



NATURAL RESOURCES DEFENSE COUNCIL

TESTIMONY
OF
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NATURAL RESOURCES DEFENSE COUNCIL
BEFORE THE
SUBCOMMITTEE ON WATER AND POWER
COMMITTEE ON RESOURCES
UNITED STATES HOUSE OF REPRESENTATIVES

ON THE

SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT

SEPTEMBER 21, 2006

Good morning, Mr. Chairman and Members of the Subcommittee. 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 in San Francisco. Thank you for the opportunity to testify today in support of the historic settlement in *NRDC v. Rodgers*. 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 are NRDC senior attorney Kate Poole and NRDC restoration scientist Monty Schmitt, as well as Philip Atkins-Pattenson of the firm Sheppard Mullin Richter & Hampton, who also represents the NRDC Coalition. All of us have been directly involved in the extensive multi-party negotiation that produced the landmark settlement that is the subject of today's hearing.

Over the past year, some members of this Subcommittee have closely followed the progress of the settlement talks between the NRDC Coalition, Friant Water Users, and federal government. To those members, and to all of you here today, I want to thank you for your patience. Despite the fact that NRDC and the Friant Water Users Authority reached agreement on a tentative settlement almost 10 months ago, it has taken months of good faith efforts by all sides, and ultimately several State agencies, to develop consensus on all the key points, including the authorizing legislation we are asking you to approve.

While the process of achieving this remarkable consensus has been difficult and exhaustive, I think it is fair to say that all of the Settling Parties believe we now have an improved and very historic comprehensive agreement, one which will bestow benefits on millions of Californians

while ending one of the state's longest running water disputes and preserving a vibrant agricultural economy on the East Side of the San Joaquin Valley.

We and others are submitting materials for the Record that will address the framework and the details of settlement in greater detail. However, I want to first briefly describe the San Joaquin River -- how it has been managed for the past 60 years; and why its restoration is so important. The San Joaquin is one of California's largest rivers, and significantly, is one of two major tributaries to the Bay-Delta – an estuary of international ecological importance, and the source of drinking water for 23 million people. The river originates in the high Sierra, and flows east past Fresno, and then north through the heart of the San Joaquin Valley until it joins the Sacramento River in the Delta region.

In the early 20th Century, the mighty San Joaquin supported steamboat travel and commerce between San Francisco and Fresno; and it teemed with wildlife, including one of the largest Chinook salmon populations on the entire Pacific Coast. So abundant were these salmon runs that farmers in the southern San Joaquin Valley used to pitchfork the fish and feed them to hogs; and people who lived near the present site of Friant Dam reported being kept awake at night by the thunderous noise of spawning salmon. By the early 1940's when Friant Dam was built, the steamboats were gone, the abundant wildlife had diminished, but tens of thousands of spring run Chinook salmon, as well as a smaller fall run, still survived in the river – and in fact, continued to survive after completion of Friant Dam. It wasn't until the Bureau of Reclamation began diverting so much water from the dam that 60 miles of river downstream were dried up that the salmon finally disappeared.

For the past half century, over 90% of the river's flow in most years has been diverted at or immediately below Friant Dam, mostly for irrigation purposes. Other witnesses will surely speak to you about the huge agricultural economy that has benefited from these diversions. But these economic benefits came at a tremendous cost -- to the environment, to the recreational and commercial fishing industries, to groundwater levels in areas adjacent to the river downstream of the dam, and to the lower San Joaquin River and the Delta, where the de-watering of the upper San Joaquin River has contributed to chronic water quality impairments that adversely affect farmers and communities in San Joaquin county, and millions of people who rely on the Delta for drinking water. But just as the operation of Friant Dam has contributed to these serious problems, the operation of Friant Dam under this historic settlement will be part of the solution to these problems.

To illustrate the broad benefits of restoration and to show the remarkably broad support for the Settlement and the Restoration Effort it provides for, I have attached to my testimony some materials that include a summary of the broad benefits of this settlement, recent news clippings and editorials, and statements of support from interested officials and organizations from throughout California. I would ask the Chair's permission to have all of the attachments to my written Statement included in the final record of this Hearing.

One of the clippings I have attached to this testimony is a very recent editorial from Stockton, California that discusses the vital importance of the settlement to that city. Communities and farmers in the Stockton area will see water quality and water supply benefits from the settlement,

particularly in the critical late winter, spring and fall months, when elevated restoration flows will significantly reduce salinity and provide much-needed assimilative capacity for long stretches of the river – from Mendota Pool all the way to Vernalis – which are currently impaired for several pollutants. Moreover, because restoration flows will help meet regulatory requirements in the Delta, a corresponding water supply benefit is expected for the communities and farmers who depend on New Melones Reservoir for their water. These water quality and water supply benefits will extend to the many state and federal water contractors who rely on the Delta pumps.

Communities and farmers downstream of Friant Dam will be strengthened by a living river, instead of a polluted drain, flowing through the heart of the Valley and into the southern Delta. The fragile Delta ecosystem and San Francisco Bay will receive a life-giving infusion at a time when this critical estuary desperately needs it. And for salmon fishermen and North Coast fishing communities whose livelihoods once depended on the San Joaquin River's legendary spring-run salmon, this settlement heralds a return of the spring run and an important step forward in rebuilding our recreational and commercial fisheries. It is because of the broad benefits of San Joaquin River restoration for our environment, our quality of life and our economy, that an almost unprecedented array of stakeholders from one end of the state to the other is supporting this settlement. A list of those supporters is included in the attachments we have provided to the subcommittee.

On behalf of the plaintiff coalition, I would like to thank two of key players in producing this settlement whose support has been especially important, Chairman Radanovich and Senator Feinstein who not only sponsored the talks that led to the settlement, but have consistently

supported the fragile consensus that began to emerge from these talks. With this remarkably broad support, we can now move ahead to tackle the next important steps in this cooperative restoration effort. Restoring the San Joaquin will be one of the largest and most important salmon restoration efforts ever undertaken. It is hard to find a river this large anywhere that has been literally dry for half a century and then brought back to life. It is equally hard to find a restoration project with such profound and far-reaching benefits.

Nevertheless, we understand that this dramatic change, while supported by the overwhelming majority of stakeholders and beneficial to millions of Californians, must be carefully implemented in light of its potential to impact some third parties. Mindful of that potential, the Settling Parties have spent much of the past several months reaching out to third-party stakeholders, briefing them on the settlement, discussing their concerns, and where appropriate, modifying the settlement to incorporate their perspectives and interests. Here are some specific examples:

1. To address concerns by downstream landowners and the local levee district that restoration not cause flows to exceed the river's flood carrying capacity, the settlement expressly requires increased channel capacity and levee work that will not only ensure safe conveyance of restoration flows, but will also improve flood protection for these downstream areas. This settlement will help fund those flood improvements for downstream landowners.
2. Landowners who farm in the area known as Reach 4B have expressed opposition to restoring flows to this reach of the river, and have urged the settling parties to consider routing flows and fish around the area by using the flood bypass system. Among the

reasons they have offered is their belief that restored flows could result in crop damage to adjacent lands, and their contention that channel capacity is so degraded in this reach that massive and costly re-construction work would be required. Although we believe the natural river channel is preferable to using a flood control bypass and will not be nearly as problematic as these parties contend, NRDC has nonetheless agreed that the Secretary of Interior has discretion to choose an alternate course if it proves to be a more viable and effective way of meeting the restoration objective. To address the concern by some stakeholders about ensuring an effective voice in the implementation process, several provisions were included. First, the settlement was clarified to ensure full environmental compliance, including full NEPA compliance, ensuring that as projects move forward the impacts will be publicly assessed and interested parties will have a meaningful public forum in which to engage. Further, the Settling Parties have entered an MOU with state agencies which requires the engagement of stakeholders regarding the implementation activities of the state and federal agencies. The Settling Parties do not believe, nor intend, that the settlement will have any material negative impacts on third parties. We are committed to ongoing outreach and engagement with all San Joaquin River stakeholders in implementing the settlement, and continue to believe that this settlement will significantly benefit even the few third-party stakeholders who are raising concerns about it. These benefits are summarized in one of our attachments. The vast majority of third party stakeholders recognize these benefits and support this settlement. It is important to keep in mind, as many third parties have already acknowledged, that the status quo of the past 50 years is going to change regardless of this settlement, and in many ways this settlement will help third parties in managing those future changes. For example, the

Central Valley Regional Water Quality Control Board is in the process of setting legally-mandated water quality objectives for salt and boron upstream of Vernalis and into the reaches of the San Joaquin River where the some west side districts farm and discharge very salty agricultural runoff. When these objectives are set, it may be challenging for some west side districts who rely on Delta water to achieve water quality compliance in these areas without spending increased amounts on elaborate treatment and disposal programs. With the settlement, these same districts could receive tens of millions of dollars in benefits from the release of clean water from the upper San Joaquin and in some cases having their facilities brought into compliance with our state's water quality laws. This is one reason many downstream interests have welcomed the possibility of an infusion of clean Sierra snowmelt to increase the assimilative capacity of the river and better enable the attainment of water quality standards.

In conclusion, with your help and support, the environmental and fishing community, the Friant Water Users, the federal government and the State of California are ready to begin this historic task of restoring the San Joaquin. The parties intend that the Settlement will be implemented carefully to ensure that the broad benefits of San Joaquin River restoration are realized for all Californians. All of us at NRDC are grateful to have had the opportunity to help make this day happen. Thank you for inviting us here to testify. As I indicated, we would be happy to answer any questions.