

Republican bill sparks war of words over Calif. water fight

Anne C. Mulkern, Environment & Energy Publishing, 6-3-11

A House bill would trigger a "water war" in California, a Democratic congressman charged yesterday -- while a GOP lawmaker countered that the measure would end ongoing fights over water uses.

The word battle came during a House Natural Resources Water and Power Subcommittee hearing on H.R. 1837, a bill from Rep. Devin Nunes (R-Calif.) that would overturn an agreement for water use in the San Joaquin River. That settlement became federal law when Congress in 2009 passed legislation that codified a court settlement.

"Are you guys kidding me?" Rep. John Garamendi (D-Calif.) asked Republican subcommittee members at the hearing. "Do you really want to start a serious water war in California? This is really, really terrible public policy."

Subcommittee Chairman Tom McClintock (R-Calif.) asked witness Thomas Birmingham, general manager of the Westlands Water District in Fresno, Calif., whether the current water accord had actually ended battles.

The fight that the 2006 settlement had presumably ended bounced back into the court three years later, Birmingham said, noting that a new lawsuit had been filed every year since.

"This legislation would actually conclude those water wars," McClintock said, to which Birmingham responded, "Yes it would."

Called the "San Joaquin Water Reliability Act," H.R. 1837 would void that 2006 settlement, which attempted to end an 18-year-old battle over water flows, salmon and endangered species in the San Joaquin River. The Natural Resources Defense Council and others had sued the Interior and Commerce departments over rules in place in the early 1990s. Under the 2006 agreement, new limits were placed on the amounts of water certain farmers can take for irrigation.

Sen. Dianne Feinstein's San Joaquin River Restoration Settlement Act was included in the Omnibus Public Land Management Act of 2009.

Since then, there have been several efforts to undo the California Democrat's measure.

Nunes' bill also would eliminate an existing tiered pricing system for water use. It would change water contracts so they last 40 years instead of 25 and would eliminate a requirement that new and renewed contracts must undergo an environmental impact study.

The Nunes measure puts into place rules that existed in 1994 in an agreement known as the Bay-Delta Accord. The measure sets compliance with the Endangered Species Act to that year.

McClintock said that existing rules were not scientifically based and that a long drought in California's Central Valley was "man-made." He and other GOP members said that current rules made fish more important than people. The lawmakers said farmers could not grow enough food and could not hire additional workers because of water restrictions.

"Protecting endangered species is a worthy goal and worthy goals need to be pursued with common sense and sound science, not left-wing ideology and junk science," McClintock said. "We need to ask whether the

enormous wealth consumed by these policies has made any significant contribution to enhancing endangered populations."

Democrats said that the Nunes measure was dangerous on multiple levels.

"This bill would radically change the way we balance water and the environment in California," said Rep. Grace Napolitano (D-Calif.), subcommittee ranking member. "New federal rules would override state law, exempting certain agricultural water users from following environmental restrictions or from having to contribute to the health of our natural water sources, as other users do.

"Creating this special privilege would push the costs of climate change and environmental damage onto all the other water users across the state," Napolitano said.

She and other Democrats also said that by pre-empting state law, the measure would set a dangerous precedent.

McClintock and others pilloried the pre-emption charge.

"The left never complains when the federal government pre-empts states seeking relief from overly burdensome federal regulations but it becomes selectively offended when the federal government pre-empts 'greens gone wild' regulations typical of states like California," McClintock said. "But in either case, they ignore the long-established fact that when the federal government participates in a project it takes supremacy over issues arising from that project."

Witnesses at the hearing said that the settlement hurt farmers who cannot get enough water for crop irrigation.

In addition to state-imposed limits, new opinions issued by the National Marine Fisheries Service and the Fish and Wildlife Service have reduced water allotments even further, said Jim Beck, general manager of the Kern County Water Agency in Bakersfield, Calif.

"Under these conditions, making the best possible use of our existing surface and ground water supplies has become our most important objective," Beck said. "But if we are to do that effectively, the state and federal governments must do a better job of balancing ecosystem and water supply needs in the Delta. H.R. 1837 takes significant steps toward that end."

Witness John Laird, secretary of California's Natural Resources Agency, said that throwing out the 2006 settlement would inevitably leave the state's water issues unsettled.

In addition to pre-empting the state's right to manage its water, Laird said, "this bill would also overturn the San Joaquin River Restoration Act, an act that resolved an extremely divisive controversy in a way that was supported by all sides," Laird said. "By overturning the act 1837 would almost certainly send that controversy back to court where the consequences of litigation would be unknown."

The bill if it passes the House is likely to hit some opposition in the Senate.

"I strongly oppose this bill, which I believe is dramatic overkill," Feinstein said in an emailed statement. "Its reverberations would include waiving the state and federal Endangered Species Acts for water pumping from the Delta and the return of many environmental regulations to 1994 levels."