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**Testimony before the U.S. House of Representatives  
Natural Resources Committee Subcommittee on Water and Power  
Legislative Hearing on  
HR 1837 “San Joaquin Valley Water Reliability Act”**

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Good afternoon, Chairman McClintock, Ranking Member Napolitano, and Members of the Subcommittee. My name is Jim Beck. I am the General Manager of the Kern County Water Agency.

**Introduction**

The Kern County Water Agency (KCWA) is located in Bakersfield, California and serves the urban and agricultural areas in the surrounding region. KCWA’s mission is: “To assure that adequate, reliable and affordable water supplies are available for beneficial use by the people, economy and the lands of Kern County.”

KCWA participates in a wide range of water management activities including protecting water quality, providing domestic, municipal and industrial water supplies, and constructing and managing groundwater banking facilities. KCWA is the second largest participant in the State Water Project (SWP), a California owned and operated water storage and delivery system of reservoirs, aqueducts, power plants, and pumping plants.

KCWA’s annual allotment from the SWP, known as its Table A amount, is approximately 1 million acre-feet of water and is delivered to 14 public water agencies that serve domestic and irrigation supplies to the farms, families and businesses in Kern County.

Since 1987, KCWA and the local water districts it serves have been faced with extreme variations in water supply from its local and SWP sources due to drought, but also in major part due to regulations imposed under the Endangered Species Act (ESA). These reductions in deliveries have, in turn, resulted in significant reductions in agricultural production, and significant adverse impacts on the economy of the region.

In 1961 when the Agency contracted with the State of California for water from the State Water Project (SWP), we expected that KCWA would receive nearly 100 percent of the water contracted for each and every year (about 1 million acre-feet). However, between 1960 and 2005 that expectation changed because the SWP was not completed, additional criteria were imposed on SWP operations, and because federally imposed restrictions to protect Chinook salmon and Delta smelt impaired SWP operations.

In 2005, based on previously existing restrictions, KCWA anticipated receiving about 68% of our total contract amount, or about 680 thousand acre-feet of water. After new biological opinions were issued

by the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) (collectively, the Services) in 2008, the SWP delivery capability dropped to 60% or about 600 thousand acre-feet on average.

While federal officials have pointed to a hydrologic drought as the major impact to water supplies over the past three years, the federal endangered species act has accounted for over 1.5 million acre-feet of water loss to the SWP since the beginning of 2008. Because the SWP was not able to deliver as much water to Kern County, farmers in Kern County paid more than \$120 million for water that was not delivered. In addition to that amount, farmers paid to pump additional groundwater and acquire expensive surface water from other sources to make up for the losses from the SWP.

Under these conditions, making the best possible use of our existing surface and groundwater supplies has become our most important objective. But if we are to do that effectively, the state and federal governments must do a better job of balancing ecosystem and water supply needs in the Delta.

### **Review of HR 1837 “San Joaquin Valley Water Reliability Act**

The San Joaquin Valley Water Reliability Act addresses three of California’s most intractable water issues; reform of the CVPIA, balanced regulation of the Sacramento San Joaquin Delta, and protecting the continued use of the San Joaquin River as water supply for the eastside of the Valley.

## **Title I**

Title I of HR 1837 makes reforms to the Central Valley Project Improvement Act (P.L. 102-575) passed by Congress in October, 1992. The KCWA is not generally considered a CVP contractor and does not hold any contracts with the U.S. Bureau of Reclamation (Reclamation) that would be affected by the CVPIA reform provisions of the HR 1837. In years when there are flood flows on the San Joaquin River, KCWA enters into Section 215 contacts with Reclamation that allow KCWA to purchase water from the Friant-Kern Canal. Based on our review of HR 1837 we believe our Section 215 contract with Reclamation would be unaffected by the bill. However, KCWA does support some of the specific sections of HR 1837 that seek to reform the CVPIA

### **Section 102**

We support Section 102 which modifies the definition of “anadromous fish.” The original definition of the term anadromous fish included striped bass and American shad. Both species are non-native, invasive species and in the case of striped bass are known to prey on the Delta’s protected salmon species and Delta smelt. Changing this definition clarifies that actions taken by the federal agencies under the CVPIA should not include protecting these invasive species at the expense of endangered native species.

A March 2009 story in Western Outdoors illustrates the importance of making this seemingly minor change to the definition of anadromous fish by describing predation by the invasive striped bass this way:

“The peak of the baby salmon’s downstream journey corresponds with the spring spawning run of striped bass. Somewhere along the line, the two

migrations crash headlong into one another.”... “It’s a one-sided blood bath, and when the spray and foam settles, stripers emerge fat and happy while Chinook suffer heavy losses.”

And recent statements by biologists for the California Department of Fish and Game (DF&G) reinforce the need to change the definition of anadromous fish. A 2010 Sacramento Bee article notes that a supervising biologist for DF&G worries about the survival of the endangered Delta smelt because in his words “Last night a chill ran down my spine imagining that Delta smelt go extinct – while we have done nothing proactive to address predation by striped bass.” The same state biologist also stated that: “I’m again thinking we should propose revising the striped bass policy to consider them a ‘weed’ like pigs or a similar pest.” Slowly this lack of scientific attention to “common sense” factors like predation that affect the Delta’s endangered fish species is changing, but it needs to change faster.

Clearly from a biologic perspective striped bass should not receive the same benefits and protections under the CVPIA as endangered salmon and Delta smelt. Changing the definition of anadromous fish to exclude striped bass and American shad ensures that federal resources are used to protect native Delta species without increasing the populations of invasive species that prey on them.

### **Section 103**

KCWA also supports Section 103 of the bill that seeks to provide 40-year contract periods for long-term water service and repayment contracts because it would significantly improve the certainty of CVP water districts’ participation in funding for the Bay Delta Conservation Plan (BDCP). The BDCP is an extensive and expensive planning process which will be submitted to State and federal regulatory agencies as an application for 50-year take permits under Section 7 and section 10 of the federal Endangered Species Act. The conservation measures contemplated by the BDCP include large-scale habitat restoration, construction of a new conveyance facility, and implementation of several projects to address “other stressors” on the Delta ecosystem.

Construction of a new conveyance facility is the most significant and costly of the conservation measures and will be paid for by the CVP and SWP water districts that receive water through the new conveyance facility. Financing to construct the conveyance facility is estimated at more than \$12 billion and will require issuance of bonds with a term sufficient to cover the expected 50-year term of the take permits and to amortize the costs of the \$12 billion conveyance facility over the term of the take permits.

Providing the CVP contractors with 40-year water supply contracts makes it easier, less expensive, and more certain that the CVP contractors will be able to participate in repayment of the bonds necessary to fund the conveyance facility. The greater certainty that CVP water districts can fund their share of the facility improves KCWA’s confidence that funding from CVP contractors will remain available throughout the term of the bonds.

### **Paragraph 108(a)**

Paragraph 108(a) of HR 1837 has the most direct effect on KCWA and reflects the largest change in how federal agencies will approach improvements to the Delta Ecosystem and to water supplies for the 25 million Californians and more than 1,000,000 acres of farmland that use water that is transferred through the Delta. If enacted, Paragraph 108(a) would require the Department of Commerce and the Department of the Interior to issue biological opinions for the SWP and the CVP that are no more restrictive than the operations required by the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” (the Accord).

The Accord was negotiated during 1994 under the leadership of Secretary of Interior Bruce Babbitt during the Clinton administration. The negotiations involved months of research and discussion about the best way to protect salmon and Delta smelt while still providing California with an adequate water supply. The final document was a bipartisan agreement signed by Governor Pete Wilson and Secretary of Interior Bruce Babbitt. The Accord had a term of three years and was extended twice for a total of five years. The Accord was replaced by the final environmental documents issued by the CalFED Bay-Delta Program in 2000. However, with the failure of the CalFED program in 2004, Delta ecosystem and water management was reduced to a species-by-species based ESA approach that focused exclusively on the SWP and CVP projects. This has resulted in a predictable round of biological opinions followed by legal challenges to their validity by the environmental community and public water agencies.

HR 1837 proposes to restore stability to Delta ecosystem and water supply management by reinstating the last set of standards that did not result in litigation. The standards set for operation of the SWP and the CVP under the Accord provided a stable base from which the state and federal agencies and the many Delta stakeholders were able to develop the CalFED program. While the CalFED program itself failed, the stability provided by the Accord was critical to the ability of the agencies and the stakeholders to develop the CalFED Program.

Today we face a similar circumstance. Repeated rounds of litigation create a constantly shifting and uncertain set of operational standards for the SWP and the CVP, and shifting environmental standards for the Delta’s fish species. HR 1837 would restore stability to the Delta by setting the Accord s as the standard for environmental protection in the Delta and operation of the SWP and the CVP. The operational and environmental certainty provided by the Accord would work in the same way it did in 1994 by again allowing State and federal agencies and Delta stakeholders to work together to finish the BDCP.

The environmentally protective standards set by the Accord allowed sufficient operational flexibility for the SWP and the CVP to manage California’s water supplies while protecting the Delta’s fish species. KCWA estimates that if the standards in the Accord are reinstated it would improve water supplies for the SWP by at least 200,000 acre-feet of water per year and between 100,000 and 150,000 acre-feet of wet season water supply know as Article 21 water.

### **Paragraph 108(b)**

Paragraph 108(b) is an essential provision of HR 1837 and without its inclusion KCWA would be unable to support the bill. This paragraph provides a pre-emption of State law in favor of the provisions of this bill.

Under California State law the SWP and the CVP are regulated by the State Water Resources Control Board and the Department of Fish and Game. HR 1837's provisions establishing the Accord as the standard of environmental protection for the Delta would apply directly to the federal agencies, but would not limit state agencies from acting under state law to establish different environmental standards. As a result, the SWP and CVP would be operated under different standards, with the likely outcome being a much more limited operation of the SWP.

Unless the application of a different standard under state law is preempted, the SWP may be required to carry the entire burden of the current Delta standards. KCWA is concerned that if HR 1837 passes without Paragraph 108(b), and the federal agencies reinstate the Accord standards for operation of the CVP, but the State agencies elect not to make their implementation of State law consistent with Paragraph 108(a), the State agencies will continue to require the SWP to meet the standards in the current biological opinions, even though those opinions have been rejected by the federal court. If the state agencies decide to continue implementing the standards in the biological opinions, the result will be imposition of the current standards and the SWP will lose significantly greater amounts of water than it does today as the entire obligation to meet the standards in the rejected biological opinions are shifted to the SWP. Such a result would significantly impact the national important economy of Southern California, and the nationally important agricultural production of the southern San Joaquin Valley, including Kern County which produces a high percentage of the nation's fruits, vegetables, and nuts for domestic consumption and for export. The inclusion of Paragraph 108(b) ensures that that State agencies do not impose different and duplicative standards on the SWP that interfere with this interstate commerce.

In recent weeks there has been some discussion among attorneys in California about the adequacy of the language of Paragraph 108(b). KCWA is participating in those discussions and will work to settle that legal question. If there is a need for amendments to the current language KCWA will work with the authors and the Subcommittee to ensure the language of Paragraph 108(b) is adequate to accomplish the purposes of HR 1837.

## **Title II**

Title II of the Act repeals the San Joaquin River Settlement (Settlement) and replaces it with alternative protections. KCWA is not a signatory to the Settlement and does not take a position on these provisions of HR 1837.

## **Title III**

Title III of the Act provides for the repayment of certain federal water supply contracts and the acceleration of repayment for others. KCWA does not hold either 9(d) or 9(e) contracts with the federal government and does not take a position on these provisions of the bill.

## **Conclusion**

In conclusion, on behalf of the Kern County Water Agency, I want to again thank the Subcommittee for investing their time and energy on this issue. California's water issues are difficult and complex, but ultimately solvable. Thank you for considering our input and for your efforts to resolve these issues.