fall-run have in recent decades accounted for upwards of 90 percent of California's salmon production and, in some years can make up as much as 50 percent or more of the ocean harvest offshore Oregon and Washington. You have heard from others on the economic value of this fishery, with economists putting it well over a billion dollar industry annually between the commercial and recreational fishery. The Central Valley fall-run chinook are a significant component of the overall value of the West Coast salmon fishery. Without these fish there'd be no commercial fishery and only a token recreational fishery in places such as the Klamath River and some small coastal rivers and streams.

Chinook salmon are regarded as the most valuable of the five species of Pacific salmon, and steelhead. They are a food that is in high demand, rich in Omega 3 fatty acids that researchers are finding help to reduce the incidence of heart disease and diabetes, reduce the formation of certain tumors, help treat depression and bi-polar disorder and even help against gum disease. This is a food source that requires very little of us, other than protecting its home – the streams and rivers it uses for spawning and nursery.

H.R. 1837 would eliminate many of the protections now in place for Central Valley salmon – in the San Joaquin River and the Bay-Delta Estuary. It undermines efforts at protecting and recovering the Central Valley's listed salmon species. It jeopardizes the restoration and productivity of fall-run Chinook populations. It likely will destroy California's salmon fishery and the jobs of thousands up and down the coast who depend on this resource and the fishing communities this fish supports.

Section-by-Section of a Problem Bill

I'd now like to turn to those sections of H.R. 1837 that we believe would be particularly harmful to our fisheries.

Title I

Section 101. – CVP Purposes. We disagree with making the addition of delivery of "replacement water" for that dedicated to the protection of fish and wildlife (800,000 af) a project purpose of the CVP. It is well to remember that at the time the CVPIA was being debated the Bureau of Reclamation was preparing to offer up approximately 1.5 million acre feet of water that it claimed it had in addition to that it already had under contract. That water "disappeared" once the initial CVPIA legislation was introduced proposing that water instead be used for restoration of fish and wildlife populations harmed by CVP operations. Congress later

"cut the baby in half" reducing the CVP obligation to 800,000 af (the other half of the water for fish, wildlife and the estuary was to be picked up by the State).

The effect of this section in H.R. 1837 is to undercut the purpose of the dedicated fish and wildlife water and redistribute it to CVP contractors. Moreover, this section of H.R. 1837 appears to fly in the face of the bi-partisan developed California water policy establishing "co-equal goals" in the 2009 Delta legislation. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 102. – Changing the Definition of Anadromous. It is our understanding salmon, particularly the ESA-listed runs, are already receiving priority under the CVPIA. We question what the purpose of this amendment is other than to remove the interest of certain fishing groups in the implementation of the CVPIA. Further, the bill redefines the definition of salmon in the CVPIA to exclude runs that were depleted prior to the enactment of the CVPIA (Sec. 102). Finally, it deems "satisfied" provisions of CVPIA that add enhancing, mitigating, protecting and restoring the ecosystem to the project purposes of the Central Valley Project if Interior does nothing more than implement the highly constrained and watered down restoration provisions of Sec. 3406.

The effect here is to (1) limit even further water available for salmon and the restoration of Central Valley rivers and streams; (2) exclude important salmon runs from restoration efforts; and (3) limit the Department of Interior's discretion to protect and restore Central Valley rivers and streams or to rely on the CVP's project purposes to do so. This is unacceptable. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 103. - Contract Reform. This provision is particularly troublesome since it essentially makes the existing 25-year contracts permanent, with 40 year celebratory signings. The current contracts, if anything, are too long. Compare them with fishing where we're not certain from year to year what to expect, or even under the new LAPPs provisions in the Magnuson-Stevens Act where the duration of individual quotas is restricted to 10 years or less.

H.R. 1837 effectively repeals a key CVPIA reform. It reverts to the failed contract structure of the last century that led to inefficient water management and pricing that placed the burden on the public for ecological and related damage caused by CVP operations. It will limit agency discretion to review contract terms regardless of changed circumstances or shifting federal priorities or new scientific information or knowledge, and it will increase litigation.

Contract reform needs to be in place to assure for changing conditions – whether it is demographics or global warming. Permanent contracts which is essentially what HR 1837 creates, without any provision for review or revision are antithetical to good public policy and the protection of economically valuable natural resources such as salmon. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 104. – Water Transfers. PCFFA worked on drafting and supported passage of the Central Valley Project Improvement Act. Facilitating water transfers was not the principal purpose of that landmark legislation. We are greatly concerned now that much of the water developed for legitimate agricultural uses is now going to provide water contractors with taxpayer-subsidized, below market rate water that can then be turned around and sold for profit by the contractor to a third party.

Further, section 104(1)(C) precludes Interior from imposing mitigation measures for water transfers. Mitigation measures must be allowed for water transfers to proceed where such measures are warranted. Government must be able to condition transfers of water initially developed by the government and sold to contractors at below market rates to foster farm development. Indeed, if government developed water is to be sold at market rates, then the government, not the water contractors, should be selling it for the benefit of the taxpayers who footed the bill and the public whose resource it is - with more set aside to return for the rivers, estuary and the fish.

Finally, section 104(3) eliminates the Water Pricing Reform provisions of the CVPIA, including tiered pricing to encourage efficiency, effectively undercutting some key water conservation incentives in federal law. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 105 - "Reasonable Flows" This section of H.R. 1837 requires cuts in water dedicated to the ecosystem in any year that all contractors may not receive 100 percent of their maximum contract. Since in most years not everyone gets their maximum, this means that fish will never get the minimum established for the protection of fish and the estuary. This is hardly reasonable. Flows ultimately have to be determined on the best science, not a growers wet dream, or some politician's or bureaucrat's notion of "reasonable." Reasonable to who, and for what? Flow decisions need to be based on science, not politics. Moreover, "reasonableness" is a vague term, certain to lead to protracted litigation.

The 800,000 acre-feet of flow provided for fish and wildlife in the Central Valley Project Improvement Act was deemed as the "federal share" of water required for maintaining the health of the San Francisco Bay-Sacramento/San Joaquin Delta Estuary. That is, the additional freshwater flow, over and above the amount otherwise allowed to flow through the Delta to the Bay. This is not water being wasted to the sea. This is how estuaries work. Estuaries - some of the most bountiful ecosystems on Earth - require freshwater inflow to mix with tidal waters to create rich, brackish water that supports fish and shellfish populations.

Section 105(1) eliminates the term "primary purpose" in CVPIA Sec. 3406(b)(2). This would reverse a previous federal appellate court decision that the 800,000 af of dedicated CVP yield must be used "primarily" to achieve the CVPIA's salmon doubling and other restoration mandates. The court ruled that these new CVPIA mandates have a higher priority, with regard to use of this dedicated water, than compliance with the CVP's other environmental obligations. The section further requires any water used to meet the CVP's water quality or endangered species obligations must be subtracted from the 800,000 af account. This again has the practical effect of reversing the court decision and limiting the amount of water that would otherwise be

available for increasing salmon populations beyond the mandates to avoid extinction or provide clean water.

Section 105 (1) (B) Changes the purpose of the CVPIA to require the Department of Interior ("Interior") to ensure that water dedicated to the ecosystem is recaptured and delivered to water contractors. This elevates supply considerations over ecological ones in determining when, how and where to use limited water available for ecosystem needs and, specifically, freshwater inflow requirements of the estuary through the Delta and to the Bay. These recapture provisions create pressure on the Bureau to use the 800,000 af for lower value environmental actions that are timed to allow for recapture, rather than higher priority ecosystem actions that might not.

We oppose any language to reduce the availability of the 800,000 af for fish and wildlife purposes over that now provided for under the CVPIA. If anything, language is needed to guarantee fish and wildlife and the estuary get the 800,000 af each year, noting the recent study conducted by the Bureau. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 106 – Restoration Fund This section of H.R. 1837 converts the CVPIA Restoration Fund into a fund for development and acquisition of new water supplies, contrary to the intent of the CVPIA or the needs of fish and wildlife populations impaired by the operations of the CVP. This section would further (1) limit Interior's ability to collect funds from contractors (sec. 106(a)); (2) establish a new advisory board of contractor representatives to make spending determinations and provide members with access to "facilities and services" of federal agencies as well as expenses (sec. 106(h)); and exempt the contractor advisory board from federal open meeting rules and requirements (sec.106(h)(4)). This section, like most of the others in the bill, is problematic and bad for fish. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 107 – Additional Authorities This section would lead to the further commodification of water by granting for-profit corporations access to conveying, storing, and, we'd assume the selling of publicly developed and funded water supplies. And that's not all. The section would further: (1) require development of a plan to provide make up supply, and any failure of the plan to increase supply suspends the 800,000 acre-foot dedication; (2) eliminate the CVPIA's mandate to reallocate the 800,000 AF, a fraction of CVP yield, to mitigate for the CVP's adverse impacts; (3) reverse court decisions ruling that CVP contracts are subject to environmental requirements and do not guarantee or legally entitle contractors to maximum water deliveries; (4) in combination with other provisions restricting the 800,000 af dedication to the flow measures, it would effectively allow unlimited CVP pumping; and (5) lead to additional federal subsidies for water projects likely to further exacerbate conflict between water management and fishery protection. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 108 – Endangered Species Act This section would permanently exempt Central Valley Project (CVP) and State Water Project (SWP) contractors from state and federal endangered species protections. Why should they be exempt? Should fishermen now be allowed to ask for exemptions from the ESA where salmon are concerned, or listed sea birds, marine mammals, or turtles? We don't think the public will stand for that nor do we think the public will stand for

exempting the State and Federal water contractors here, effectively putting species in danger of extinction and shifting the conservation burden entirely to other water districts, land owners, municipalities and fishermen, even if the latter groups' impact on the species is *de minimus*.

This section is outrageous. Section 108(a)(1) deems the State and Federal projects to be fully in compliance with federal ESA if operated under rules established in the Bay Delta Accord, which are far less protective, while Section 108(2) precludes the modification of the Biological Opinions regarding operation of the State and Federal projects without the consent of the contractors who signed the December 1994 Bay-Delta Accord - which, we might add, was an agreement, and is not statutory law.

Section 108(b)(1) goes further by: (1) precluding California from adopting or enforcing any measure that is "more restrictive" than allowed by this bill; and (2) preempts all California water and environmental laws applicable to the projects, overturning more than 100 years of federal Reclamation law establishing that the CVP is subject to state water law.

While the authors are to be credited for their audacity, this is certainly not an audacity of hope for those whose jobs and businesses are in salmon fishing. Aside from probably ending the Bay Delta Conservation Plan process, the export pumping allowed by H.R. 1837 would, if the current science is correct, destroy the Bay-Delta Estuary – the most important of its kind on the West Coast of both American continents and, with it, the second largest run of salmon in the lower 48 and California and much of Oregon commercial salmon fishery and most of what's left of California's recreational salmon fishery. This section, like much of the rest of H.R. 1837, is the audacity of greed. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Title II – San Joaquin River Restoration

More than 60 years ago, the Bureau of Reclamation illegally destroyed the upper San Joaquin River and its salmon fishery. In most years, more than 60 miles of California's second largest river have been left completely dry as a result of Friant Dam operations. As a result, those thriving salmon populations, which provided the lifeblood for thousands of fishing jobs across California and Oregon, simply disappeared. PCFFA was one of thirteen co-plaintiffs that settled its lawsuit over the San Joaquin River in 2006, shutting down our successful court challenge in exchange for the government's commitment to not only restore flows and salmon to the river, but also to provide projects to minimize water supply impacts to area farmers. As the Bush Administration and the bi-partisan supporters in Congress recognized, the Settlement provided a balanced approach to managing the river, with some water for salmon and our livelihoods, but most water still going to farmers in the area. We agreed to this Settlement in good faith, and continue to support its implementation and look forward to the day soon that salmon will return to spawn in the River.

HR 1837 makes a mockery of that historic compromise and attacks this multi-party settlement that a federal court approved 5 years ago. The bill would eliminate all of the benefits of the Settlement to area farmers, including the water supply and flood protection projects that account for the majority of costs, but it would not eliminate the requirement to restore the river. Instead, Title II of the bill would reignite the water war on the San Joaquin River, a fight that none of the

parties to the Settlement wants to restart, but which a tiny minority of radical interests now want to use for political gain. It's not good for the Valley, it's not good for fishing jobs and our members, and it's not good for the state of California.

Section 202 – Preemption of state law This section of H.R. 1837 flies in the face of state's rights. It calls for the preemption of all state laws that allow for or require restoration of the San Joaquin River, fisheries or habitat. Here the State and Federal contractors are basically telling the public they're going to dry up the San Joaquin River once again, its fisheries and public trust resources be damned.

Section 203 – Repeal of San Joaquin River Settlement This section, as its title states, repeals the bi-partisan settlement reached for the restoration of the San Joaquin River. This we oppose. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 204 – Discharge of Obligations This section repeals provisions of the CVPIA calling for restoration of the San Joaquin River by "deeming all such requirements to have been satisfied and discharged." It may deem that, but it certainly isn't so. Finally, it would limit San Joaquin River flows to 50 cfs, a fraction of the water needed by the river or to restore salmon runs. We recommend striking this section in entirety and not allowing this language to be attached to any other measure.

Section 207 - Natural and Artificially Spawned Species PCFFA certainly recognizes the need for hatchery production to mitigate past habitat losses, and we support full hatchery production consistent with natural salmon production. However, destroying natural runs will get us nowhere and that's exactly what this section calls for. California wisely recognized in 1988 the need to protect and rebuild wild salmon populations, when it established in law its salmon doubling goal for natural spawning populations. That doubling goal was incorporated in part into the 1992 CVPIA, which set a doubling goal for Central Valley anadromous fish populations. This section is certain to lead to the extinction of the Central Valley's remaining wild salmon populations and with them the brood stock needed to maintain hatchery operations over the long term. Yes, fishermen depend on hatcheries for a good part of our production, but healthy populations of wild stocks are essential for our future.

Conclusion

Mr. Chairman and members, H.R. 1837 should be rejected in total and none of its provisions should be attached to any other measure. It is bad public policy. It is one-sided. It destroys any effort, such as the Bay-Delta Conservation Plan, to achieve consensus on California's water use and development. Instead, it will re-ignite California's water wars. Finally, it will destroy California's salmon fishery along with the great Bay-Delta Estuary.

Thank you again for the opportunity to testify here this morning. I'll be happy to answer any question members may have.