Exhibit "A"

MERCED IRRIGATION DISTRICT

WATER & POWER

The Honorable Dianne Feinstein
United States Senate
Washington, D.C. 20510

The Honorable Barbara Boxer
United States Senate
Washington, D.C. 20510

February 5, 2013

Dear Senators Feinstein and Boxer:

I am writing on behalf the Merced Irrigation District in response to a Dec. 18, 2012 letter sent to you and to a Dec 5, 2012 letter sent to the Energy and Natural Resources Committee by a number of conservation organizations. The letters express opposition to Merced ID's proposal to make a small adjustment to the Wild and Scenic Rivers boundary for the Merced River where it joins Lake McClure, a component of the District's Merced River Hydroelectric Project in Central California.

This adjustment is being requested to allow the Federal Energy Regulatory Commission (FERC) to consider the proposed New Exchequer Spillway Modification Project (Project). The proposed Project would raise the spillways on Lake McClure to allow for the capture and storage of occasional flood flows.

From the beginning, Merced ID has made every effort to educate the public, the media, regulatory and resource agencies, local governments, agricultural and environmental interests and Congress about the Project. This has resulted in significant support, including House approval of bipartisan legislation (H.R. 2578) in the 112th Congress that would adjust the Merced River Wild and Scenic boundary by less than a half-mile in order to allow FERC to *consider* the Project. FERC consideration would include full environmental, economic and engineering reviews by federal and state agencies in an open and transparent public process.

The letters sent to you and the Committee include a number of misstatements and exaggerations regarding the proposed Project. Unfortunately, most of the organizations that signed the letter have never contacted Merced ID to discuss the proposed Project or have declined our offers to engage in constructive dialogue.

Nevertheless, Merced ID has had very productive discussions with other members of the conservation community. The District remains eager to explore options that will allow the District to enhance our community's water supply reliability in an environmentally sound manner.

Meeting California's current – and future – water needs for agriculture, the environment and domestic consumption, will require a host of solutions. These include a combination of conservation, recycling and enhanced storage. This is exactly the approach Merced ID is taking.

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The proposed project would allow the District to draw down naturally occurring high flows more slowly so that additional water can be saved and put to beneficial use, rather than being released from the reservoir as flood flows. Any increase in the size or level of the reservoir would be temporary and occur for a few weeks only every few years.

It is also crucial to understand that this short section of river within the Wild and Scenic Rivers boundary is already inundated during high-flow periods. Also, it's worth noting this section of the river is within the District's FERC boundary. FERC cannot consider approving the proposed Project because of these overlapping federal boundaries. FERC has jurisdiction because Lake McClure is part of the Merced River Hydroelectric Project, which generates hydroelectricity as well as providing flood control and water storage for our community.

Raising or otherwise modifying spillways and floodways at existing dams is a safe and economical method of increasing water storage and flood control capacity. It is also a reasonable alternative to developing large-scale reservoirs to meet California's water needs. In fact, Congress has authorized -- and funded studies and construction -- of similar projects at federal dams on rivers flowing from the Sierra Mountains.

As you consider this issue, Merced ID would like to ensure that you have all of the facts and the District's response to objections raised by project opponents. Specifically, Merced ID would like to address several points contained in the conservation groups' letters to you and the Committee:

The proposed spillway project would *"permanently destroy a portion of the river."*

> Raising the spillways by up to 10 feet would allow for *occasional and temporary* increases in the water level of the reservoir where it meets the Merced River. The areas affected by these temporary increases are already inundated during floods and periods of high flows. These inundations can last for days or a few weeks in the late spring and summer. When that happens, the water surface within this 1,800-2,000 foot section of the 122-mile-long Wild and Scenic Merced River corridor is already above the levels that MID is proposing with this project. The spillway project would affect this short section by increasing the duration of these naturally occurring inundations for short periods of time (inundations would last up to eight weeks).

"The expanded reservoir would drown the threatened limestone salamander, a wildlife species protected by both the California Endangered Species Act and the State Fully-Protected Species statute."

> Lake McClure, like all Sierra foothill reservoirs, has a natural cycle of fluctuation based on the amount of seasonal runoff, which is determined by snowpack. It is difficult to imagine the limestone salamander has not already adapted to these variations in water levels. Nevertheless, any potential effects on the limestone salamander would be thoroughly examined through federal and state NEPA and CEQA processes, which provide for abundant input from the California Department of Fish and Wildlife, federal land-management agencies, independent scientists, conservation groups and the public. All the data would be presented for review by the FERC in the licensing process.

"An expanded reservoir will inundate hiking and biking trails, submerge campsites, and turn rafting areas into stagnant water."

First, the wording of the letter appears intended to convey the false impression that the spillway Project would result in a permanent increase in the size of Lake McClure. It would not. The Project is intended to capture high flows that occur every few years and last up to eight weeks.

Second, there are no maintained trails within the overlapping portion of the Merced River Hydroelectric Project's FERC boundary and the 1,800-foot stretch of river above Lake McClure. There are portions of an old railroad grade occasionally used as a trail, as well as scattered sections and remnants of older trails throughout the area. Several campsites owned by Merced ID may experience temporary inundation during high water years. However, as previously stated, that would be considered and addressed in an environmental review process. It should be noted that any campsites that would be inundated are owned and operated by Merced ID. The District would have an obvious interest in maintaining or relocating these sites.

Finally, claims of "turning rafting areas into stagnant water" are simply false. The water is not – nor will be -- stagnant. This is some of the most pristine water in the State. Currently, rafters floating down the Merced River to Lake McClure have some flat-water paddling as they reach Merced ID's campsites, a location from which they remove their rafts from the water and end their trip. The Project may occasionally increase the length of flat water paddling necessary to reach a take-out location, but these situations would be short lived if they occur at all. During high flows, river conditions become more dangerous and it is unlikely boaters would risk this trip during peak runoff. Nevertheless, the FERC environmental review would determine any impacts to rafting and identify reasonable measures to mitigate them. Merced ID is currently working with the whitewater community to develop protocols that can be included in a new FERC license for its existing operations, separate from the proposed spillway project. Similar efforts would occur should the spillway Project proceed.

"...there are serious issues such as dam safety that have not been addressed..."

There are no unaccounted for safety issues with the existing project, nor will there be any with the proposed Project. FERC requires various dam safety monitoring and reporting activities for the existing project. Furthermore, any proposal to raise the spillway would be subjected to a rigorous engineering review by both FERC and the California Division of Dams, a division of the California Department of Water Resources. Any potential safety concerns would have to be addressed through physical improvements or operational requirements. It is preposterous to believe that Merced ID would pursue an unsafe project or that state and federal agencies would permit licensing of a dangerous project.

The proposed spillway modification project *"raises safety questions because it would block off nearly all of the dam's emergency spillway. The possible consequences of such a proposal include potentially catastrophic overtopping of the dam under extremely high flows."*

The Project would not "block off" the spillway. The proposed Project would raise the height of the gated spillway and the ungated spillway in order to increase the reservoir's storage capacity. The ungated spillway would remain ungated. Any claims of "overtopping" the dam are simply not factual. Again any proposal to raise the spillways would be subjected to a rigorous engineering review by both FERC and the California Division of Dams.

The proposed spillway project *"would produce little or no actual increase in useable water yield in this reservoir that has never actually filled and spilled."*

This statement is misleading at best. Opponents are confusing "uncontrolled" flood releases with "controlled" flood releases. Merced ID makes controlled flood management releases on a regular basis, as do most reservoirs in California. For example, in 2011, California experienced a wet year. This resulted in MID "filling and spilling" 1 million acre feet of water – the equivalent of the entire reservoir's capacity. The following year, in 2012, MID faced one of the driest years on record. Had the spillway modification Project already been in place, the District could have carried forward up to 70,000 acre feet of water from 2011 for use in 2012 – a dry year. This is just one recent example.

"The costs of such a scheme have not been disclosed and may require an expensive raise of the Highway 49 Bridge over the reservoir."

There is absolutely no reason to believe that a small temporary raise in elevation of the reservoir would affect the bridge at Highway 49. Merced ID has repeatedly stated that the estimated cost of the project is $40 million.

In closing, please note that Merced ID is not asking Congress to approve, authorize or require the construction of the proposed Project. Rather, Merced ID supports legislation that would implement a minor change in a Wild and Scenic boundary. This would in turn allow FERC, the State of California and the public to fully weigh the project's merits against any potential impacts.

The question before Congress is whether, and under what circumstances, changes can be made to Wild and Scenic River boundaries. Opponents of the spillway project legislation believe that Wild and Scenic boundaries should never be altered under any circumstances because to do so would diminish, even symbolically, what is intended to be permanent protection. They also believe that changing one Wild and Scenic boundary would set a precedent that would weaken the integrity of the entire Wild and Scenic Rivers System.

These are legitimate concerns that Merced ID understands and respects. As we have stated previously, the Wild and Scenic River protections for the 122 miles of waterways in the Merced River watershed have greatly benefited the District's water supply, making it among the most pristine in the state. The regional economy also has benefited significantly from the outdoor recreational opportunities created and secured by including the Merced River and its tributaries in the Wild and Scenic Rivers System. Merced ID has no desire to reduce in anyway the benefits afforded to the District and the region by the Wild and Scenic Rivers System.

The District believes any effects of the Project can be offset and are outweighed by the benefits of additional water storage for use during dry years.

Among the many benefits:

- A more stable water supply for our community.
- Groundwater recharge.
- Decreased use and reliance on groundwater to the benefit of both domestic and agriculture users.
- Increased recreation opportunities for boaters and fishing enthusiasts.

The proposed spillway modification project will not, by itself, solve California's or even the San Joaquin Valley's water problems. But it is exactly the type of low-impact water conservation and storage measure that must be a feature of any successful effort to meet California's water challenges.

Again, Merced Irrigation District remains open to exploring ideas to address the concerns of all parties.

Thank you for your consideration of our views.

Respectfully,

John Sweigard
General Manager
Merced Irrigation District

Enclosures (2)

December 5, 2012, letter to Senator Bingaman from Friends of the River, et al

December 18, 2012, letter to Senators Feinstein and Boxer from NRDC and Defenders of Wildlife

Bryan Kelly
Deputy General Manager, Water Resources
Merced Irrigation District

Testimony on H.R. 934 - To amend the Wild and Scenic Rivers Act related to a segment of the Lower Merced River in California, and for other purposes
H.R.934
Subcommittee on Public Lands and Environmental Regulation
April 18, 2013

Chairman Bishop, Ranking Member Grijalva, and members of the Subcommittee, my name is Bryan Kelly and I am the Deputy General Manager, Water Resources for the Merced Irrigation District (MID). I am pleased to be offered this opportunity to testify in support of H.R. 934, legislation that would allow the Federal Energy Regulatory Commission (FERC) to consider proposed improvements to the spillway at New Exchequer Dam that will provide additional water supply to Merced County and the San Joaquin Valley of California.

I'd like to begin by thanking Congressman McClintock, Congressman Costa and the cosponsors of H.R. 934 for introducing this bipartisan bill that could improve the precarious water supply situation in California's San Joaquin Valley without major environmental impact and at no cost to the federal government.

The Merced Irrigation District is a California Public Agency under the California Irrigation District Law. MID owns, operates and maintains hydro-electric facilities on the Merced River, consisting of the New Exchequer Dam and Reservoir (Lake McClure) and McSwain Dam and Reservoir (Lake McSwain). They are located in the western foothills of the Sierra Nevada mountain range, approximately 23 miles northeast of the City of Merced. Lake McClure has a storage capacity of 1,024,600 acre feet, while Lake McSwain has a storage capacity of 9,730 acre feet and is operated principally as a regulating reservoir for MID's hydroelectric generation facilities at New Exchequer Dam (FERC Project No. 2179).

The water managed by MID flows west from Lakes McClure and McSwain through the New Exchequer Dam hydroelectric plant creating over 100 megawatts of clean, renewable energy. The water then continues down the Merced River or through more than 700 miles of canals for irrigation use by more than 2,200 Merced County growers. The irrigation water supplied by New Exchequer Dam directly supports approximately 3,600 jobs and $120 million in agriculture revenue. The majority of those served by MID's water are family farmers, with the average farm size being 49 acres.

Proposed New Exchequer Dam Spillway Modification Project

MID's hydroelectric facilities are operated under a license from the Federal Energy Regulatory Commission. That license is up for renewal in 2014, and as part of the relicensing process MID has reviewed potential project enhancements, including increased storage in Lake McClure. In many years, runoff exceeds the reservoir's storage capacity and additional capacity would allow for the capture of excess runoff for use during future dry years.

To be able to store at least some of this wet-year bounty, MID has developed *The New Exchequer Dam Spillway Modification Project* (the Project). The Project would increase the height of the existing spillway

gates on Lake McClure and raise the crest elevation of the existing un-gated spillway by approximately 10 feet to allow for additional storage capacity in wet years within the existing FERC Project Boundary.

Based on known hydrology, we estimate that MID would be able to take full advantage of this additional storage about once every three years, capturing up to 70,000 acre-feet of water in a single wet year. This occasional, short-term boost in storage will provide water supply benefits year after year by allowing higher carryover storage. We estimate that the project would increase average critical (dry) year water supply by 15,000 acre-feet.

For example, 2011 was a very wet year, and MID completely emptied the equivalent of Lake McClure's full capacity to provide storage space required to accommodate run off from a record-setting snowpack, while maintaining safe flood control flows downstream. However, 2012 and 2013 were dry years. The consecutive dry years have resulted in reductions in available water supply to MID Growers. If the project were in place in 2011, MID would have been able to capture and store up to an additional 70,000 AF of water to provide to MID Growers during 2013, reducing the economic impact to the region due to the dry year.

The additional water would also enhance MID's groundwater storage and conjunctive use opportunities, provide incidental flood control benefits and provide greater flexibility in meeting the needs of agriculture and the environment within MID and in the San Joaquin Valley as a whole.

The additional water would also generate up to an additional 10,000 mega-watt hours per year of clean, renewable energy, enough power to serve 1,700 homes.

MID would pay the estimated $40 million cost of the Spillway Modification Project. No federal funding is required. But federal legislation is necessary to allow FERC to consider the merits of the project during the relicensing process. That is the purpose of H.R. 934.

Wild and Scenic River Implications

In 1992, Congress amended the Wild and Scenic River Act (P.L. 102-432) to add the lower Merced River to the upper reaches of the Merced as part of the Wild and Scenic Rivers System. In all, more than 120 miles of the Merced River and its tributaries from Yosemite National Park to the upper end of Lake McClure are protected as Wild and Scenic.

The 1992 Act set the lower boundary of the Wild and Scenic designation at the normal maximum operating level of Lake McClure: 867 feet above sea level. This means the Wild and Scenic portion of the river extended into the existing FERC boundary for MID's hydro-electric facilities (including Lake McClure). MID supported the 1992 legislation after it was changed to ensure that the Wild and Scenic designation would not affect the continued operation and maintenance (including flood control operations) of the New Exchequer Project. The provision for flood control operations is important because during certain flood-water "surcharge" conditions, the upper end of Lake McClure is actually higher than the lower end at the dam, causing water levels to rise above the 867-foot Wild and Scenic boundary. This happens on a regular basis during wet years.

The 1992 Act says that FERC may only relicense MID's hydroelectric project to a maximum normal operating level of 867 feet above sea level. FERC has determined that this provision prevents it from considering MID's proposed Spillway Modification Project as part of its relicensing effort. MID's engineers estimate that during wet years, the project would cause the reservoir to rise up to 10 feet and extend approximately 1,800 feet laterally into the Wild and Scenic corridor (but still within the existing FERC boundary). These inundations would occur about once every three years, typically in mid-summer

and last from two to eight weeks. As noted above, this inundation occurs regularly. MID is simply proposing to store some of this excess flow for a short period of time so that it can be put to beneficial use.

H.R. 934 would allow FERC to consider the Spillway project during the relicensing process for New Exchequer Project by moving the Wild and Scenic River boundary back by approximately half-a-mile to coincide with the existing FERC project boundary. The bill is identical to a legislation (HR 2578) approved by this Committee and the House in 2012.I want to be absolutely clear on this: MID supports the Merced River's Wild and Scenic designation above Lake McClure. This designation has helped to ensure that MID's water source is one of the most pristine in California by prohibiting new discharges, mining and other activities that have historically degraded water quality.

H.R. 934 does not mandate, authorize or in any way pre-judge the merits of the proposed spillway modification project. It simply allows the project to undergo a rigorous engineering, operational and environmental examination by FERC and other Federal agencies in an open, public process that will identify and address all potential impacts in accordance with Federal law, including the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), the Federal Endangered Species Act (ESA) and the California Endangered Species Act (CESA).

MID has discussed the proposed spillway project with conservation organizations and we are aware of their concerns about H.R. 934 setting a precedent for altering Wild and Scenic boundaries. We take those concerns seriously, and MID is open to discussing ways to address them in a manner that would allow the spillway project to get a fair hearing before FERC. But MID believes that the merits and the benefits of the project should be weighed against philosophical objections to making a tiny adjustment to a boundary line. A project that can provide tens of thousands of acre-feet of new water to the San Joaquin Valley at no federal cost certainly bears consideration by FERC even if it would cause the reservoir to occasionally stray 1,800 feet into the 122-mile-long Wild and Scenic river corridor.

Economic Benefits

In California's Central Valley, we often refer to ourselves as "The Other California." We don't produce movies, nor do we produce microchips: we produce the vast majority of the nation's fruits, nuts and vegetables. In fact, we produce more than $30 billion per year in agriculture products of food and fiber. In most simple terms, Merced County's economy depends on agriculture and water. Agriculture remains the largest employer in our community and agriculture depends on water. According to a 2009 U.C. Davis study, each 100,000 acre feet of water supports 1,200 local jobs and $40 million in agriculture revenues.

Merced County continues to be ground zero in this economic recession. Every urbanized area in Merced County is a Disadvantaged Community, including incorporated cities and unincorporated communities, based on the criteria defined in California Water Code § 79505.5(a). We have experienced the housing bubble at its worst and remain within the top 10 in the nation for foreclosed properties. Our unemployment rate continues to hover around 20 percent, placing Merced also within the top 10 for the highest rate of unemployment.

The significance of any new water supply for the Central Valley cannot be overstated, although an additional 70,000 acre-feet of water won't cure these ills. Just as moving the Wild and Scenic boundary a few hundred yards won't "drown" the Merced or destroy the National Wild and Scenic Rivers System. There isn't a single, grand solution to California's water problems and its related economic consequences. There will have to be many solutions, including projects like the New Exchequer spillway improvement - a relatively small-scale, low-cost enhancement of an existing facility.

Congress has already demonstrated support for this type of approach at federally owned dams in Central California. The Corps of Engineers recently completed an innovative spillway improvement project at Terminus Dam on the Kaweah River that increased the flood control and water storage capacity of Lake Kaweah by approximately 60,000 acre-feet, and the Corps is considering a similar spillway improvement project for Success Dam on the Tule River in the lower San Joaquin Valley. Bipartisan Water Resources Development Act legislation (S. 601) now pending in the Senate directs the Corps to study ways to optimize the water storage, flood control and environmental benefits of existing federal dams. This Committee and the House have recently approved bipartisan legislation to facilitate development of the hydroelectric generation at existing dams and irrigation facilities.

There is no dispute that enhancing the efficiency and benefits of existing water projects is among the most economical and least environmentally disruptive approaches available. Of course, each project must be judged on its own merits and benefits and impacts weighed for each individual case. That's all we ask for the proposed New Exchequer spillway project

Opponents of H.R. 934 have raised a number of concerns about the project itself, many of which are without any real substance (please see the attached letter that was sent to Senator Feinstein and Senator Boxer discussing some of these concerns, attached as Exhibit "A"). Regardless of the substance of such concerns, all aspects of the project's benefits and impacts will be fully examined in the FERC process, which will give critics ample opportunity to air their concerns. The real issue at hand is whether Congress should make even a tiny adjustment in a Wild and Scenic boundary to accommodate a water supply project. There are those who argue that even considering a boundary change will set a destructive precedent. MID does not agree. We believe that the question of a boundary change for the Merced River should be examined on its own merits, and that the benefits and *real* impacts of the proposed change be weighed and discussed rationally. We trust the Committee to do that and to recommend House approval of H.R. 934.Thank you for your time and consideration.