



Restoring the San Joaquin River

An update by Representative Devin Nunes

United States Congressman, California's 21st Congressional District November 2007

The San Joaquin River Settlement:

Challenges ahead and a call to action, By *Rep. Devin Nunes*

The background

I made a commitment to my district that I would do my best to achieve passage of a San Joaquin River Settlement agreement in Congress. Despite efforts to misrepresent my position, I have never opposed a settlement of this dispute. In my view, as long as the agreement is fair to the people who live and farm in our valley, it should be given a chance to work.

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Rep. Devin Nunes

I recognize that Friant is in a difficult position facing a hostile, activist judge who has indicated he will rule in favor of the environmentalists. Indeed, the judge has ruled that the only acceptable solution is a self sustaining salmon fishery. From my perspective, what is best for the Valley is an extension of the current taylor fishery that exists below Friant Dam. This could be accomplished quickly and without devastating effects on Valley residents and communities. But, as is so often the case in today's society, unelected radical environmentalists find sympathetic, appointed judges to order burdensome and harmful rulings on productive citizens.

Even though Friant is in a difficult situation, a deal was made at the behest of legislators. Now, this deal has been compromised due to the actions of the Natural Resources Defense Coun-

cil (NRDC) in the Delta Smelt case. Instead of demanding NRDC stand by the original deal, some of Friant seems content to accept any settlement in lieu of a court judgment.

I understand the dilemma of Friant directors. When this case started 18 years ago, their lawyers and consultants counseled them to stand and fight. Now, many of the same advisors are adamant that any settlement (no matter how flawed) is superior to going back to court. Although I dispute the fact that Friant water users' interests are served by the current proposal, which does nothing to achieve its own water management goal, Friant's support alone is not enough to convince me that our region's interests are served by the agreement.

As part of my effort to determine whether or not negotiators have crafted a deal that protects all of our interests, I have asked a lot of hard questions. This has frustrated those who expected the fanfare of a settlement to be followed by a rubber stamp in Congress.

What I have discovered during this process is that in an effort to rush a deal through Congress, some of the settling parties have consistently misrepresented facts concerning their deal to farmers and the general public.

The truth

The settling parties have repeatedly insisted that they intend to mitigate the problems associated with water being redirected from current uses. In testimony before Congress and in official correspondence, Friant, NRDC, and their champions have insisted that the river restoration goals and water management goals of the settlement are co-equal components. However, when

called upon to elaborate what co-equal means, we are provided ambiguous statements that indicate an unwillingness, at least on the part of NRDC, to make meaningful their commitment to the water management goal.

Below is one example of how the settling parties and their champions respond to questions about how the water management goal will be achieved. In one statement, California's Senators express their complete support for the co-equal status of river restoration and water management goal and they point to Friant's report as a means to achieve the goal of mitigating water loss. In another quote, Senator Feinstein **opposes** legislation necessary to move forward with Friant's water projects.

"We strongly agree that the water management goal is fully co-equal with the river restoration goal ...earlier this year Friant submitted a 76-page list of possible projects to implement the water management goal," - Senator's Dianne Feinstein and Barbara Boxer, responding to concerns expressed by Friant Water Users Authority Chairman Kole Upton, 9/2007.

In this statement and others, both senators seem to endorse Friant's water management report. The document contains a variety of water projects that have been described by Friant officials as "the solution" to reduced surface water supplies. Indeed, there are no other documents that explain how the water management goal could be met.

Because of the importance and reported co-equal status of water management and river restoration, I tried to find Friant's project list in the settlement agreement submitted to Congress.

(Continued on page 2)

(Continued from page 1)

According to the nonpartisan Congressional Research Service (CRS), “no specific water management projects are identified as part of the settlement, nor is it clear how funding under the settlement would be divided between efforts to achieve the restoration goal and efforts to achieve the water management goal.” In fact, nowhere in the two pages generously devoted to the water management goals are there any water projects specified or authorized. At the same time, more than 18 pages of the settlement document are devoted to river restoration and the specific actions that will be undertaken to achieve that goal.

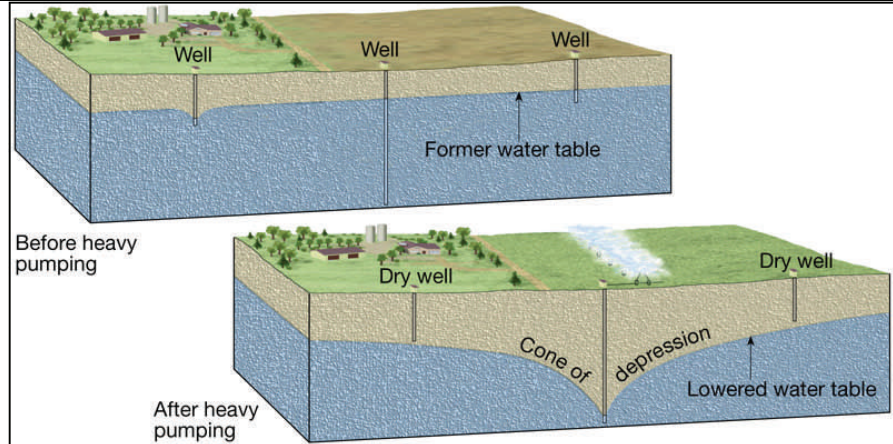
You don’t have to be a skeptic to be suspicious when someone tells you that they have a plan to deal with a problem, but will not put it in writing, or in this case in their legislation.

In an effort to further explore the theory of the co-equal nature of water management and river restoration, I introduced the San Joaquin River Settlement Water Management Goal Implementation Act. The bill is simple. It does nothing more than authorize the water management projects Friant references in the report it submitted to Congress. Furthermore, it provides this authorization only if projects are deemed to be feasible.

The reaction to the introduction of this legislation has provided me further evidence that the claims made by Friant, NRDC and its supporters are untrue. There will be no serious efforts to resolve the water supply shortages resulting from implementation of the settlement. This is a recent quote from Senator Dianne Feinstein:

“I don’t believe this is the way to proceed (referring to my proposal to authorize Friant’s projects). The focus right now should be on restoring the San Joaquin into a livable river, enacting the settlement and meeting both the river restoration and the water-management goals,” - Senator Dianne Feinstein, Visalia Times Delta, October 6, 2007

What the Senator is telling us, in Washington DC beltway talk, is that there will be no water management



Increased groundwater pumping will degrade groundwater quality, especially for public water systems and domestic and agricultural wells currently of marginal quality.

projects as outlined in Friant’s report. At least, that is, none that the federal government will be involved with. So, the question remains. What do Friant and NRDC have in mind when they claim river restoration and water management are to be co-equal priorities?

The consequences

Knowing that we will not recover water diverted for river restoration, it is important to understand the likely consequences.

The nonpartisan CRS estimates that the average annual reduction in water deliveries is 225,000 acre-feet. However, averages are misleading. For example, Friant operates in a Normal-Dry and Normal-Wet water year, as identified in the Settlement, 60% of the time. In these years, the average water delivery reduction would be 302,000 acre-feet .

It is important to note that water supply reductions caused by the settlement will not be felt equally across our region. The legislation is silent on this important detail. Therefore, water districts will experience losses depending on the nature of their water supply contract. Many communities on the East Side of the valley with junior water rights with Class II contracts or that rely on Section 215 water will bear the brunt of the impact associated with lost water. They and others will be forced to find alternatives to current surface water deliveries. With surface supplies already over-prescribed, this means increased ground water pumping.

Local communities throughout our region have testified that, absent changes to the settlement, serious problems lie ahead for the residents of val-

ley communities. City and county officials have objected to the Friant / NRDC legislation because it fails to address substantial regional water supply challenges that will be aggravated by the settlement.

Furthermore, many other organizations have stepped forward to express their concerns. The San Joaquin River

Tulare County Board of Supervisors
“The settlement represents a significant economic and environmental challenges to our communities...For this reason, changes need to be made to the Settlement Agreement before it becomes law to address the human impacts,” - Resolution of the County of Tulare, January 9, 2007

Kern County Board of Supervisors
“While the Settlement Agreement contains assurances that the settling parties intend to deal with the problem of reduced surface water deliveries, it provides no concrete plans to address these projected water losses...The Board urges federal legislators to work to include language in the San Joaquin River Settlement implementing legislation that addresses losses in surface water and groundwater supplies,” - Official Resolution of the County of Kern, January 24, 2007

The City of Lindsay
“...the City of Lindsay receives on average 70% of its municipal water supply from the Friant system...any changes to water deliveries from Friant will undermine the very foundation of our economy and threaten the survival of our community,” - Official Resolution, City of Lindsay January 9, 2007

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Task Force transmitted a letter to Congress, following the testimony of an NRDC representative in the Delta Smelt Case. The letter expressed grave concerns about the inconsistencies of NRDC's position on the settlement and their expert's testimony in the case.

NRDC's expert (Dr. Peter Gleick), testified in the Delta Smelt case that West Side losses could be replaced by Friant water. This is the same expert that said agricultural users in Friant were wasting 20% of the water which could be dedicated to river restoration. The settling parties have told us that negotiations

were done in good faith, yet one year after the settlement was signed we see NRDC targeting Friant water again. Therefore, does anyone really believe NRDC is serious about helping us get our water back?



The future

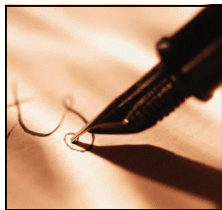
With all of the evidence suggesting serious water supply challenges associated with the settlement, and an unwillingness on the part of settling parties to put their water management plans in legislation, it is important for us to make our voices heard.

While there have been many missed opportunities, I will continue to demand that the restoration and water management receive equal priority and I will vigorously fight any proposal before Congress that does nothing more than pay lip service to our regional water challenges.

Devin Nunes
Devin Nunes
Member of Congress

Missed Opportunities

In August of 2006, the Friant Board of Directors voted unanimously to approve their participation in the settlement of their 18-year legal battle with the Natural Resources Defense Council. Since then, despite events that have fundamentally changed the deal, the settling parties have summarily rejected all efforts to provide concrete solutions that allow the water management goals to be achieved. None of the offers or suggested changes to the settlement have ever been officially voted on by the Friant Board of Directors.

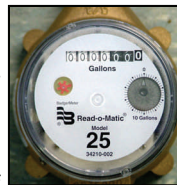


October 2006: The settling parties negotiated an agreement with third parties, offering protections from the settlement and its implementing legislation. No official approval by the Friant Board.

December 2006: I offered a complete legislative alternative, supported by key House leaders, that would have terminated the settlement and replaced it with Congressional action. It would have provided sufficient flows to restore the river and mitigated for groundwater impacts. Summarily opposed by the settling parties without a vote of the Friant Board.

February 2007:

A proposal was put forward to develop a water conservation program which would have consisted of voluntary and temporary forbearance of irrigation. Payments would have been provided to landowners. Furthermore, if the implementation of the water conservation program did not adequately mitigate adverse water supply impacts then a voluntary program of permanent land retirement would be instituted as a measure of last resort. Summarily opposed by the settling parties without a vote of the Friant Board.



February 2007: A proposal was put forward to transfer the San Luis Unit on the West Side into private hands and replace water that will be lost by Friant contractors as a result of the San Joaquin River Settlement. The Westside would have relinquished its claim to more than 400,000 acre-feet of Central Valley Project water, making available on an annual basis an average of 100,000 acre-feet for Friant's use. Summarily opposed by the settling parties without a vote of the Friant Board.

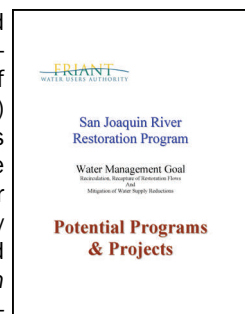
March 2007: Tulare County Supervisor Allen Ishida proposed an amendment that would have authorized a feasibility study and construction of pumping and conveyance facilities on the main stem of the San Joaquin River to meet the

water management goal. Summarily opposed by the settling parties without a vote of the Friant Board.

May 2007: A proposal was put forward to provide a legal action alternative. In this case, the proposal would have allowed anyone to sue the Secretary of Interior to compel him/her to implement the water management goal in the settlement. If the water management goal was not implemented then impacted parties would be afforded the right to seek damages. Summarily opposed by the settling parties without a vote of the Friant Board.

October 2007: I proposed legislation to authorize projects to meet the water management goal. The bill would authorize feasibility studies and possible construction of (if found feasible) all the projects included in the Friant Water Users Authority document titled "San Joaquin River Restoration Program -

Water Management Goal: Recirculation, Recapture of Restoration Flows and Mitigation of Water Supply Reductions - Potential Programs & Projects." The settling parties have yet to take an official position on this legislative proposal.





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PUBLIC DOCUMENT—OFFICIAL BUSINESS

Unless the people of the San Joaquin Valley hold their representatives accountable, Congress will move forward with a flawed plan to restore the San Joaquin River.



WASHINGTON, DC OFFICE

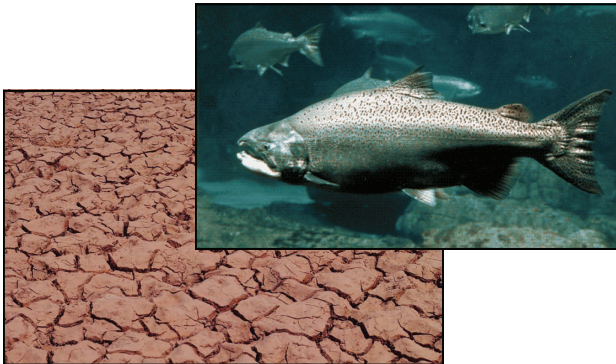
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We need to restore the San Joaquin River but not at the expense of our region's water supply and economy.