Distorted Water
2014
Dear Friends,

During the debate in Congress over the Sacramento-San Joaquin Valley Emergency Water Delivery Act, opponents have attempted to frame the debate with selective use of facts and outright dishonesty. I prepared this document because it is important for us to understand the distortions used to argue against reform and to respond to them with facts.

Sincerely,

Devin Nunes
Member of Congress
Congressman Devin Nunes is the author of the Sacramento-San Joaquin Valley Water Reliability Act of 2012 (H.R. 1837) and is co-sponsor of the Sacramento-San Joaquin Emergency Water Delivery Act of 2014 (H.R. 3964). The new legislation, authored by Rep. David Valadao and supported by the California GOP Delegation, offers a comprehensive solution to government-imposed water shortages and places into statute the landmark bipartisan agreement known as the Bay-Delta Accord.

**Water Recovery**
The bill restores water deliveries that were cut off by environmental lawsuits and overreaching federal regulation. The bill recovers the lost water that was dedicated to a failed $1 billion salmon restoration plan.

**A Reliable Water Supply**
The bill ensures water reliability by restoring long-term water contracts that were curtailed by environmentalists. The bill ensures a stable water supply by mandating compliance with the water accord agreed to by the State of California, the federal government, water agencies, and environmental organizations.

The bill streamlines environmental regulatory processes to speed up water reliability projects and transfers. The bill ends the bizarre effort to protect non-native species and focuses efforts on native species, thereby ensuring environmental water is used for a beneficial purpose.

**Cutting Costs**
The bill addresses the budget realities faced by all levels of government and terminates the ostentatious and misguided $1 billion salmon restoration program.

The bill reduces the debt by $521 million by incentivizing early pay-off of the Central Valley Project federal loan and reducing discretionary spending. It also eliminates a flawed river restoration program that is estimated to cost more than $1.2 billion.

The bill establishes transparency and accountability measures to protect taxpayers from frivolous spending on failed environmental projects.

**Secures All Water Rights**
The bill protects and secures all water rights that are senior to federal water rights. The bill also settles a long standing dispute over area-of-origin water rights.

**Setting the Record Straight: Distortions vs. Facts**

**DISTORTION:** California water shortages are simply the result of a serious drought.

**FACT:** California is a drought-prone state, which is why infrastructure was built to store and transfer water. Dry conditions and serious droughts are made far worse by the fact that federal water deliveries have not correlated with the actual availability of water.

In 2009, 84% of normal precipitation resulted in a meager 10% water allocation to people south of the Delta. In 2010, 110% precipitation resulted in a miserly 45% water allocation. In 2011, despite 198% of average snow pack, only 80% of water was allocated.

The correlation between the availability of stored water and actual deliveries of water has become inconsistent. Since 1953, final agriculture service allocations from the Central Valley Project have tracked overall CVP storage and therefore the availability of water to the system. However, in recent years CVP allocations have been made without reference to available supplies, which has reduced the ability of the system to mitigate against drought conditions as originally intended. There is no question that additional rainfall would reduce the suffering of San Joaquin Valley communities. However, even in years with full reservoirs, rushing rivers, and significant efforts to mitigate flooding, water users remained without full water allocations.

**DISTORTION:** This is an unprecedented attack on California’s right to regulate water. It is an assault on states’ rights.

**FACT:** At the invitation of the State of California, the Central Valley Project was built by the federal government nearly seven decades ago. At that time, the State of California relinquished its rights to any water produced by the federal project.
Since 1986, at the request of the State of California and by federal law, the Central Valley Project and the State Water Project are required to operate in coordination with each other. Therefore, any action taken by the federal government will impact state operations and any action by the state will impact federal operations. This is not a state preemption – it is required coordination. Furthermore, the Bay-Delta Accord signed in 1994 by California Governor Pete Wilson and Clinton Administration Secretary of the Interior Bruce Babbitt outlines explicit operations for the Sacramento and San Joaquin Rivers Delta. State compliance with the Accord cannot be labeled federal preemption when California is simply being held to a previous agreement - one that had strong bipartisan support.

Because the Central Valley Project and the State Water Project are unique and are not replicated anywhere else in the country, the actions prescribed in H.R. 3964 will not set a precedent that can be applied to other Reclamation projects. Furthermore, specific language added to the bill prevents it from being used as a precedent.

**DISTORTION:** Water contractors (farmers and communities south of the Delta) are using too much Delta water.

**FACT:** Most Delta water, about 76%, flows into the ocean and not to farms or urban water users.

In an average year, the entire state of California receives about 200 million acre-feet of water through precipitation. More than 50% evaporates into the atmosphere, percolates into the soil or is used by native vegetation. The remaining water, approximately 82 million acre-feet, flows into rivers. Of this amount, California dedicates 48% to the environment – the single largest use of water in California. The remaining water is used by agriculture (41%) and cities (11%). Of the water that reaches the Delta, the vast majority, approximately 76%, flows into the San Francisco Bay.

**Bay-Delta Water Utilization**

More than three quarters of the water that flows into the Delta reaches the ocean.

**Much of California is historically arid and dry. The bulk of the state’s 38 million residents live in communities that regularly experience low rainfall, and the state’s prime farmland is located in a region that was once desert-like.**

Early California leaders noted the inhospitable nature of large swaths of the state but also recognized its potential. They brought life and economic prosperity to the Golden State by constructing the world’s largest water delivery system - a system that allowed the Sacramento-San Joaquin Valley to become the world’s most productive agricultural region.

Once completed, the 54 state and federal reservoirs provided reliable water deliveries to farms and southern California communities using more than a thousand miles of canals. These water deliveries were made during periods of high rainfall as well as catastrophic droughts.
FACT: The Sacramento-San Joaquin Valley Emergency Water Delivery Act improves supply certainty for all users and restores the property rights of California water contractors.

The bill directs the Secretary of the Interior to operate the CVP with a strict adherence to state water rights law and the California Water Code. This includes CVP operations related to the Endangered Species Act. North of Delta users will benefit significantly from this reform.

The bill also affirms the senior water rights associated with contractors in the Sacramento Valley and resolves a long standing dispute over area-of-origin and Central Valley Project water rights.

FACT: The association between Delta pumping and fish populations is based on junk-science that was thrown out by the federal court (see Delta inflow and correlating Salmon population graph).

Other factors are likely to be far more significant to fish populations including waste water discharge from urban centers, predatory fish and ocean conditions that are cyclical and beyond our control.

Environmental extremists expect us to believe that we can restore smelt, salmon and other species by flushing massive amounts of fresh water into the ocean while ignoring other factors. The amount of water needed to "save" the environment is constantly being adjusted upward. Today, approximately 76% of Delta water flows into the ocean. When the Central Valley Project Improvement Act (CVPIA) was enacted in 1992, Delta environmental flows were increased by 1.2 million acre-feet. Since then, biological decisions on the Delta have raised this number to 3.4 million. Despite these major water diversions, none of the threatened or endangered species have recovered. In fact, since CVPIA became law more species have been listed, not less. Common sense demands we try something new.

Recognizing the lack of scientific support for water restrictions, the U.S. District Court overturned the biological decisions used to justify them. Specifically, the court ruled that the federal government failed to evaluate the human impact of water restrictions and that "the absence of explanation and analysis for adoption of [water pumping] limits uses no science, let alone the best available and is simply indefensible.”

The Court lamented that the federal government had not only violated the law in pursuit of water restrictions but that the expert witnesses chosen by the government provided no scientific basis for their views and behaved like zealots.

A full and honest examination of the available research shows that other forces are involved in the Delta’s environmental problems. For example NOAA, the federal agency that authored the infamous “killer whale” biological opinion, admitted during Congressional testimony that salmon and other species are being impacted by ocean conditions. In addition, there is extensive research that suggests that non-native species and urban wastewater is causing environmental degradation in the Delta.

FACT: The bill seeks to achieve measurable improvements to the environment through the application of evidence-based science.

To date more than $1.4 billion has been spent under the flawed Central Valley Project Improvement Act (CVPIA) on habitat restoration. These funds were distributed without adequate transparency or accountability, significantly reducing the likelihood that they will improve the Delta ecosystem. H.R. 3964 creates a framework for meaningful cooperation among stakeholders, establishes a process for the reliable delivery of water and replaces junk-science with evidence-based science.

The current management of the Delta ecosystem is conducted on an ad-hoc species-by-species basis that ignores the system as a whole and fails to account for the realities associated with California’s water infrastructure. Bizarrely, this includes ongoing efforts to protect non-native species that prey on native endangered species (see Delta Smelt vs. Predator Species graph on next page). There has been and will be no Delta ecosystem recovery under this model. Common sense demands that after 20 years of failure, Congress try something new.
Under existing law it is not the environment but environmental special interests that are thriving. A handful of activists have gained significant control over California’s water supply as water contractors are forced to engage in what amounts to regulatory whack-a-mole. Each time a settlement is reached, another issue arises with liability entirely born by one side—the farmers.

**FACT:** Fishermen are suffering from decades of failed policies advanced by the radical environmental movement. Evidence-based science does not support the contention that water exports are harming fish populations.

Existing policies have failed by any reasonable measure to restore health to native fish populations, yet water dedicated to the environment continues to rise. Common sense demands that Congress explore alternatives.

Fishery challenges are not being caused by Sacramento or San Joaquin Valley water users. There is significant evidence that a number of factors are causing declines, some of which are natural phenomena such as ocean conditions. Unfortunately, politics and not evidence-based science have focused the bulk of regulatory attention on Delta pumping for the past 20 years. The fact that the Delta ecosystem has failed to improve over this period demands a re-evaluation of the basic facts.

DISTORTION: H.R. 3964 favors farmers over fishermen, exacerbating fishery challenges that have caused massive unemployment in the fishing sector.

Despite the fact that there is no credible evidence that water users are causing fishery challenges, some in Congress have attempted to use salmon fishermen as an excuse to block any effort to improve water reliability in the Sacramento Valley or San Joaquin Valley. This is both inappropriate and disingenuous.

**REELING IN THE CASH**

Fishermen were reeling in government bailout checks, many over six figures, but were still able to use their boats and equipment for species other than salmon.

In sharp contrast, Hurricane Katrina Survivors received payments of $2,432.

“It may be the most generous aid package ever to come from Congress.” - CBS News.

**Salmon Fishermen Bailout Payments**

- 3 payments of $500,000
- 213 payments over $100,000
- Total Payments $230 million

**LINK TO CBS NEWS VIDEO**
While **government restrictions** have resulted in closed salmon seasons, fishermen were well compensated for the inconvenience. The 1,722 permit holding fishermen received bailouts totaling $230 million, representing more money per recipient than Hurricane Katrina survivors. Generous payments, courtesy of the American taxpayer, were also provided to businesses associated with the industry.

These payments, billed as disaster relief, were unprecedented. The $230 million in bailout payments were made to fishing interests despite the fact that the total economic impact of the closed salmon run was estimated by the Congressional Research Service at $57.9 million.

A unique form of “disaster relief,” the salmon fishermen bailout money replaced 100% of fishing income based on the recipient’s “best recent year,” resulting in six figure payouts for many. While receiving these payments, they were able to continue fishing for albacore tuna, rockfish, crab, slime eel and other species.

The facts demonstrate several things. First, fishery problems are not primarily the result of Delta pumping. The association between the two has been contrived by left-wing special interests. Second, fishermen who were ordered by the government not to catch salmon have received generous payments from the taxpayers for the losses they suffered.

Finally, coastal unemployment hardly suggests an economic catastrophe has hit as a result of fishery challenges. Coastal unemployment is below the state average and remains significantly lower than the water deprived San Joaquin Valley.

**FACT:** The striped bass is a non-native species in the Sacramento-San Joaquin Rivers Delta and is preying on salmon smolts and Delta smelt (species listed under the federal Endangered Species Act).

The California Department of Fish and Game, with the support of the Delta Stewardship Council, the Association of California Water Agencies, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, have attempted in recent years to modify existing striped bass fishing regulations. Their proposal would have increased the daily number of striped bass that could be harvested by sport fishermen and lowered the minimum length of harvested fish from 18 to 12 inches.

However, lobbying by the environmental community and the sport fishermen alliance resulted in the California Fish and Game Commission denying the proposal. This ensures predatory species continue to have a devastating impact on native endangered salmon smolts and Delta smelt species. Politics, not evidence-based science, is dominating current policy related to the Delta. H.R. 3964 will provide better protection to native endangered species.

**DISTORTION:** The recreational striped bass fishery and jobs associated with it will collapse.

**FACT:** Government imposed water restrictions have resulted in job losses which disproportionately impact certain communities. No study has shown that job losses haven’t occurred.

Yes, this is unprecedented because the federal government has been resistant to common sense and sound science.

The assumption that a hatchery born fish is different than a wild born fish is equivalent to assuming that a child born at home is genetically different than a child born at a hospital. This is federal bureaucratic lunacy.

**DISTORTION:** Hatchery born juvenile Chinook Salmon

**FACT:**: This is simply false. Quite the reverse is true because the bill replaces biological decisions that were found by the U.S. District Court to be unlawful.

Nothing in the bill would prevent completion of the BDCP, which is intended to be a voluntary habitat conservation plan under section 10 of the Endangered Species Act. It also should be noted that while H.R. 3964 does not undermine the BDCP, the State of California, through the State Water Board, is taking action to preempt the BDCP process. The Water Board intends to concurrently initiate revisions to the Sacramento River flows, Delta outflows and water project operations portions of its Bay/Delta Water Quality Control Plan before the BDCP analysis is finalized.

Moreover, a primary initiative of the BDCP is the authorization of construction of an isolated delta conveyance system. If this bill were enacted as written the construction of an isolated delta conveyance system will no longer be needed and will remove the number one complicating factor in finishing the BDCP process and implementing a voluntary habitat conservation plan.

**DISTORTION:** Job losses in the San Joaquin-Sacramento Valley are not due to water restrictions.

**FACT:**: Counting hatchery fish towards Endangered Species Act determinations is unprecedented.
the most conservative study demonstrated that thousands were driven to unemployment due to water diversions.

In 2009, water restrictions imposed on the San Joaquin Valley forced the diversion of more than 750,000 acre-feet of water from water contractors. This is enough water to irrigate 350,000 acres of land, which is approximately the number of acres fallowed on the westside of the San Joaquin Valley. This is land that had previously been in production with the support of full-time employees.

Had this land been cultivated, there would have been far less unemployment in communities like Firebaugh, Huron, Mendota and Tranquility. Estimates of job losses range from 4,500 to 30,000 and independent research has documented that 18 direct farm jobs are lost per 1,000 acre-feet of water that is diverted away from farms. This does not include the indirect job losses that result.

**DISTORTION:** Pre-empting State Fish and Game Code on the San Joaquin River is an invasion of states’ rights.

Not true - In 1986 California asked for and received federal preemption to ensure coordination of state and federal water projects.

At the invitation of the State of California, the Central Valley Project was built by the federal government nearly seven decades ago. At that time, the State of California relinquished its rights to any water produced by the federal project. Since 1986, at the request of the State of California and by federal law, the Central Valley Project and the State Water Project are required to operate in coordination with one another. Therefore, any action taken by the federal government will impact state operations and any action by the state will impact federal operations. This is not a state preemption – it is required coordination.

Furthermore, the Bay-Delta Accord signed in 1994 by California Governor Pete Wilson and Clinton Administration Secretary of the Interior Bruce Babbitt outlines explicit operations for the Sacramento and San Joaquin Rivers Delta. **State compliance with the Accord cannot be labeled federal preemption when California is simply being held to a previous agreement** - one that had strong bipartisan support. Because the Central Valley Project and the State Water Project are unique and are not replicated anywhere else in the country, the actions prescribed in H.R. 3964 will not set a precedent that can be applied to other Reclamation projects. The bill includes explicit language limiting its application to California.

Finally, this is an exercise of Congress’ rights under Section 1 of the Constitution’s 14th Amendment to enact legislation to ensure that private property is not taken without due process. Water can be acquired by federal and state agencies for the benefit of fish, but it will have to be acquired in a manner consistent with the just compensation clause of the Constitution’s 5th Amendment.

**DISTORTION:** H.R. 3964 undermines checks on the corporate greed of CVP water users by giving them 40 year contracts and eliminating tiered water pricing.

In 1992 CVPIA lowered CVP contracts to 25. Prior to that date, CVP contracts were consistent with all other Western water contracts and lasted 40 years. Tiered pricing was also established by CVPIA but has been universally recognized as having been a failure.

Restoring 40 year consistency in water contracts will promote the cer-
tainty required for long-term investment in jobs. The right of successive renewal is a critical component in long-term financing and planning for agricultural and urban water contractors.

Tiered pricing was included in CVPIA in 1992 to encourage water conservation, not to enrich the treasury. In reality, tiered pricing has become a punitive tax on water districts that try to expand conjunctive use. Repealing tiered pricing will expand groundwater banking, which will have both water supply and environmental benefits.

Finally, the label “corporate farm” is often placed on family owned and run farming in the San Joaquin Valley by people in Washington who have little or no understanding of what it takes to make a living in agriculture today. Environmental, regulatory and market conditions make small, traditional farms highly vulnerable. Many of our farmers have been forced to grow in size and efficiency to remain competitive. Despite this, however, they remain at risk on an annual basis to conditions outside their control.

Moreover, according to the American Farm Bureau Federation, “American farms are still what most people would call “family farms.” Today 98 percent of all farms are owned by individuals, family partnerships or family corporations. Just two percent of America’s farms and ranches are owned by non-family corporations.

DISTORTION: The Bay-Delta Accord is outdated.

FACT: If the Bay-Delta Accord can be tossed aside, then what is the use of negotiating any water agreement?

When the Bay-Delta Accord was signed by California Governor Pete Wilson, Interior Secretary Bruce Babbitt, Commerce Secretary Ron Brown, EPA Director Carol Browner, various local water agencies, and key environmental interest groups, Interior Secretary Bruce Babbitt said: “A deal is a deal, and if it turns out there is a need for ad-

DISTORTION: Regulatory streamlining by satisfying NEPA with the completion of CEQA is unprecedented and counter to other bill provisions which provide federal pre-emption.

FACT: First, see the distortion about “states’ rights” which dispels the idea the federal government is acting unilaterally on a highly integrated and coordinated project. Second, it has been the practice of the federal government to allow states to develop their own environmental protections.

Removing duplicative regulatory burdens at the federal level if the states’ requirements meet or exceed those required by the federal government is reasonable. Contrary to the coordinated operation of the Central Valley Project at the request of the State of California, state’s rights can be preserved by removing over-burdensome and duplicative regulations.

The procedural requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA) are identical. In fact, CEQA contains substantive provisions that are absent from NEPA. For example, under CEQA, a project cannot be approved without mitigation measures if there are feasible actions that will reduce the impact to less than significant.

The federal government deferring the responsibility of environmental protection to the state is not unprecedented. In the transportation sector the federal government passed the Surface Transportation Project Delivery Pilot Program (23 USC Sec. 327), which was part of SAFETEA-LU. This bill allows the state to take the responsibility for the environmental review of projects and streamlines the process to encourage investors and bring quicker completion of projects.

DISTORTION: Congress is breaking up an historic settlement of the San Joaquin River dispute with no support from the affected water users.

FACT: Congress must consider the views of all of the impacted parties and not simply court litigants when adjudicating what is in the public interest. Cities, counties, taxpayers and many others did not support the San Joaquin River settlement.
The enactment of the settlement legislation was jammed through Congress over the objections of many cities and counties that were impacted by the water loss. These folks were not party to the settlement and the solution was forced upon them. The only way the Pelosi-led Congress could enact the ill-advised San Joaquin River Settlement was to cram it in a massive omnibus lands bill.

**FACT: It is impossible to destroy a salmon fishery that hasn’t existed in the San Joaquin River for nearly seven decades.**

Even before Friant Dam was completed in 1942, the salmon that existed in the river was intermittent at best. H.R. 3964 will support a live river and a viable fishery, but it will not attempt to resurrect an extinct salmon run at a cost of $22 million per fish.

**FACT: Repealing $300 million in authorized appropriations will have no impact on farmers.**

The San Joaquin River Settlement, in which the funding was intended, is repealed in this bill. Therefore, the projects that were needed to restore a cold-water fishery will no longer be necessary.

**FACT: This is completely false because it benefits the taxpayers rather than farmers.**

This distortion ignores basic economics of the time value of money – “A dollar in hand today is worth more than a dollar promised at some future time”.

Currently, farmers do not pay interest on their share of the capital costs to construct the CVP. Therefore, they have absolutely no incentive to pay-off the obligation early. With the time value of money, taxpayers lose because the final repayment of these capital costs in 2030 will be worth less than an up-front payment today. By offering a discount on the prepayment of this obligation, the farmers have the incentive to repay the obligation early, and this will be a boon to the taxpayers.

The benefit to the farmers is minimal because they will have to issue interest bearing bonds to pay-off the federal loan. Current interest rates for highly rated agencies is approximately 6%, which is significantly higher than the treasury rate.
Central Valley Project is born: With the Rivers and Harbors Act of 1935, the federal government assumed control of the Central Valley Project and its initial features were authorized for construction by the U.S. Army Corps of Engineers.

Funds for construction of the initial features were provided by the Emergency Relief Appropriation Act of 1935 (49 Stat. 115). The project was authorized by a finding of feasibility by the Secretary of the Interior and approved by the President on December 2, 1935, for construction by Reclamation.

August 11, 1935

Construction begins: Construction of the initial units of the Central Valley Project begin in October 1937.

October 1937

Friant Dam construction begins: Griffith Company and Bechtel Company of Los Angeles were awarded the Friant Dam construction contract on a low bid of a little more than $8.7 million. Under contract terms, the firms had 1,200 days from October 1939 to finish the job.

October 1939

Friant Dam begins operations: Millerton lake can reach 520,000 acre feet at maximum capacity.

February 21, 1944

The case against Friant is born: California Fish and Game code 5937 is updated. The law mandates the owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.

1937

Construction begins: Construction of the initial units of the Central Valley Project begin in October 1937.

October 1937

NEPA created: Large Democratic majorities in the House and Senate help speed passage of the National Environmental Policy Act (NEPA) - leading to the establishment of the Environmental Protection Agency.

January 1, 1970

The Modern Environmental Movement is born: Rachel Carson publishes Silent Spring and successfully leads the effort to ban DDT - a chemical that had been instrumental in the eradication of malaria in the developed world.

September 1962


February 3, 1973

ESAs leads San Joaquin River Lawsuit: Fifteen environmental groups sued the federal government in 1988, arguing contract renewals should be subject to environmental review under provisions of the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA).

1988


Distorted Water Timeline (1930-1980)
CVPIA becomes law: Large Democratic majorities in Congress speed passage of the Central Valley Project Improvement Act, sponsored by Rep. George Miller (D-CA). The bill dedicated 800,000 acre feet of water to the environment.

Friant surrenders: Fatally flawed San Joaquin River Settlement Agreement is signed.

Minnows get protection: The Delta Smelt is listed under the Endangered Species Act as “threatened.”

Dry dirt and tumbleweeds: Congress enacts the San Joaquin River Settlement as part of a larger omnibus public lands bill. The legislation mandates a salmon-run on the river and leaves open-ended future water diversions from the region’s already dry communities.

Turn on the Pumps Act Defeated: Congressman Nunes’ HR 3105, the Turn on the Pumps Act, would have returned Delta pumps to normal operations. Democrats killed consideration of the measure (Roll Call 616).

Test Flows Begin: As the westside of the San Joaquin Valley is transformed into desert due to Delta pumping restrictions, the eastside of the valley begins to spill water from Friant dam to restore a long-gone fishery on the San Joaquin River. The river restoration sets the stage for massive water diversions that ultimately will mirror those of the westside.

Obama Ruling: The National Marine Fisheries Service ruled that Delta pumping was killing salmon, steelhead, sturgeon and killer whales.

U.S. District Court Rejects Junk Science: Judge Wanger declared that the federal government failed to evaluate the human impact of water restrictions and that “the absence of explanation and analysis for adoption of [water pumping] limits uses no science, let alone the best available and is simply indefensible.”

Sacramento-San Joaquin Valley Water Reliability Act The full House passes H.R. 1837, a comprehensive solution to government-imposed water shortages.

Emergency Water Provision Sought in Farm Bill by House Leaders Chairman Frank Lucas has presented a legislative fix in a bicameral conference committee to relieve the water crisis in the South Valley.