

Testimony of Dale R. Brogan
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Before the
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Committee on Resources
Subcommittee on Water and Power
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I. Introduction

Chairman Radanovich and other distinguished members of Congress, thank you for the opportunity to testify before you today.

My name is Dale Brogan. I am the General Manager of the Delano-Earlimart Irrigation District, a position that I have held since 1988. Prior to my appointment as General Manager, my professional experience included working with the Lower Tule River Irrigation District for four years. Both districts are Central Valley Project (CVP) contractors. I also have experience working for the federal government, having started with the USDA Soil Conservation Service out of college, as well as experience in the private sector as the operator of a small farm supply business in northern California.

My professional training includes a Bachelors of Science degree from California Polytechnic State University, San Luis Obispo, having graduated from that institution in 1975. I am also a 1992 graduate of the California Agricultural Leadership Program.

I also serve as Manager of the Eastside Power Authority. Eastside is a joint powers authority that consists of three irrigation districts and three state water districts. Eastside was founded in 1995 for the purpose of bringing lower energy rates to its member districts and their customers. Eastside has an assigned CVP power allocation, administered by the Western Area Power Administration.

I have also been recently involved in the founding of the Valley Water Alliance, a non-profit grass-roots organization created to ensure a reliable water supply for businesses, industry, agriculture, and the community at large in the Central Valley region of California. I am currently the Secretary/Treasurer of the Alliance.

I hold additional local and statewide positions with related water and energy organizations, including serving as a board member of the Agricultural Energy Consumers Association and the Friant Water Political Action Committee. I am a member of the advisory committees for the Friant Water Authority and the Friant Power Authority, as well as sitting on the Agricultural Advisory Board of Southern California Edison Company. I have also served as a board member of the Central Valley Project Water Association, and as a member of the Tulare County Farm Bureau Water Committee.

II. Setting and history of Delano-Earlimart Irrigation District

The Delano-Earlimart Irrigation District (District, or DEID) was formed in 1938. The District includes a total of 56,500 acres situated in southern Tulare County and northern

Kern County along the San Joaquin Valley's eastside. The District serves approximately 321 landowners with an average farm size of 175 acres. Over 57 percent of our landowners own less than the acreage certification threshold of 240 acres.

Virtually all of the acreage in DEID has been developed. Approximately 82% of the District is planted to permanent crops, the most prevalent being grapes. Other permanent crops include pistachios, almonds, and various tree fruit varieties. Twenty-six different crops are grown by our farmers.

The District's irrigation water distribution system is completely pipelined, with all customer deliveries having water meters. Our system allows the District to make water deliveries with virtually no losses, thus creating an extremely efficient water delivery project that is the foundation for the District's overall water conservation and management program. We have seen this highly efficient use of irrigation water transcend to many of the District's growers with the advent of drip irrigation and sprinkler system technology. Today, much of the District's acreage utilizes these advance water application techniques.

Growers within the District produce crops with a gross value of approximately \$400 million annually, which by the most conservative of estimates translates to over \$1 billion injected into the economies of the region. Less than 1 percent of the total crop value comes from crops that are part of any USDA crop-support program.

The Delano-Earlimart Irrigation District signed its original water service contract for water delivery from the CVP's Friant Division with the U.S. Bureau of Reclamation (Bureau) in 1951. The District continues to contracts with the Bureau for its water supply which is managed and used conjunctively with groundwater for the long-term irrigation needs of District growers. DEID holds the largest Class 1 contract in the Friant Division, totaling 108,800 acre-feet of CVP water, nearly 14 percent of the Friant project's total firm yield. DEID also contracts for 74,500 acre-feet of Class 2 Friant water, a supplemental supply that is made available by the Bureau only when it becomes apparent that all Class 1 demands can be met. Historically, the District has received a total CVP-Friant Division supply of approximately 131,000 acre-feet (1955-2004 average), providing a supply of approximately 2.53 acre-feet per acre to eligible lands.

The historic groundwater condition of the District is an important and interesting perspective. In the late 1800's, development of the Delano-Earlimart area began with a water supply originating from numerous artesian wells. However, by the 1930's groundwater supplies were quickly diminishing to levels that threatened the area's continued economic viability. By 1947, the mean depth to groundwater was 209 feet. In July of 1950 the Bureau issued a report that verified the endangered water supply conditions of the Delano-Earlimart area. Given the title as the "Delano Cone", the Bureau documented that between 1905 and 1949, the average depth to groundwater had fallen every year, including those years with record rainfall. They noted that:

"Within the District is the apex of the largest cone of groundwater depletion in the San Joaquin Valley. In 1949 this cone covered about 200,000 acres. It completely surrounds and includes the Delano-Earlimart Irrigation District."

With the introduction of a surface water supply from the Friant Project in 1951, groundwater conditions have improved dramatically. Considering that this area once had the largest

groundwater overdraft in the San Joaquin Valley, it is quite an accomplishment that by the end of 1986 the average depth to groundwater had risen a dramatic 93 feet. However, the 1987 through 1993 drought was an example of the need for conjunctive use in the Delano-Earlimart area, as growers were forced to rely on groundwater. In that 7-year span, the average depth to groundwater dropped an alarming 27 feet. Said in other terms, while it took 35 years to raise the groundwater level by 93 feet, it only took 7 years of drought to erase 35 percent of the gain. Clearly our groundwater is a fragile commodity.

Recognizing the innate value of water in the Delano-Earlimart area, the District since its inception has maintained an aggressive approach to sound water management practices, including conservation. The District first memorialized its water conservation efforts with a published plan in 1988 in compliance with Section 210 of the Reclamation Reform Act of 1982. The plan was later updated and expanded in December of 1993, under guidelines for compliance with Section 3405(e) of the Central Valley Project Improvement Act of 1992 (CVPIA). The plan has been routinely updated since that time.

Keystone water management and conservation practices implemented in the District include a tiered block pricing strategy that effectively manages the interconnection of both surface and groundwater supplies, participation in a cooperative on-farm irrigation evaluation program with the Cal Poly Irrigation Training and Research Center, and instituting incremental improvements in operation and delivery system components leading to a highly flexible water distribution system tied to grower demand. These improvements include implementation of a computerized water order entry and management program for District water users, water meter measurements tabulated through hand-held data recorders, construction of a remote telemetry command and control system (SCADA) for all District pumping plants, renovation of over 500 grower delivery points in the District, and ongoing installation of pressure-compensating turnouts for on-farm deliveries of District-supplied water. The latest task in this area has been the beginning of a 3-year project to replace all of the District's original motor control centers at a cost of \$1,300,000, slated for completion in 2008.

Other activities included in our water management and conservation program include regular publication of water conservation news and features in the District's newsletter, creation and maintenance of a District web site providing sources of irrigation water management and conservation information including crop ET values to growers, annual publication of a District Water Policy that includes a section on conservation and management practices, development of a regional groundwater management program, and participation in an integrated regional water management planning group.

The Delano-Earlimart Irrigation District is directed by a five-person, locally elected Board of Directors. The current Board consists of:

- Director Kelley Hampton. Mr. Hampton was appointed in November of 2004. Mr. Hampton farms 160 acres of almonds, the same property that his father farmed since 1955.
- Director Nick Canata. Mr. Canata was originally appointed to the Board in 1994. He has been farming table grapes for the past 23 years in Tulare and Kern counties.. Nick also has a farm management and marketing company.

- Director Harold Nelson. Mr. Nelson succeeded his father as Director for Division 3 in January 1990. He owns and operates 340 acres of land that is primarily planted in grapes. Harold is also very active in a number of farmer cooperatives and agricultural and water entities. He serves as President of the Board of Directors.
- Director Anton Caratan. Mr. Caratan farms with his father in the District on land that includes acreage farmed originally by his grandfather in the early 1900's. Primary crops produced are table and wine grapes. His family operation also includes a cold storage facility.
- Director Peter Hronis. Mr Hronis followed his father as a Director and Vice President of the Board. He is a third generation grower in the District, currently farming with his brother and mother in Tulare and Kern counties. In addition to growing grapes, alfalfa, and vegetables, the Hronis family is a major packer and shipper of the Delano area produce.

III. Primary impacts of CVPIA on DEID over the past 13 years

By in large, the District and its growers have learned to live with impacts of the CVPIA. However, required adjustments were not without pain and some CVPIA provisions have made little sense. In this regard, I would call the committee's attention to the following CVPIA provisions and issues:

a. Restoration Fund/Friant Surcharge costs.

When the CVPIA initially passed in the fall of 1992, the District immediately had to deal with an increase in water rates from the Friant surcharge and a short time later, the restoration fund charge. At that time, the District attempted to treat the cost increase as a simple addition to the wholesale cost of the water supply, and in turn passed the cost on to our growers in our water rates. That proved disastrous, as that simplistic act raised the cost of the District's surface water to a point of being non-competitive with the cost of pumping groundwater in a large portion of the District. After creating that untenable situation, the District took another approach. Beginning with a series of public meetings with its growers, the District began a discussion of the new CVPIA environmental tax, its effect on the District's water cost, and possible methods of providing a reliable revenue source to fund this new tax. At the end of the process, the choice supported by the vast majority of growers was to fund the CVPIA-mandated environmental tax through a land-based "standby charge". The rationale for selecting this approach was the acceptance that the tax was a new cost of doing business within the District, but without any real connection to the District's water supply other than the convenience to the federal government as a method of collecting the funds. It was determined that the need to sustain a reliable, affordable surface water supply at the lowest cost of available water supplies to the area (groundwater being the only other source) was key to the District's conjunctive use program. It was also found to be a benefit to all within the District, regardless of the amount of surface water that each individual used. A property-based assessment, or standby charge, spread the cost of the new tax equitably among all District landowners, while keeping the surface water supply within the first tier of the area's water supply cost. The standby charge was set at \$26.75 per acre, where it remains

today as a result of state law limitations on raising property-based fees (Proposition 218). If the District were free to set the standby charge at the rate necessary to fund a “normal” water year for the District (100% Class 1 and 30% Class 2), the rate would be set at \$33.32 per acre.

While the District and its growers have learned to cope with the impacts of CVPIA, including its financial impacts, it does not mean that the impacts have not been great. Every dollar that has been paid by our growers for the Friant surcharge and the restoration fund charges is a dollar that has forever left the local economy.

Since 1992, the water users of the Delano-Earlimart Irrigation District have paid \$21,125,015 in CVPIA-mandated environmental fees. That is an average of \$1,508,929 per year (1992-2005). In the just completed 2005 water year, the District’s growers paid \$2,330,618 in CVPIA-mandated environmental fees. By any account, these are staggering numbers for one small community to pay, particularly when the results are so hard to see. More on that later.

Aside from the sheer size of the amount of CVPIA-mandated fees that DEID growers have paid, these same charges have had a negative impact on the District’s local efforts to increase its groundwater recharge activities. The historic method of groundwater recharge employed by the District is “in-lieu” recharge. This means that every effort is made to supply as much surface water to water users as possible in every year and thereby reduce the amount of groundwater that needs to be pumped in the service area. Natural recharge then occurs from the surrounding watersheds. This in-lieu method of groundwater recharge and management has been an effective method since the District first began making water deliveries, and was envisioned by those who formed the District, as evidenced by DEID’s large Class 1 contract. However, the District has also been interested in developing an active direct groundwater recharge program to provide a greater groundwater bank for water users during times of drought. In the early 1990’s, the District made a modest attempt to develop a direct groundwater recharge project by purchasing an 80 acre parcel in the geographic middle of the District, bisected by an intermittent drainage way known as White River. Within this site, the District constructed perimeter berms and internal levee banks, a series of connection points to the District’s water distribution system, and a diversion structure in the river. Unfortunately, the price of CVP water has risen to the point that the District cannot afford to introduce CVP water into the basin. The only water that has been put into the basins within the past few years has been Section 215 surplus water, and only when the price was reduced to an incentive rate. This is a situation where an existing groundwater recharge facility is being under-utilized due to the inflated cost of CVP water from CVPIA charges. It is ironic that this is the type of project that many detractors to new surface water storage say is needed to address future California needs, yet the facility cannot be fully used in surplus water years because of the additional CVPIA fees put upon that same water supply.

b. Tiered pricing.

The artificial and punitive effect of CVPIA-related tiered pricing is problematic to many in the Friant Division. While DEID has come close but has not triggered tiered pricing, Class 1 only Friant districts trigger tiered pricing in all but severe drought years. This is a repressive water tax that is punitive in nature without benefit other

than being a revenue generator for the federal government. Any thought that tiered pricing would be an incentive to use less water due to pricing is simply ignorant of the Friant Division of the CVP. This is a water-short area that depends on conjunctive use of surface water and groundwater and the ability to use and/or store as much water as possible in plentiful years in order to survive in the dry years.

c. Transfers.

Limitations on the amount of water that can be transferred between contractors under the historic transfer provision in CVPIA have been a problem in some years since the passage of CVPIA, and will certainly be an issue in future years. Conjunctive use within the Friant Division hinges on having the unfettered ability to move water from one contractor to another in wet years. Transfers and exchanges in wet years are key to conjunctive use in Friant and the long-term ability for districts to assist one another in times of droughts. Water trades, banking agreements, and exchanges need to occur in order to effectively manage individual and collective water service contracts in Friant. Unfortunately, the creation of an arbitrary ceiling on historic transfers within the Friant Division, a limit of no more than 150,000 acre-feet annually, has become a serious problem in recent years. While the Friant Division had not historically transferred more than that amount, the 2005 water year did pierce that cap by 100,000 acre-feet, and the 2006 water year is shaping up much in the same way.

Accommodating the transferred amounts in excess of 150,000 acre-feet was done only by the quick action of the Bureau in the form of additional, environmental documentation that was completed during and for the 2005 water year. But this was a one-year analysis, and will undoubtedly be a needed again in 2006 and for years to come. The future of the Friant Division, particularly in light of San Joaquin River restoration, will be highly dependant on the ability to transfer and exchange water without any artificial ceiling or uncertainty from year to year.

An additional concern with CVPIA transfer provisions is that of transfers to non-long-term contractors that were without contracts at the time of passage of the CVPIA in 1992. Due to hydrologic circumstances unique to the 1992 water year, many non-long term water entities within the Friant service area with a history of being able to enter into beneficial transfers and exchanges with Friant long-term contractors found themselves without a contract for temporary water supplies. Subsequent to implementation of CVPIA transfer provisions, the Bureau determined that those without some form of contract in 1992 could not participate in future transfers under the historic transfer provisions. That has been problematic to many within the Friant Division. The resultant bureaucratic quagmire for those wanting to make use of transfers and exchanges with some of our local water agencies within the Friant service area has been counter-productive to the water management needs of many. Many of these agencies can and have provided mutually beneficial water management services to Friant districts over the history of the CVP, but now have for the most part been excluded from doing so since CVPIA. No more odious than historical transfers and exchanges among Friant long-term contractors, the CVPIA has created a whole group of second-class water users. This group had previously been important water management partners within the Friant service area.

IV. Future impacts of CVPIA on DEID in a post-SJR restoration settlement world

If you are in the Friant Division of the CVP, you cannot look into the future without gazing through the glass of San Joaquin River restoration. As all of you know, reports are numerous about the potential of a settlement in the 18-year old battle between an environmental coalition led by the Natural Resources Defense Council and the Friant and federal government defendants. I will add my voice to the chorus that has publicly stated that they believe a settlement will occur. With that backdrop, CVPIA reform will be necessary if it is not to run at cross-purposes of a settlement and the ability of Friant Division districts such as DEID that will be required to provide the water necessary for river restoration. While others may add to my list, here are my primary concerns:

a. Restoration Fund/Friant Surcharge.

San Joaquin River restoration will be expensive. Both state and federal resources will be necessary to do the job. As I have previously noted in my testimony, Friant water users are already giving significant dollars to the CVPIA restoration fund. In particular, the Friant surcharge was created and funded specifically due to San Joaquin River concerns.

I believe that it is time for Friant dollars paid into the restoration fund to stay at home. The restoration of the San Joaquin River can be considerably helped along if the Friant surcharge and the restoration fund dollars paid by Friant are earmarked exclusively for river restoration and river-related activities, including the continuation of the Vernalis Adaptive Management Program under the San Joaquin River Agreement.

Friant's contribution paid into the restoration fund should also be available to assist with water supply enhancement projects related to the San Joaquin River. Obviously, river restoration is going to take water from Friant water users who have been putting this water to beneficial use for more than 50 years. That real and immediate water loss must be addressed if the economic viability of the valley is not to be compromised both in the short and long term. Projects will need to be developed and funded that can create new water sources for the Friant districts being called upon to make water available immediately. In the short term, local projects that promote storing surplus water in new or expanded groundwater banking projects will be needed, as will the ability to do associated transfers and exchanges. Longer term solutions that will require capital include recirculation scenarios, new surface storage projects and other bricks and mortar projects.

Some of these Friant dollars could be used to help buy down the cost of replacement water that could, and should, be made available to those Friant districts that give up water to river restoration. These Friant contractors should be first in line to get water back in wet years and at a reduced price that makes economic sense for the contractor. Friant restoration fund dollars could be put to good use in this fashion.

b. Tiered pricing.

Taking water when it is in surplus under existing contracts for banking purposes to partially mitigate the water supply impacts in all other year types will be one of the primary strategies that Friant districts will need to have available to them if they are to survive. As stated earlier, tiered pricing is a punitive, repressive water tax that

provides no real incentive for water conservation in a conjunctive use area such as Friant, and will be at cross-purposes with river restoration. The ability to access as much contract water in wet years as can be put to beneficial use and/or banked for future use will be compromised by the continuation of tiered pricing. Tiered pricing provisions in CVPIA should be repealed.

c. Transfers.

Up to this point, no real impact has been felt by DEID with regard to the limitations placed on transfers by CVPIA. That is due to the nature of the recent transfers that have been important to District operations and water management goals. However, that is not the case with all Friant contractors, nor will it be the case in the future for DEID with river restoration looming.

In the future, I would anticipate that DEID will be impacted by existing CVPIA transfer constraints. As the Friant contractor with the largest Class 1 contract, DEID will be providing more water to river restoration than any other district on the normal and drier than normal water years, and in amounts that will hurt. DEID absolutely needs all available tools to cope with the significant water supply impact that settlement could impose on the District. Any compromise in the available tools, such as a restriction on the potential partners in transfers and exchanges within the existing Friant place of use will be problematic.

CVPIA transfer provisions were meant to be additive, but have been mistakenly interpreted as being replacement terms. Historic transfers within the Friant division were not intended to be impacted by CVPIA. Rather, the context of those new transfer provisions were as safeguards to existing contractors in the face of a world in which CVP water was to be used by others outside of the traditional CVP boundaries. Again, the restrictions that CVPIA brings to the table with river restoration on the horizon must be addressed and corrected. I would suggest that a programmatic environmental review be completed for all historic transfers within the Friant Division, including those involving both long-term contractors and those historic short-term contractors/temporary contractors, without any artificial limit. That would put historic transfers in the Friant Division in the proper context: allowed by CVPIA and provided for under the terms of our water service contracts.

V. Other issues of concern to DEID

There are other CVPIA-related issues upon which I would like to take the opportunity to comment:

a. Project yield enhancement.

CVPIA Section 3408(j) calls for the Interior Secretary to develop a plan for increasing the yield of the CVP in order to minimize the adverse effects on the CVP contractors as a result of the CVPIA. That study was required to be completed by 1995, with the resulting plan to provide an increase in the yield within 15 years, or 2007. Time is ticking. As yet, there is no plan.

For Friant districts, the incipient San Joaquin River restoration process only increases the need for a plan to enhance the yield of the CVP, particularly in the San Joaquin

River basin. Efforts in this area must be given the same, or greater, emphasis as environmental concerns have been given over the past 13 years. Water users must have the opportunity to catch up.

b. Accountability of past and future Restoration Fund/Friant Surcharge funds. A popular line from the movie *Jerry McGuire* was “Show me the money”. Put into the context of fourteen years of CVP contractor payments into the restoration fund and many of millions of dollars later, CVP water users have shown you the money. Now, where are the results? What projects have been funded? Have they produced any results? Who has been the primary beneficiary of the funds collected under the CVPIA? Are the project purposes being achieved? Has there been any accountability in the process of collecting and spending our dollars? These and many other questions demand answers, and I believe that the Congress should demand those answers now.

The Bureau, U.S. Fish and Wildlife Service and a group of CVP contractors led by the Central Valley Project Water Association have embarked on a process that will hopefully provide these long overdue answers. Known as the “CVPIA Program Activity Review”, it is a good first step toward providing accountability that has long eluded us. Clearly, good government requires that those that have put up the millions and millions of dollars in CVPIA funds over the past fourteen years have the right to know where it has all gone and what was achieved with their money.

c. Warren Act revenues.

Currently, non-CVP entities are allowed to use CVP facilities under a Warren Act contract with the Bureau. However, water revenues paid under Warren Act contracts are credited to the big black hole of the U.S. Treasury. No value is credited toward the repayment of the CVP. Logic would dictate that charges derived from the use of federal facilities to transport non-project water should go toward repayment of those same facilities. Instead, Warren Act dollars become an unearned revenue windfall to the Treasury. Siphoning off these dollars to the Treasury is analogous to renting a room in a home but paying City Hall instead of the guy who is responsible for making the mortgage payments.

Mr. Chairman and members of the subcommittee, this concludes my testimony before you today. It has been my pleasure to address this distinguished panel and I appreciate the opportunity to appear before you. I would be happy to answer any questions concerning my testimony that you may have.