



December 14, 2009

The Honorable Jeff Bingaman, Chairman
Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510

The Honorable Lisa Murkowski, Ranking Member,
Committee on Energy and Natural Resources
304 Dirksen Senate Building
Washington, D.C. 20510
Transmitted via Facsimile to 202-224-6163

Re: Opposition to S 1759 [Senators' Feinstein and Boxer], Water Transfer Facilitation Act of 2009

Chairman Bingaman, Ranking Member Murkowski and Members of the Water and Power Subcommittee:

The undersigned oppose S 1750. As representatives of California fishing, river and environmental organizations we have worked for decades to achieve, in the words of the 1992 Central Valley Project Improvement Act [CVPIA] Public Law 102-575 Section 3401(f), "a reasonable balance among competing demands for use of Central Valley Project (CVP) water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors."

The stated intention of Senator's Boxer and Feinstein S 1759 is purportedly to smooth the transfer sale of water among irrigation districts south of the Delta by directing Interior Department officials to complete under "the most expedited basis practicable" all necessary environmental reviews and by lifting several safeguards that assure fish and wildlife protections that the 1992 Central Valley Project Improvement Act [CVPIA], PL 102-575 imposed on the water that a CVP contractor can transfer. The unfortunate effect will be a free pass for the Bureau of Reclamation and CVP contractors to resell taxpayer funded water and by-pass present laws designed to protect the environment and repair some of the environmental damage caused by the project.

According to BOR testimony, over 600,000 acre feet of water was approved under existing law this year for sale and transfer of water by CVP irrigators. For 57 years, the taxpayer-subsidized CVP has damaged fish, wildlife, natural river resources and damaged the economic livelihood of Indians, farmers, commercial and sport fishing in the San Francisco Bay-Delta and in rivers throughout California. The 1992 CVPIA protections still have not been implemented nor followed by the Bureau of Reclamation and now this legislation will undo even these modest provisions by allowing these taxpayer subsidized agricultural interests to profit from this public funded largesse at the further expense of our fishery resources.

We oppose the passage of S 1759. It strikes at the heart of the principal purpose of the CVPIA, co-authored by Senator Bill Bradley and Congressman George Miller, and signed into law 17 years ago by President George H. W. Bush. There is no evidence to support the purported problem that the legislation attempts to solve – unless the intent is to by-pass environmental protections that are part of the CVPIA.

We also are concerned about the unintended harm this legislation, if passed, can bring to the fish and wildlife resources of the San Francisco Bay-Delta and its estuary. We urge the bill be remanded to the Water and Power Subcommittee so the full effects and potential unintended consequences of the legislation can be analyzed. We are concerned that this legislation, if it should pass, will be contrary to its intended purpose, for three main reasons outlined below:

There is little or no evidence that the bill is needed, unless the purpose of the legislation is to get around existing safeguards.

If, as is asserted, this legislation is to benefit agriculture by reallocation of water resources through the sale of water only south of the Delta, then the authors should not object to inserting language that would require any such transfer sale be entirely and exclusively water that originates south of the Delta in the San Joaquin Valley. The authors have refused this simple change. Agricultural interests indicate there are insufficient water resources south of the Delta to “solve” their need for water. And yet these same taxpayer-subsidized corporate agricultural interests have yet to provide evidence to support how removing the safeguards enacted under the CVPIA will solve their water supply problems by allowing them to sell water to one another – unless they intend to further deplete water that Congress intended be used to remedy over 57 years of damage to the fisheries of the state.

Under the CVPIA legislation only **real water** that had been used on-farm for three years prior to enactment of the CVPIA is allowed to be sold for a profit outside of the congressionally designated service areas. [Section 3405(a) (1), subparagraph (A)] The purpose of these safeguards was to assure water being freed up for sale was “real water”, water beyond that which Congress intended to be used to meet the Secretary of Interior’s legal obligations to fish and wildlife protection and restoration of the San Francisco Bay-

Delta estuary or to the Trinity River, its communities and the Secretary's Tribal trust responsibilities.

Removing the Congressionally adopted safeguards will adversely impact the San Francisco Bay, the Sacramento-San Joaquin Delta Estuary, Tribal trust responsibilities and the economic health of the State of California

Congress allowed Central Valley irrigators to profit from taxpayer funded water supplies by selling their water provided that they followed federal obligations as outlined above. Also they could not use water that was intended to meet the Secretary's obligation under federal law to remedy and restore damage to fish and wildlife. Water diversions under the federal Central Valley Project have decimated salmon, steelhead and trout populations causing huge economic dislocations and putting many thousands of people out of work.

One of the CVPIA's major intended purposes was to rebuild the salmon population devastated by the water diversions by the Central Valley project contractors. To do this Congress required the Bureau of Reclamation to dedicated and manage 800,000 acre feet of water from the project annually to fish and wildlife populations damaged by operations of the Central Valley Project. Further Congress set a numeric goal for the Secretary of Interior to meet—a doubling of the salmon populations. Neither of these objectives has been met. Removing the CVPIA safeguards to allow these contractors to profit from the sale of this taxpayer subsidized water allows these federal contractors to undercut Congress's intent and mandates.

The Bureau of Reclamation has consistently failed to carry out Congressional directives.

Congressional action until now has been clear. The Secretary of Interior and the Bureau of Reclamation are not exempt from the Clean Water Act, the Endangered Species Act, the Central Valley Project Improvement Act and various other provisions of federal and state law. And yet the history of the Central Valley Project is replete with examples of how the project is operated in violation of the law and the intent of Congress. Court case after court case has found the Bureau of Reclamation in violation of the Clean Water Act, Endangered Species Act, and National Environmental Policy Act and in a landmark Supreme Court case, California water rights law. Only expensive, time-consuming legal effort has resulted in compliance and at times only additional court action has brought compliance with court orders.

And now under S 1759, the Bureau of Reclamation and these subsidized irrigators are asking Congress to change the law because they do not want to comply with the existing laws that would safeguard the environment if they were followed.

We urge that this legislation be remanded to the Water and Power Subcommittee to analyze the impacts of the legislation on the environment, groundwater aquifers, refuges, fisheries and water quality and to consider amendments to safeguard taxpayer funds that

have provided this water that will profit irrigators. Absent this action we urge the full committee not to pass this legislation.

Sincerely,

Jim Metropulos



Senior Advocate
Sierra Club California

Steve Evans



Conservation Director
Friends of the River

Byron Leydecker



Chair, Friends of Trinity River

Barbara Barrigan-Parrilla

Campaign Director
Restore the Delta

cc: The Honorable Dianne Feinstein, U.S Senate
The Honorable Barbara Boxer, U.S Senate
The Honorable Ken Salazar, Secretary of the Interior
The Honorable David Hayes, Deputy Secretary of the Interior
The Honorable Byron L. Dorgan
The Honorable Ron Wyden
The Honorable Tim Johnson
The Honorable Mary L. Landrieu
The Honorable Maria Cantwell
The Honorable Robert Mendez
The Honorable Blanche Lincoln
The Honorable Bernard Sanders

The Honorable Evan Bayh
The Honorable Debbie Stabenow
The Honorable Mark Udall
The Honorable Jeanne Shaheen
The Honorable Lisa Murkowski
The Honorable Richard Burr
The Honorable John Barrasso
The Honorable Sam Brownback
The Honorable James E. Risch
The Honorable John McCain
The Honorable Robert Bennett
The Honorable Jim Bunning
The Honorable Jeff Sessions
The Honorable Bob Corker