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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.

Subcommittee on National Parks, Forests and Public Lands
June 14, 2011

Chairman Bishop, Ranking Member Grijalva, and members of the Subcommittee, my name is Bryan Kelly and I am the Director of Regulatory Compliance and Government Affairs -Water for the Merced Irrigation District (MID). I am pleased to be offered this opportunity to testify in support of H.R. 869, 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 Denham and the cosponsors of H.R. 869 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 average 300,000 acre feet of 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 30 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. 2011 has been a very wet year, and MID will most likely completely empty the equivalent of Lake McClure's full capacity to provide storage space required to accommodate run off from a record-setting snowpack.

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. 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. 869.

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 from Yosemite National Park to the upper end of Lake McClure is 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. It's happening now. This month the water level at the upper end of Lake McClure and within the Wild and Scenic portion of the river contained within the FERC boundary, was at about elevation 884 mean sea level (MSL), while the water surface elevation at New Exchequer Dam was approximately 824 feet MSL.

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 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. 869 is intended to allow FERC to consider the Spillway project during the relicensing process and the bill sets limits on the timing and duration of the temporary inundations of the Wild and Scenic area that would be caused by the project.

I want to be absolutely clear on this: MID supports the Merced River's Wild and Scenic designation above Lake McClure's FERC boundary. 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. 869 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 examination by FERC and other Federal and State agencies in a public process that will identify and address all potential impacts in accordance with 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. 869 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

The significance of any new water supply for the Central Valley cannot be overstated.

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. 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.

H.R. 869 is simply intended to allow the Federal Energy Regulatory Commission to *consider* a proposed project that will create jobs and further support Merced County's economic base. We ask that the Subcommittee and the House Natural Resources Committee support H.R. 869.

Thank you for your time and consideration.