

Kole Upton

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

“The San Joaquin Valley Water Reliability Act”

June 2, 2011

Testimony

Mr. Chairman and Members of the Subcommittee

It is an honor and privilege to appear before the Water and Power Subcommittee. I appreciate the opportunity to testify concerning the subject of the Hearing, “The San Joaquin Valley Water Reliability Act.”

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 sons, I grow wheat, corn, oats, cotton, almonds, and pistachios. The water essential to growing these crops comes from four sources: Friant Dam, Buchanan Dam, Merced Irrigation District, and groundwater. None of these sources by itself can provide enough water to sustain our area for the long term.

I am appearing as an individual and not as a representative of any of the water or agricultural organizations of which I am a board member. Today, I speak only for myself.

The bill, titled “The San Joaquin Valley Water Reliability Act”, offers a number of actions that provide a comprehensive regional solution to government-imposed water shortages. My testimony will focus on the section of the title identified as, “San Joaquin River Settlement – Repeal and Replace”.

In that the San Joaquin River provides the major portion of the surface water available to my farm and those of my neighbors, government actions relating to the San Joaquin River have been of critical importance. The most significant actions in the last 20 years involving the San Joaquin River are the Central Valley Project Improvement Act (CVPIA) and the San Joaquin River Settlement. .

The initial action leading to the Settlement began just before Christmas Eve in 1988 when an environmental coalition sued the United States and the Friant Water Users Authority challenging the renewal of the Friant water service contracts. The case stumbled along in Federal Court until the environmental coalition hit the jackpot with Judge Lawrence Karlton with its 7th amended complaint alleging that California Fish and Game code Section 5937 had been violated. That Law requires dams to which it applies to release or bypass adequate water to keep fish below it in “good condition”. Judge Karlton determined that Law to be applicable to Friant Dam despite Congressional mandates to the contrary, and was prepared to order water releases to implement that Law.

Although Friant Dam had a robust fishery for 40 miles below the Dam, it was frequently dried up at Gravelly Ford by the Congressional action authorizing the project. The Judge agreed with the environmental coalition that the appropriate solution was the re-introduction of a self-sustaining salmon fishery. This type of fishery requires the most water and would have the most detrimental effect on the current users of the water.

After appeals and settlement negotiations between the Parties failed, the Judge finally indicated he was ready to rule. However, prior to the court date, Senator Dianne Feinstein and Congressman George Radanovich asked the Parties: the environmental coalition, the Friant Water Users Authority, and the Federal Government, to try once more to reach a settlement.

Negotiators were appointed to represent all Parties. I was appointed by Congressman George Radanovich to be one of the two Friant negotiators. At the time, I was the Chairman of the Board of Directors of the Friant Water Users Authority. In the spirit of full disclosure, I am no longer Chairman and the Chowchilla Water District has not been a member of Friant for several years.

The basic parameters of the settlement involved two (2) co-equal goals. The first goal was to make a good faith effort to restore the self sustaining salmon fishery. The Parties recognized that even though this goal might not be achieved, the attempt itself was worth the cost to society. The second goal (The Water Management Goal) was to mitigate some or all of the water losses to the Friant service area that would be caused by pursuing the first goal.

An integral part of The Water Management Goal was the ability of the Friant service area to re-circulate some of the water used for fishery. The water could then be picked up by some of the Southern Friant districts as a water supply instead of water from Friant. As part of the Settlement, the Bureau of Reclamation agreed to study and implement this program.

Once agreement was reached among the Settling Parties, they reached out to the State of California and other water agencies to secure their satisfaction with the proposed Settlement. Agreement was reached and the Settlement was signed on Sept. 13, 2006. However, enacting legislation languished in Congress for several years before being signed by President Obama.

During the intervening years between the signing of the Settlement and the enactment of the legislation, some of the organizations in the environmental coalition filed lawsuits on Delta issues. The effect of these lawsuits was to greatly impair the Bureau of Reclamation's ability to re-circulate Friant's water. Therefore, the Water Management Goal of the Settlement can no longer be considered as 'co-equal' in this Settlement. Indeed, directly as the result of actions by several of the environmental signatories to the Settlement, it has been rendered unachievable.

It also must be pointed out that other parts of the Settlement are having troubles. For instance, the concept of 'no harm, no foul' to Third Parties regarding implementation of the Settlement is in serious doubt among those farmers along the San Joaquin River (and others). The seepage in to adjoining lands caused by the river restoration flows is "swamping crop roots" according to a recent article in the Fresno Bee (May 22, 2011).

The salmon restoration itself is also behind schedule and the question should be asked whether this effort warrants the expenditure of so much public money? Further, the publication released by NRDC, "In Hot Water", makes the point that cold water fisheries that are on the periphery of viability now will have even more difficulty in the future because of global warming. The flat and wide San Joaquin River is already on the periphery salmon viability, and thus according to NRDC is an extremely poor candidate for an experiment of this cost.

Therefore, I support the concept of a restored San Joaquin River offered by this Bill. What I can no longer support is the current Settlement that will wreak havoc upon the Friant service area by requiring farmers to further overdraft the underground aquifers to make up for the surface water lost to the Settlement. This Bill restores the River and also allows the Friant service area to get its water back. It saves the taxpayers hundreds of million of dollars, a fraction of which could be used to enhance existing salmon fisheries to produce exponentially more salmon than we will ever get from this experiment.

The bottom line would be a restored River, no water losses, and more salmon.

We have all heard the blather about support for this Bill being contrary to the “Blood Oath”, and the ensuing threats about the violation of such. The Friant districts and the Federal Government have complied with their obligations in the Settlement to date. In fact, the Friant districts went even further and re-financed their districts’ obligation to the Federal Government to provide funds for this Settlement.

It is the environmental coalition with their Delta lawsuits that have caused the implementation of the co-equal Water Management Goal to be in jeopardy. I am aware that their opinion is that the lawsuits are not a ‘technical’ violation of the Settlement. I respectfully disagree. I am also aware of the Federal and State politicians who have ‘leaned’ on Valley water agencies regarding paragraph 4 of the Blood oath, “4) their organization(s) pledge to oppose any amendments to said legislation that are not agreed to by all the organizations listed below”. I note that no Friant or Federal representatives are appearing today in support of the Bill, presumably honoring that Blood Oath.

Perhaps, it is time for legislators to determine what is best for society in this situation and not be intimidated in to continuing a Settlement that is exorbitantly costly, will not achieve either of its goals, and will wreak havoc on the East Side of the San Joaquin Valley.

Thank you for the opportunity to offer oral and written testimony.

Kole Upton