

TESTIMONY ON H.R. 5123
THE COLORADO RIVER, SALTON SEA AND
CALIFORNIA QUANTIFICATION SETTLEMENT AGREEMENT

HOUSE RESOURCES COMMITTEE
SUBCOMMITTEE ON WATER AND POWER

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Mr. Chairman and Members of the Committee,

Defenders of Wildlife ("Defenders") and our allies - other conservation groups, Indian tribes, and various business interests - have been actively working to protect and restore the Colorado River for almost a decade. Defenders itself is a non-profit biodiversity organization with approximately one million members and supporters. Our offices are headquartered in Washington, D.C. with field offices, inter alia, in Albuquerque, Tucson, Sacramento and Mexico City. Starting with Secretary of the Interior Bruce Babbitt's efforts in the mid -90s, and continuing with the Bush Administration, Defenders has commented on numerous proposals, draft environmental impact statements, administrative decisions, legislative initiatives and the like relating to H.R. 5123. We are intimately involved in almost every facet of this intertwining set of serious water policy issues.

This Committee must decide what, if anything, Congress should do regarding management of the Colorado River. At present, Defenders does not see the need for federal legislation. And while I reserve the opportunity to submit additional information for the record at the hearing, *including our serious concerns with the extremely problematic legislative language in H.R. 5123*, our message today is **three-fold**:

Point One: A 4.4 Plan is a Good Thing

Defenders unequivocally supports the state of California's efforts to get its annual consumptive use to 4.4 million acre-feet (af), the amount allotted under the "Law of the River." ⁽¹⁾ Defenders also supports, in broad principle, the proposal to sell water from the Imperial Irrigation District to San Diego County ⁽²⁾, as well as the proposal to establish instream flow rights for the entire river as part of the United States' trust responsibilities to the American public.

Point Two: Use, Don't Abuse, NEPA

The environmental review under the National Environmental Policy Act (NEPA) - a statute that possesses no express substantive restrictions - for the Quantification Settlement Agreement (QSA) and all other related actions has been pitiful. ⁽³⁾ Instead of looking for ways out of NEPA, Congress and the applicable federal agencies should be seeking to utilize NEPA as the useful federal planning device that it is. No one should be surprised that federal agencies such as the Bureau of Reclamation now face serious legal questions under the Endangered Species Act (ESA) because these agencies have little idea how their various band-aid proposals - none of which have been looked at synergistically - would impact listed species such as the brown pelican, snowy plover, Yuma clapper rail, and the desert pupfish. The legislative environmental waivers contained in the present bill are completely

unnecessary ⁽⁴⁾, an admission of failure, and will be vigorously opposed by the general public. ⁽⁵⁾

Point Three: Look at the Salton Sea in Context

Restoration of the Salton Sea is an important objective for migratory birds, recreation, and related economic reasons. Our goals should be realistic, with concrete responsibilities (both short and long-term) assigned to various parties. In addition, restoration of the Salton Sea must be viewed in the context of Mexican Delta conservation because the two water complexes are in the same ecosystem and water basin. ⁽⁶⁾ Federal aid to individuals and projects in the Imperial Valley must be closely scrutinized so as to be consistent with overall Congressional objectives in the region. ⁽⁷⁾ It is startling to see the language in H.R. 5123 when such little tangible progress has been made in implementing the terms and objectives of the 1998 Salton Sea Reclamation Act by Congress (P.L. 105-372).

Conclusion

Congress is perhaps at the most important juncture in the management of the lower Colorado River - a federalized river - since 1928 when it passed the Boulder Canyon Project Act. ⁽⁸⁾ 43 U.S.C. § 617 et seq. Major issues pertaining to California development, human health, the Salton Sea, federal expenditures, and the entire efficacy of the lower Colorado River basin, including Mexico, are all at stake. Although these issues are not easy, they can be solved if a truly representative and legal process is utilized. The temptation for quick fixes, with inadequate information supplied for and by the privileged few, should be rejected.

Thus, we respectfully urge this Committee:

* *to continue its important oversight role* over the subject matter contained in H.R. 5123; and

* *to reject H.R. 5123* until a demonstrable need for federal legislation, which must be significantly altered from its present unacceptable form, is offered.

1. See Arizona v. California, 376 U.S. 340 (1964)(Supreme Court Decree regarding Boulder Canyon Project Act and other law).
2. See, e.g., Legal Memorandum of Defenders of Wildlife and Planning & Conservation League, In re Imperial Irrigation District and San Diego County Water Authority, State of California Water Resources Control Board (July 11, 2002).
3. See, e.g., Letter from E.P.A. to Bureau of Reclamation, 26 April, 2002 (noting "adverse effects to surface and groundwater quality and lack of mitigation," "insufficient information" on public health and endangered species issues, and the clearly illegal segmentation of many related actions). The state of California has echoed these concerns.
4. Not only have the major California water users already tentatively agreed to an initial five-year following period on lands contained in the Imperial Irrigation District, which would alleviate many of the short-term problems facing the Salton Sea, but the December 31, 2002 "deadline" for QSA execution in the Interim Surplus Guidelines also provides more flexibility for California than is commonly asserted. We have time to do the California 4.4 Plan correctly.
5. See, e.g., www.stopextinction.org. Defenders has identified at least a dozen serious drafting flaws and/or environmental rollbacks in the bill at issue.
6. See generally Defenders of Wildlife et al. v. Norton, pending before Judge Robertson in the U.S. District Court for the District of Columbia. This case, fully briefed and argued, will determine whether federal agencies must "consult" under the ESA for impacts from U.S. federal actions upon U.S.-listed species that occur in the Mexican Delta of the binational Colorado River. No injunctive relief or demand for water has been requested in this litigation. See also Minute 306 to 1944 United States-Mexico Water Treaty.
7. This bill authorizes an additional \$113 million of federal funds (roughly similar amounts for habitat enhancement and water storage respectively), plus potentially another \$50 million in private/public funds, to essentially maintain a murky status quo. It would be far better to spend this money on ecologically-sound restoration projects and economically-sustainable jobs in the Imperial Valley once an agreed blueprint for overall action is agreed upon. Such a present lack of clarity perhaps explains why the financial numbers in H.R. 5123 are different than both what the Imperial Irrigation District's general counsel states and what a consulting firm estimates. Compare John Penn Carter, Water Transfers and the Salton Sea at 4, CLE International (May 3, 2002)("The cost of mitigating for adverse socioeconomic impacts resulting from a following program may very well be equal to, or greater than, the hundreds of millions of dollars required for environmental mitigation.") with Tetra Tech, Inc., Draft Assessment of Salinity and Elevation for Varied Inflow (April 2002)(numerous estimates under different plausible scenarios).
8. See generally Western Water Policy Review Advisory Commission, Water in the West: Challenge for Next Century (June 1998); William DeBuys and Joan Myers, Salt Dreams: Land and Water in Low-Down California (1999).