

SAN JOAQUIN VALLEY WATER PROVISIONS (Sec. 1475) IN THE FISCAL YEAR 2011  
CONTINUING RESOLUTION (H.R. 1)

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THE HONORABLE DEVIN G. NUNES  
OF CALIFORNIA  
IN THE HOUSE OF REPRESENTATIVES

February 17, 2011

MR. NUNES. Mr. Speaker, after four years of complete neglect by the Democratic majority, the San Joaquin Valley of California is in utter shambles. The previous Congress inexplicably and utterly failed to comprehend that shutting off the water supply to an agricultural economy would create economic devastation. As a result, unemployment rates rose to 20% and are as high as 40% in some parts of the Valley.

For the past several years, I have fought to restore the water flow and bring back the lost jobs. Every attempt I made to offer legislation was rebuffed by the Democrat majority. Instead, they chose poverty over prosperity and environmental activists over farm workers. The message sent to families in the San Joaquin Valley was that Congress doesn't care that hungry people stand for hours in food lines. It was more important to nourish a fish than nourish a child. In a final insult to the people of the San Joaquin Valley, carrots from China were among the food products provided in those lines.

Those dark days are coming to an end. A new dawn has come in the House of Representatives – one that will bring jobs and water back to the parched San Joaquin Valley. The bill before us today is the first step in that direction.

Over the last three years, the San Joaquin Valley has seen water supply cuts imposed and justified by draconian biological opinions on the delta smelt and salmon developed by the Fish and Wildlife Service (FWS) and the National Marine Fisheries Services (NMFS). The United States District Court for the Eastern District of California has held that these opinions are unlawful and illogical; the National Academy of Sciences has said those opinions are not supported by science.

With respect to the delta smelt biological opinion issued by the FWS on December 15, 2008, it has been remanded to the agency for preparation of a new biological opinion. The Court's December 14, 2010 decision identified an overarching legal flaw in the "reasonable and prudent alternative actions" proposed by FWS. Specifically, the Court found that the FWS failed to comply with its own regulations that govern the development and evaluation of reasonable and prudent alternatives. The Court held that "the RPA Actions manifestly interdict the water supply for domestic human consumption and agricultural use for over twenty million people who depend on the Projects for their water supply," and commented that, "Trust us' is not acceptable. FWS has shown no inclination to fully and honestly address water supply needs beyond the species, despite the fact that its own regulation requires such consideration."

The language that was included in Section 1475 of the bill (H.R. 1) before the House today was specifically addressed by the Court. The Court found that the delta smelt reasonable and prudent alternative Actions 1, 2 and 3 are scientifically flawed because of FWS's use of raw salvage numbers without accounting for changes in population abundance across years, was "scientifically inappropriate." The Court further found that "the PTM study does not justify the imposition of -5,000 cfs as an upper limit in Actions 1,2, or 3," and directed FWS "to perform an accurate scientific analysis and justify its ultimate decision regarding the imposition of a water flow ceiling."

Additionally, the Court found that FWS's finding that project pumping reduces delta smelt prey, despite serious criticism of the underlying analysis by FWS's own peer review panel "suggests another unlawful, results-driven choice, ignoring best available science." The Court said that FWS's attempt to blame the Central Valley Project and State Water Project for essentially all other stressors on the delta smelt population "has not been justified, nor is it logical or explained by any science." The Court also said the entire modeling method employed by FWS in the delta smelt biological opinion was flawed, arbitrary and capricious, and ignored the best available science, all of which indicated that "a bias was present." The Court concluded that because "the impacts of regulating Project Operations are so consequential, such unsupported attributions (a result in search of a rationale) are unconscionable."

With respect to the salmon biological opinion issued by the NMFS, on June 4, 2009, the Court granted a preliminary injunction against implementation of reasonable and prudent alternative Actions IV.2.1 and IV.2.3 – both of which are addressed in Section 1475 of H.R. 1. In its May 18, 2010 findings, the Court declared "there is little to no justification in the record for the exact flow ratios chosen for RPA Action IV.2.1." It explained that "the record does not support a finding that the specific Vernalis flow to export ratios imposed by Action IV.2.1. ... are necessary to avoid jeopardy and/or adverse modification to any of the Listed Species."

In addressing Action IV.2.3, the Court found "NMFS did not address relative population impacts in developing or explaining RPA Action IV.2.3." The Court ruled that "salvage data was not scaled for population size, which any prudent and competent fish biologist and statistician would have done, making NMFS' reliance on the salvage data scientifically erroneous." Also, the Court found that "[t]here are serious questions whether there is support in the record for the general proposition that exports reduce survival of salmonids in the interior Delta."

Last year, the National Academy of Science (NAS) issued a report on both of these biological opinions, including the reasonable and prudent alternatives imposed by each; the report was titled a "Scientific Assessment of Alternatives for Reducing Water Management Effects on Threatened and Endangered Fishes in California's Bay Delta." In particular, regarding the delta smelt biological opinion, the NAS found that "there is substantial uncertainty regarding the amount of flow that should trigger a reduction in exports." It also found "the historical distribution of smelt on which the relationship with OMR flows was established no longer exists. Delta smelt are now sparsely distributed in the central and southern delta ... and pump salvage has been extremely low, less than four percent of the 50-year average index."

Regarding Action IV.2.3 in the salmon biological opinion, the report concluded that "the threshold levels needed to protect fish is not definitively established." The report counseled that "[u]ncertainty in the effect of the flow triggers needs to be reduced, and more flexible triggers that might require less water should be evaluated." The report also found that "there is little direct evidence to support the position that this action alone will benefit the San Joaquin salmon" absent increased San Joaquin River flows. In reference to Action IV.2.1, the report found that while flows may help out migration, reducing the "effectiveness of reducing exports to improve steelhead smolt survival is less certain," and that there is a "weak influence of exports in all survival relationships."

As a final criticism of the reasonable and prudent alternatives in the two biological opinions, the report decried the lack of a "quantitative analytical framework that ties them together within species, between smelt and

salmonid species, and across the watershed. This type of systematic, formalized analysis is necessary to provide an objective determination of the net effect of the actions on the listed species and on water users.” The report found the lack of any such analysis to be “a serious deficiency.” As the NAS report observed, “[t]his issue has been raised repeatedly in peer reviews, but still has not been incorporated in the NMFS and FWS analyses.”

Despite what the opponents of turning on the pumps say, Section 1475 of H.R. 1 will not prevent the Bureau of Reclamation from complying with the Endangered Species Act in carrying out its vital function to deliver water supplies. Instead, Section 1475 is intended to enable the Central Valley Project to operate unencumbered by the proposed agency alternatives that the Court has already found do not comply with law and therefore should not be enforced.

Furthermore, the bill will ban federal funding for the restoration of the San Joaquin River during the 2011 fiscal year. This is the first step in efforts to replace the flawed billion dollar salmon run. It also demonstrates Congressional intent to suspend restoration flows for 2011, thereby keeping the water on the east side of the valley. Through the replacement of the existing restoration plan, we will be able to establish both an environmentally and economically responsible San Joaquin River restoration. This will include a year-round, live river on the San Joaquin but will also ensure a robust east side agriculture economy.

I call on my colleagues to support this bill and these vital provisions which will ensure that farmers in the San Joaquin Valley have water to irrigate their fields, grow crops that feed this nation, and put thousands of people back to work.