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**Testimony on H.R. 869 - "To clarify the definition of flood control operations for the purposes of the operation and maintenance of Project No. 2179 on the Lower Merced River."**

**Before the  
Subcommittee on National Parks, Forests and Public Lands  
House Committee on Natural Resources  
June 14, 2011**

Mr. Chairman, members of the Subcommittee,

Thank you for the opportunity to testify today. I am the senior policy advocate for Friends of the River. Founded in 1973, Friends of the River is California's statewide river conservation organization. In the past, I served as executive director of the Merced Canyon Committee and later as principal representative for Friends of the River in the Federal agency planning efforts that resulted in recommendations to protect the river. I was subsequently involved throughout Congress's deliberations that culminated in the 1987 and 1992 Merced River designations from the headwaters in Yosemite National Park to the present Lake McClure Reservoir. The Merced River canyon is the year-round gateway to Yosemite National Park, and it is one of America's best known and most beloved rivers. We oppose HR 869 and urge you to continue to preserve and protect our river heritage for the benefit of current and future generations.

**Effect of HR 869**

HR 869 proposes to amend the National Wild & Scenic Rivers Act to redefine reservoir storage operations of a potentially expanded Lake McClure Reservoir as flood-control operations, and allows the modification of the dam complex to allow the reservoir to invade the wild and scenic river upstream for these defined purposes. HR 869 is in fundamental conflict with the major purpose of the National Wild & Scenic Rivers Act: to ensure that no project works impound waters that convert a free-flowing river into a

reservoir. For the sake of the integrity of our National Wild and Scenic River System, Congress should reject HR 869.

### **Background of Merced National Wild & Scenic River**

The current reservoir/wild and scenic river boundary and associated boundary policy definition was proposed by the U.S. Forest Service, Bureau of Land Management, and National Park Service under President Ronald Reagan in 1986. California Republican Senator Pete Wilson introduced the first bill to designate the river/wild & scenic river boundary at its present location in 1987. The framework of the final bill with its accommodations for Mariposa County and for the Merced Irrigation District was fashioned by Rep. Tony Coehlo, who on his retirement concluded that his work to save the Merced River was his most personally meaningful achievement in his time in Congress.

An agreement on the final language of the bill designating this reach of the Merced National Wild & Scenic River was reached among the Senate Energy Committee, California Republican Senator John Seymour, Senator Alan Cranston, the house sponsor of the bill, Gary Condit, the Merced Irrigation District (MID), Friends of the River, and the Wilderness Society in 1991. The resulting bill was cosponsored by Senator Seymour and signed by President George H.W. Bush in 1992.

HR 869 seeks to reverse the Reagan-era agency recommendations and the consensus agreements fashioned by the authors of the legislation that originally created the Merced National Wild & Scenic River.

### **Purpose of the National Wild & Scenic River System**

The National Wild and Scenic River System was established to protect and preserve a portion of our nation's dwindling stock of free-flowing rivers that has been substantially reduced from extensive development of dams, reservoirs, levees, and diversions. Congress did not create the national wild and scenic river system as a national reserve for future reservoirs but as a system to protect living free-flowing rivers for posterity. Since the creation of the system, the United States Congress has never removed the protections from dams and impoundments so central to the Act from a previously designated national wild and scenic river. It should not do so now.

HR 869 proposes to allow expansion of a reservoir to inundate a free-flowing river of national significance, an action that would be in fundamental conflict with the purposes of the national system that “selected rivers of the Nation which, with their immediate environments, possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural or other similar values, shall be preserved in **free-flowing** condition, and that they and their immediate environments shall be protected for the benefit and enjoyment of present and **future** generations.” (§1b Wild & Scenic Rivers Act)

When it created the National Wild and Scenic River System, Congress made an explicit pact with the American people: “The Congress declares that the established national policy of dam and other construction at appropriate sections of the rivers of the United States needs to be complemented by a policy that would preserve other selected rivers or sections thereof in their free-flowing condition to protect the water quality of such rivers and to fulfill other vital national conservation purposes.” (§1b Wild & Scenic Rivers Act). At full pool, twenty-four miles of the Merced River downstream of the designated wild & scenic river lie under MID reservoirs licensed by the Federal Energy Regulatory Commission. Upstream, the Merced River is protected by the National Wild & Scenic Rivers Act from dams and reservoirs all the way into Yosemite Valley and beyond.

The certainty of protection afforded by a National Wild and Scenic River also creates regulatory certainty in the business environment. The reliance on the Merced National Wild & Scenic River has been important to tourism businesses around Yosemite National Park. For example, one of the whitewater rafting companies who serve customers on the Merced recently wrote the following to Mariposa County:

Zephyr Whitewater is only one of several rafting companies that utilize this section of the river for our late season trips. Additionally, the proposed Merced River Canyon bike trail would be another feather in the cap for Mariposa County's "things to do". It would be a much more popular trail if it followed a free flowing Merced river instead of an expanded reservoir.

When we operate our late season trips on this lower section, we currently hire local people to "tow" our rafts to Bagby through the existing reservoir. An expanded reservoir would probably stop our operations, as this would

make an already "long" tow out probably "too long". Additionally, the "dead zone" which always exists with rising and lowering upper reaches of reservoirs would render this section of the river unattractive and would setback Mariposa County's growing reputation as an outdoor destination.

### **Legislative Considerations**

**(It's *deja vu* all over again, or there is nothing new under the sun)**

The Federal agencies did not recommend and the Congress did not establish the Merced National Wild and Scenic River without careful deliberation. In addition to recognizing the obvious scenic, recreational, and natural resources of the Merced River, the implications of the designation on MID were considered.

#### *Water*

Consistent with the language of §1b of Wild & Scenic Rivers Act above, it was noted that for year after year after the construction of its 1960s-era giant dams on the Merced River, the Merced Irrigation District reported in its annual reports that "[t]he District now has virtual control of the waters of the Merced River as long as such waters were put to beneficial use, and is assured of an adequate irrigation supply for the foreseeable future."

It has been said by some today that the significance of *any* new water to the San Joaquin Valley cannot be overstated. However, the meaningfulness of that general statement needs to be guided by the numbers. Even then, this was the subject of Congressional testimony in 1991. Using standard storage-to-yield ratios for new storage in already diverted watersheds, this project might be expected to increase yield to someone and for some purpose by an average of perhaps 10,000 acre-feet per year — some years more, most years none or less. The consumptive water rights and average annual consumptive diversions associated with MID's project works amount to over half a million acre feet per year. Project deliveries of the federal Central Valley Project are around six to ten million acre feet per year. MID's project idea, even if constructed, is not going to provide any meaningful amount of new water to the San Joaquin Valley or even to MID, which does not hold the most senior water rights on the portion of the San Joaquin River system where water still finds its way to the Delta. The marginal yield of such a project was noted in testimony before the Congress in 1991. That has not changed. Today, the adverse precedent contained in HR 869 that our National Wild and Scenic River System can be used as reservoir sites is far more meaningful.

### *Floods*

It was noted in testimony then (as now) that New Exchequer Dam has never filled and spilled.

### *Dam Safety*

At the time that the Federal agencies were considering finding wild and scenic river designations for the Merced River, I asked Tim McCullough, the then general manager of MID, whether the District had any plans to enlarge the Lake McClure Reservoir rather than build a new dam upstream. He leaned back in his chair and laughed, saying he had no interest in putting more water against a dam that had such a long history of through-dam seepage.

The project that HR 869 is designed to facilitate, as presently conceived by MID, is to construct operable gates on top of the emergency spillway. Emergency spillways are generally conceived of as the last line of defense against overtopping and potential failure of a dam. Dam-safety officials generally prefer that the last line of defense operate regardless of mechanical failures, human error, control-system failures, flood-debris disruption, other mishap, or even terrorists in control of the operating features of a dam. Again, as noted in testimony before Congress in 1991, it could be very expensive to raise and perhaps stabilize the whole dam/spillway complex so that the existing margins of safety for through-seepage and design to prevent the reservoir from flowing over structures not designed to be overtopped — such as the main dam — are maintained with a higher Lake McClure Reservoir. The national wild and scenic river legislation for the Merced River enacted by the Congress and supported by MID at the time wisely took the reservoir-expansion option off the table as part of establishing a protected free-flowing river.

### *Wild & Scenic River eligibility*

For much of the time the designation was being considered by the Reagan-era Federal agencies and the Congress, MID did argue that the wild and scenic river designation boundary should be moved somewhere upstream, arguing that a river in flood pouring into a surcharged reservoir — by definition spilling over the top of its ungated spillway — would be inconsistent with the proposed wild and scenic river designation. The

Federal wild and scenic river managing agencies and the Congress had previously (and have subsequently) rejected that view in other similar designations. They again rejected that view in 1986 and 1992 since MID cannot physically or meaningfully impound water that was flowing freely over the top of its long ungated spillway and only Providence (not the Congress) could predict how high such a hypothetical flood would be. Contingent on the acceptance of language to make this operational position clear in the statute, the MID board of directors voted 4–0 to support the legislation that ultimately was enacted into law. All was well. The river and the river-based recreation there has prospered.

## **Reflections**

We urge members of the Subcommittee to visit the Merced River canyon on your next trip to Yosemite National Park. Just take Highway 140 from the City of Merced and drive up to the river. The canyon is magnificent. The spring wildflowers are magnificent. The river is a wonder. Get out of your car. Hike or boat down the canyon. Perhaps some day your young and adventurous college-age sons or daughters will mountain bike to Yosemite Valley up the proposed Merced to Yosemite multi-use trail. This is why we have national wild and scenic rivers. Experience it.

## **Conclusion**

HR 869 breaks the agreements and understandings that created the Merced River wild and scenic river. The project that it seeks to facilitate will not provide any meaningful project benefits and offers dangers to downstream communities. It disturbs the economic fabric of businesses reliant on the certainties that wild and scenic river designations create. Perhaps most important at all, it tells the American people that Congress is unable or unwilling to abide by the commitments it has made to set aside certain selected rivers and protect them for future generations.

The pact with the American people for the Merced River was made a generation ago with leadership from Republican and Democratic legislators and by Republican presidents. The actions that this Congress takes to defend our country's premier river-protection system are vital to the future National Wild and Scenic River System and have important consequences to our National Park System as well as the Wilderness Preservation System.

Please reject HR 869.

Thank you for your consideration today.