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Testimony  
Before the Subcommittee on Water and Power  
Committee on Natural Resources  
United States House of Representatives  
Fresno, California

*The Federal Response to the California Drought Emergency*  
July 21, 2008

## MADAM CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE

It is an honor and privilege to appear before this Committee. I appreciate being allowed the opportunity to recommend solutions to alleviate the economic hardship inflicted upon the valley by the natural and court-ordered droughts.

I, Kole Upton, am a farmer in Merced and Madera Counties living on the same farm started by my father after he returned from World War II. With my brother and my sons, I grow wheat, corn, oats, cotton, almonds, and pistachios. The water essential to growing these crops comes from two sources, neither of which by itself can provide sufficient water to sustain our area for the long term.

One source is the underground which is falling at a rate of 2 to 10 feet per year depending on which part of the area we farm. The other source of water is surface water from the federal government and is Central Valley Project (CVP) water. The East Side of the San Joaquin Valley is a conjunctive use area, depending on both sources for its long term viability. In fact, that was the reason for the building of Friant Dam. The surface water from Friant was used to save the area from the drastic overdraft conditions which was causing farm land to be abandoned with the resulting detrimental effect on the embedded cities. The situation is the same today. If a significant amount of surface water is irretrievably lost to the Friant service area, the effect will be devastating.

Although the CVP is an integrated project serving some three million acres, we on the East side of the San Joaquin Valley are currently disconnected from the Delta and receive our water from east side reservoirs such as Friant Dam.

Due to this isolation, we have to date been spared the huge water losses inflicted upon our neighboring farmers on the West Side of the Valley. However, unless the current version of the San Joaquin River Restoration Bill is changed, we can expect to be on the same treadmill of continuous lawsuits which are continuing to wreak devastation on west side farms, farm workers, their communities, and ultimately the California State budget.

## THE PROBLEMS

The problem is not the courts or the judges. The problem is the courts are being forced to base their decisions on laws that have not been amended or changed in decades. The environmentalists have skillfully used such laws as the Central Valley Improvement Act (CVPIA) and the Endangered Species Act (ESA) so that judges have no alternative but to order massive releases of water. Regrettably, most of this water is already being beneficially used by urban or agricultural users, and the resulting loss devastates people and communities.

If this cost to people, communities, and society in general was actually instrumental in saving species or providing huge environmental benefits, then perhaps it would be worth it. Sadly, that is not the case. For instance, despite millions of acre-feet of water and billions of taxpayer dollars invested in saving the Delta and the associated species, the situation is as bad as ever.

In addition, other possible causes of the decline in the delta have been virtually ignored. Non-native species, predation, urban sewage discharges, and illegal diversions have been ignored and

judges are left with the one remedy of taking more and more water from current users without any accountability for success.

This problem started for the west side with the listing of species inhabiting the Delta in the late 1980's and early 1990's, followed by the passage of CVPIA in 1992 in which the west side gave up well in excess of 800,000 acre-feet to satisfy environmental demands. Supposedly, that was to be the extent of their contribution to restore the environment, with promises made to restore some of their losses through Cal-Fed. Instead, the west side has been subjected to a series of lawsuits which have only compounded the losses and with no demonstrable benefits to the environment.

The east side now faces the initiation of the same scenario with the expected passage of the San Joaquin Restoration Bill. This bill has the laudable goal of settling a decades old lawsuit, and restoring a long dead salmon run, and mitigating the water losses. However, since the agreement was signed in September 2006, there have been significant events and new information which indicate the vast amount of water and money called for in this project will be a colossal waste. Further, there is no commitment from the environmental community that they will not initiate additional lawsuits involving species other than salmon, and calling for judges to release more water.

We now have information loudly trumpeted by the environmentalists decrying the effects of global warming. In fact, the Natural Resources Defense Council's (NRDC) paper 'In Hot Water' recently warned about the difficulty of cold water species such as salmon and trout surviving in southern latitudes. Despite this, the San Joaquin River Restoration Bill will authorize water and money to attempt to restore the southernmost salmon fishery in California. An additional problem has arisen since September 2006. This is the catastrophic decline in salmon numbers on the northern salmon fisheries. Would it not make more sense to start out with a more responsible restoration program on the San Joaquin and dedicate the saved resources to saving the existing salmon runs?

The Friant/NRDC Settlement agreed to in September 2006 had two co-equal goals. One was the restoration of salmon fishery on the main stem of the San Joaquin River which had been dried up at the direction of Congress when Friant Dam was built. The second was a Water Management Goal, the purpose of which was to mitigate some of all of the water losses to the Friant service area. Unfortunately, this second goal was rendered much more difficult with the actions by the environmental plaintiffs in the Delta lawsuit, and the resulting Court decision.

In June 2007, Governor Schwarzenegger and Senator Feinstein proposed a water bond for California which included a new dam at Temperance Flat on the San Joaquin River. This dam would have provided much more of the cold water required to make a salmon fishery workable. The new dam would have achieved much of the Water Management Goal. However, the spokespersons for the environmental plaintiffs in this case totally rejected a new dam. Thus, their actions and intransigence left the Settlement in place but with little hope of achieving the Water management Goal.

Given the highly unlikely possibility of success in achieving salmon restoration and the degradation of the Water Management Goal, a compromise solution was proposed. This would involve extending the current fishery which exists below Friant Dam to the Sack Dam on the West Side. This would cost a fraction of the money and the water could be recovered, thus achieving the Water Management Goal. The concept could be modeled after the highly acclaimed Kings River system which is only a few miles south of the San Joaquin. Again, environmental spokespersons rejected any compromise. They insist on inflicting both sides of

this valley with draconian policies that cause great hardship to valley residents and communities with little benefit to the environment.

### THE SOLUTIONS

The solution for both situations is for Congress to act decisively, responsibly, and quickly. The following actions should be taken:

1. Emergency legislation passed calling for the accounting of environmental releases. That objective scientists review the court ordered releases for their effectiveness in achieving the environmental goal for which they were ostensibly ordered. If not, the beneficial users from which the water was taken can petition the court for reduction or curtailment of such releases. There needs to be a time limit for this action so that it cannot be delayed by endless court appeals.
2. That judges not be required to order releases unless it can be demonstrated by objective scientists that such releases can reasonably result in the desired results, and that all known impacts on species of concern and habitat are addressed rather than placing all responsibility on the backs of water users. That releases simply for sake of releasing water is not a sufficient reason to deny current beneficial users their use of the water.
3. Congress insists the settling parties agree to amend the San Joaquin Restoration Bill to call for a responsible restoration plan costing much less water and money. This could be done as an interim measure until sufficient data is available to determine whether restoring a salmon fishery in today's world is reasonable, prudent, and feasible.
4. Congress initiate emergency legislation establishing that the judicial standard for ordering water releases puts all public uses of water on the same level.

My written remarks and testimony are intended to be positive. We are in a dire crisis and, since compromise solutions have been rejected by those speaking for the environmentalists, Congressional leadership is the only solution. Otherwise, this entire valley will be subjected to this destructive scenario of successive lawsuits which puts environmental releases (whether they help the environment or not) ahead of any of the other beneficial uses of this precious public resource.