CVPIA

OVERSIGHT HEARING

BEFORE THE

SUBCOMMITTEE ON WATER AND POWER

OF THE

COMMITTEE ON RESOURCES
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

ON

THE PROGRESS OF THE DEPARTMENT OF THE INTERIOR IN IMPLEMENTING THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT

MARCH 20, 1997—WASHINGTON, DC

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PROGRESS OF THE DEPARTMENT OF THE INTERIOR IN IMPLEMENTING THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT

THURSDAY, MARCH 20, 1997

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON WATER AND POWER,
COMMITTEE ON RESOURCES,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:10 p.m., in room 1334, Longworth House Office Building, Hon. John T. Doolittle (Chairman of the Subcommittee) presiding.

STATEMENT OF HON. JOHN T. DOOLITTLE, A U.S. REPRESENTATIVE FROM CALIFORNIA; AND CHAIRMAN, SUBCOMMITTEE ON WATER AND POWER

Mr. DOOLITTLE. The Subcommittee on Water and Power will come to order. This Subcommittee is meeting today to hear testimony concerning progress of administrative solutions to implement the CVPIA. We are familiar with the five-minute rule and so forth.

This is the third in a series of oversight hearings dedicated to progress reports by the Department of the Interior on its efforts to resolve the ongoing implementation problems under the Central Valley Project Improvement Act.

Reclamation officials originally informed the Subcommittee in July of 1995 that administrative solutions would be implemented by October of that year. In August of that year we were informed that such solutions could be implemented by the end of that year.

And then in September of '95, Deputy Secretary of the Interior Garamendi personally met with me and requested that I delay action on the CVP reform bill, which I had introduced in July of that year, for six months in order for the Administration to work out solutions. The Garamendi process resulted in more than 100 meetings between September of '95 and the end of March '96.

A year ago, after all of those meetings and months of administrative discussions, Deputy Secretary Garamendi, at our April 18, 1996, oversight hearing on CVPIA implementation said that he could finally commit to a schedule.

And that schedule called for, first, the release of draft administrative solutions and an administrative action schedule by mid-June '96; second, the release of the draft CVP Programmatic EIS in August of '96; and, third, the conclusion of the revised administrative solutions by September 16, '96.

With great expectation, we asked for a progress report by the Deputy Secretary at our September 12, 1996, hearing on the administrative implementation of CVPIA. Unfortunately, he reported that the draft EIS was not released in August and, as yet, there has been no date announced as to when it will be forthcoming.

As to the final proposed administrative actions and a schedule for their implementation, he reported that they would not quite make the September 16, '96, deadline but they would certainly be done by the end of the year. After nearly two years of sliding deadlines, claims that administrative solutions lie just around the corner, and requests to forbear on legislation, surely, I hope, he can now report he has developed most of the administrative solutions.

After hearing from the various interest groups, however, there is a concern that the issues remain unresolved, and in many cases not even addressed. Drafts of position papers often simply restate the various alternatives or call for yet more meetings. This can hardly be called success or a resolution of the issues, or even a credible process for resolution.

Additionally, I am concerned that the Department of the Interior has delayed the release of the Draft CVP Programmatic EIS, which Mr. Garamendi proposed a year ago would be released in August of '96. Even that date was a significant delay, since the CVPIA required completion of the EIS by October 1995. Interior is now 18 months beyond the legal deadline.

Unfortunately, controversy also still surrounds annual water allocations. When the December 1994 Bay-Delta Accord was signed, many water users thought they had obtained certainty of supply for those three years and a commitment to an open process for implementation.

There continues to be real concern about the role and responsiveness of the U.S. Fish and Wildlife Service in this process. There is a developing consensus among the stakeholders, and even concern expressed within Interior that the Service is not working to resolve the issues, that policy is being set by administrative staff rather than managers or elected officials, and that there is no real plan to correct these problems.

Release of the anadromous fish restoration program has also been delayed. It, too, was supposed to be developed within three years of the October 1992 enactment of the CVPIA. The Department is now only saying that it will be released this spring.

Against this backdrop is a curious commitment by the Department to insist on early renewal of contracts by the CVP contractors under the CVPIA. Interior seeks to use those renewals to introduce new conditions. Yet all of the underlying deadlines have been allowed to slip and the factual information on which to base the contracts has not been developed.

It is amazing that the Department is willing to be so selective and I might add capricious about which deadlines it respects and which it does not. Mr. Secretary, I look forward to hearing from you today. I recognize the gentleman from California, Mr. Miller.

[The statement of Mr. Doolittle follows:]

THE HONORABLE JOHN T. DOOLITTLE, CHAIRMAN, A REPRESENTATIVE IN CONGRESS FOR THE STATE OF CALIFORNIA

This is the third in a series of oversight hearings, dedicated to progress reports by the Department of the Interior on its efforts to resolve the ongoing implementation problems under the Central Valley Project Improvement Act (CVPIA).

Reclamation officials originally informed the Subcommittee in July of 1995 that administrative solutions would be implemented by October 1995. In August 1995, we were informed that such solutions could be implemented by the end of that year.

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Unfortunately, controversy also still surrounds annual water allocations. When the December 1994 Bay/Delta accord was signed, many water users thought they had obtained certainty of supply for those three years and a commitment to an open process for implementation.

There continues to be real concern about the role and responsiveness of the Fish and Wildlife Service in this process. There is a developing consensus among the stakeholders, and even concern expressed within Interior, that:

the Service is not working to resolve the issues,
policy is being set by administrative staff rather than managers or elected officials, and
there is no real plan to correct these problems.

Release of the anadromous fish restoration program has also been delayed. It, too, was supposed to be developed within three years of the October 1992 enactment of the CVPIA. The Department is now only saying that it will be released "this spring."

Against this backdrop is a curious commitment by the Department to insist on early renewal of contracts by the CVP contractors under the CVPIA. Interior seeks to use those renewals to introduce new conditions. Yet all of the underlying deadlines have been allowed to slip and the factual information on which to base the contracts has not been developed. It is amazing that the Department is willing to be so selective and capricious about which deadlines it respects and which it doesn't.

I look forward to hearing from the Deputy Secretary today.

STATEMENT OF HON. GEORGE MILLER, A U.S. REPRESENTATIVE FROM CALIFORNIA

Mr. MILLER. Thank you. Thank you, Mr. Chairman, and thank you for holding these hearings and to our witnesses for agreeing to appear. I think it is important to remember that we passed the CVPIA nearly four and one-half years ago, we did not expect implementation overnight.

This law is a major reformation of the largest reclamation project in history. We did our best to include reasonable provisions to give water users and others plenty of time to make adjustments to the new law. We tried to plan for problems that might delay implementation and we tried to give the Secretary the flexibility he needs so he could make the bureaucracy more responsive to the requirements of the new law.

I am prepared to argue that CVPIA is in fact properly being implemented though probably at a slower pace than I might have hoped for several years ago. We did not anticipate the immediate legal challenges to the law. In fact, I think it was under legal challenge longer than this process has been engaged in.

We may have underestimated the scientific complexities of some of the restoration goals. These things take time to resolve. While we need to continue to press for timely implementation of the law we should not set impossible deadlines or unreasonable goals. If we do that, we run the risk of shortchanging the resources we set out to protect when we passed the CVPIA.

That would be detrimental to our resources, our citizens, and our State. As we implement CVPIA, we are modifying decades of harmful policy and affecting many major interests throughout the State. We now have a stakeholder process that is making progress and we have to give it reasonable amounts of time.

If it is to find the guidelines and targets we cannot impose arbitrary drop dead dates that would provide a means for undercutting the law. We should continue to keep the pressure on through the hearings and stakeholder process. I also want to touch on the relationship between the CVPIA and the Bay-Delta CALFED process by noting that the success of Bay-Delta CALFED process will not happen if we cannot make CVPIA work.

In fact, Bay-Delta exists because of CVPIA, not the other way around. There are some who would prefer to ignore CVPIA or try to frustrate its implementation offering the excuse that Bay-Delta will take care of everything. I categorically reject that notion.

Bay-Delta is a process. The CVPIA is the law. The Secretary is required to proceed with the prompt and thorough implementation and I hope he will enjoy the support of all interested parties as he proceeds and I look forward to continuing this discussion. I think that these periodic hearings are helpful in terms of moving the process along and airing the grievances that various parties have from time to time. And Deputy Secretary Garamendi, we welcome you.

[Press release issued by Honorable George Miller, a Representative in Congress from the State of California follows:]

FOR IMMEDIATE RELEASE THURSDAY, MARCH 20, 1997

Contact: Daniel Weiss
202/225-2095 James Snyder

Miller Cautions Against Reversing CVPIA

Rep. George Miller today urged colleagues and Interior Department officials alike to maintain headway in implementing the Central Valley Project Improvement Act, reclamation legislation that is helping to restore fish and wildlife to the watersheds, rivers, lakes and tributaries of the San Francisco Bay.

In a hearing of the Resources Committee Subcommittee on Water and Power Resources regarding the status of CVPIA Miller acknowledged the complexity and controversy of the legislation, which he authored. But he warned that turning back the clock would reverse years of progress since the legislation was passed in 1992.

"As we implement the CVPIA, we are modifying decades of harmful policy and affecting many major interest throughout the state," Miller said. "We now have a stakeholder process that is making progress, and we have to give it a reasonable amount of time."

The CVPIA, passed by Congress and signed into law in October 1992, mandates that 800,000 acre-feet of yield from the CVP be dedicated primarily to fish and wildlife restoration. A major program resulting from the legislation is the Bay-Delta process, which has had dramatic success in restoring fish to the Sacramento River Delta and the San Francisco Bay.

"There are some who would prefer to ignore the CVPIA or try to frustrate its implementation, offering the excuse that Bay-Delta will take care of everything," Miller warned. "I categorically reject that notion. Bay-Delta is a process. The CVPIA is the law."

The Central Valley Project is a major Federal water project channeling water from the Sacramento and San Joaquin Rivers. It involves a system of 20 dams and reservoirs, canals and powerplants and provides irrigation water to 3 million acres of farmland and more than 2 million Californians. Its hydroelectric capacity is 2,000 megawatts.

Mr. DOOLITTLE. We have with us as really our primary witness, Deputy Secretary of the Interior, the Honorable John Garamendi. He is accompanied today by Mr. Roger Patterson, Regional Director of the Mid-Pacific Region, Bureau of Reclamation, and Mr. Dale Hall, who is Assistant Regional Director, Ecological Services, Pacific Region, U.S. Fish and Wildlife Service.

Mr. Secretary, I know that you are the witness but as you and I have discussed we may have questions being commented upon by your associates so may I ask, please, all of you to rise and we will administer the oath and proceed.

[Witnesses sworn.]

Mr. DOOLITTLE. Let the record reflect each answered in the affirmative. I think that you gentlemen, having been here many times before, are familiar with the five-minute rule, and with that, Mr. Secretary, we will invite you to offer your statement.

STATEMENT OF HON. JOHN GARAMENDI, DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR; ACCOMPANIED BY ROGER PATTERSON, REGIONAL DIRECTOR, MID-PACIFIC REGION, BUREAU OF RECLAMATION; AND DALE HALL, ASSISTANT REGIONAL DIRECTOR, ECOLOGICAL SERVICES, PACIFIC REGION, U.S. FISH AND WILDLIFE SERVICE

Mr. GARAMENDI. Thank you, Mr. Chairman and members of the Subcommittee. It is always a pleasure to be here at these periodic hearings to address our progress in the Central Valley Improvement Act. We are on the homestretch in addressing most of the issues that have arisen regarding the implementation of the CVPIA, and I certainly appreciate the continued interest and oversight.

This afternoon I would like to briefly describe for you the progress we have made on many fronts this past year in implementing the provisions of the CVPIA. I will then summarize for you the status of the administrative proposals and close with a discussion of the relationship between the CVPIA and the CALFED Bay-Delta Program.

The accomplishments of 1996 and 1997. The flood flows created by the massive January storms will enable the Bureau of Reclamation to provide full water supplies for agricultural and urban contractors, wildlife refuges, and the aquatic environment.

At the same time, supplies will be available for accomplishing the fish restoration flows recommended by the Fish and Wildlife Service as part of an adaptive management program under the CVPIA. We are, with others, repairing the levees and working to reduce damage from future floods. At the same time, we are working to identify ways in which these actions can create opportunities for environmental restoration in the Bay-Delta.

The Shasta Temperature Control Device, the first of its kind, has now been completed. On Friday, February 28, 1997, the Temperature Control Device was operated for the first time for cool water conservation. The TCD gives Reclamation the flexibility to provide cooler water temperatures in the upper Sacramento River and optimize the quality of water releases for downstream salmon without bypassing the powerplant.

Reclamation, the Service, and other cooperating Federal agencies are reviewing a draft PEIS which is scheduled for release in June. This draft includes descriptions and impact analyses for the New Alternatives 3 and 4, which were developed based on public input and discussed at meetings held November 21, 1996, and January 21, 1997. The New Alternatives 3 and 4 both incorporate the most current flow objectives for CVP-controlled and non-CVP streams based on the Service's AFRP.

Reclamation finalized the 1996 Criteria for Evaluating Water Conservation plans and we used these new criteria to evaluate water districts' conservation plans. These criteria were first developed in '93 as a requirement of CVPIA. Sixty water districts already have plans that meet these criteria.

In December an important step was taken in the process leading to the construction of a new fish screen for the Glenn Colus Irrigation District pump station at Hamilton City. Representatives from the Reclamation, the Service, and National Marine Fisheries Service, and State agencies agreed upon a proposed plan which will be identified and fully analyzed in the EIS EIR.

It is anticipated that this will be released to the public in the spring, with public meetings scheduled during the spring and summer months. After consideration of the comments, a final decision on the alternative to be built will be made and, if all goes well, construction should begin in 1998.

In addition, the Service expects to release the AFRP this spring. Release of the plan was originally delayed while the AFRP developed and refined guidelines and objectives for use of water management tools provided by the CVPIA. Development of these guidelines and objectives were highlighted in two public workshops in October.

Although the final restoration plan is still being drafted, efforts to implement sections of the CVPIA that contribute to restoring natural production of anadromous fish are continuing as they have over the last several years. These include modifying CVP operations, managing Section 3406(b)(2) water, acquiring water, installing and operating the temperature control device at Shasta, restoring and replenishing spawning gravel, and screening unscreened and inadequately screened diversions.

In addition, the CVPIA supported other important activities in 1996 that contributed to the restoration of anadromous fish. These include improving fish passage at Daguerre Point Dam on the Yuba River; restoring degraded riparian habitat along the lower reaches of Mill Creek; continuing development of comprehensive watershed management strategies for Deer and Butte Creeks; developing a restoration plan and proposing work for the lower Tuolumne River; evaluating intermittent streams as rearing habitat for chinook salmon; installing real-time flow monitoring systems in four creeks that support the production of spring-run chinook; and acquiring and protecting riparian habitat on the Sacramento River, the Big Chico, Mud creeks, and reducing siltation in Big Chico Creek.

The first public announcement requesting participation in the Agricultural Waterfowl Incentive Program, under section 3406(b)(22), was sent out in November '96. The program, managed by the Service in cooperation with Reclamation, provides incentives to eligible Central Valley and Delta farmers to flood their fields during appropriate periods of the year for the benefit of waterfowl.

The intent of the program is to demonstrate the creation of waterfowl habitat and how it can be incorporated within the landowners' on-going agricultural operations. To date, 75 applicants have submitted proposals to provide either wintering or breeding waterfowl habitat for a commitment of 1 to 5 years.

The CVPIA administrative process. Even while Interior moved forward with these and other CVPIA programs during the course of the past year, we have continued to work closely with stakeholders and the interested public to identify the best ways to implement certain provisions of the CVPIA.

Last summer we prepared and released for public comment draft proposals on twelve major areas of concern identified in public meetings on the CVPIA. As you will recall, these 12 areas are the AFRP; management of the (b)(2) water; contracting; refuge supply; Restoration Fund; San Joaquin River; stakeholder process; Stanislaus River; transfers; Trinity River; urban reliability; and water conservation.

We are in the process of finalizing all of those proposals with one exception, the proposals will be released in final form in the next couple of months. The only proposal which will take longer to finalize is the Stakeholder Process, which has been held up at the request of the stakeholders to give them time to consider their recommendations regarding this key element of the CVPIA implementation.

Finally, and for about 30 second, we will finish this, relationship with the CVPIA and the long-term CALFED Bay-Delta Program. The solutions we are developing through the CVPIA administrative

process represents what I have termed the zone of reasonableness, the common ground.

While consensus has not yet been reached on all aspects of the CVPIA implementation, I firmly believe that it is now important to complete this process and build upon the achievements as we move forward into the CALFED Bay-Delta process. The key to water supply reliability as well as restoration of the Bay-Delta ecosystem is successful implementation of the Bay-Delta long-term program.

We look forward to working closely with all stakeholders, the public, and members of this Committee in this endeavor. This concludes my statement. My colleagues and I will be happy to answer whatever questions you may have.

[Statement of Mr. Garamendi may be found at end of hearing.]

Mr. DOOLITTLE. Thank you very much. Mr. Secretary, the Subcommittee just literally today received the Department's responses to the follow-up questions submitted after the September 12, '96, hearing which would make that over six months ago. Could we get your personal commitment that the Subcommittee can get a more timely response to the follow-up questions from this hearing?

Mr. GARAMENDI. Your dismay is only equalled by my anger at the delay. You have such a response.

Mr. DOOLITTLE. Thank you. Section 4304(c)(3) of the CVPIA contains a provision to encourage early renewal of project water contracts. Affected contractors must enter into a binding agreement with the Secretary prior to October 1, 1997, to renew their contracts upon completion of the PEIS or pay an additional charge to the Restoration Fund of one and one-half times their annual Restoration Fund payment.

I am wondering how informed decisions regarding contract renewal can be made without the benefit of the PEIS? Are you trying to find a way to implement the early renewal provisions that does not create a conflict which would disrupt your other implementation actions in the Bay-Delta process?

Mr. GARAMENDI. The dilemma that you pose in your question is apparent to us. We have received many comments in that regard. There is a dilemma. The information for the long-term is not available. We are presently trying to work our way through that difficulty and we anticipate within the next month to 45 days that we will be able to resolve the apparent or the obvious problems that are faced by the contractors.

Mr. DOOLITTLE. Given the delay of the PEIS and the intent of the CVPIA to allow for early renewal as a policy matter, would it be equitable to extend early renewal deadline?

Mr. GARAMENDI. That is one of the issues we are trying to figure out is exactly that if it is not only equitable but how we do it within the context of the law.

Mr. DOOLITTLE. And I am assuming that where the law says we have to do these other things out there and they just for one reason or another have not been done. I assume this could be put on the same plain with those. What do you think?

Mr. GARAMENDI. I think that is what we are thinking about.

Mr. DOOLITTLE. OK. Could a binding agreement be developed to provide adequate legal protection for both Interior and the contractors without imposing a retroactive financial penalty?

Mr. GARAMENDI. Like the previous two questions, this one speaks to the dilemma and what we are attempting to do right now is to work our way through this dilemma. I would almost prefer to take your questions as comments, perhaps your sense of direction. We do not have a specific answer. These three issues are exactly what we are wrestling with. How do we achieve an appropriate resolution of what is an apparent, well, an obvious dilemma.

Mr. DOOLITTLE. Will all of the papers, once released, actually propose solutions or will they propose further discussions among the stakeholders in certain instances—and I guess if they will, is it really fair to characterize these as solutions?

Mr. GARAMENDI. It certainly is fair to characterize them as solutions, at least I will. Others may not. The papers are two different types. One type lays out definitions and definitively defines what actions will be taken. Another type lays out processes because in fact process is what is required to deal with the issue at hand.

So depending on how you want to characterize them in my view they are both solutions although one set is a process answer because that is what is necessary. There is no definitive answer, for example, on some of the scientific issues.

We have to move forward in an innovative or adaptive management process seeking to always improve the circumstances seeking to improve the habitat or the environmental issues without knowing at the outset exactly what the ultimate solution might be. So you will find both process and definitive categories in the papers.

Mr. DOOLITTLE. I guess I would just observe, I think it is long on process and short on definitiveness. We have got to have definitiveness to actually resolve some of these terrible problems.

Mr. GARAMENDI. Well, I think you will understand more completely as the papers do come out the description I have just gone through.

Mr. DOOLITTLE. As the Administration moves forward with implementation of CVPIA, can you tell us how decisions will be coordinated with the decisions being made with respect to the anadromous fish restoration plan, with the Programmatic EIS, and with the CALFED process?

Mr. GARAMENDI. I cannot in every detail answer that question. The AFRP is in itself a process and that process is affected by the actions of the Bay-Delta Program. The PEIS is not yet completed but that will provide some additional direction and parameters for all of these elements.

One of the reasons we have not been able to keep the deadlines and time table that I gave you previously is that we are finding that we have found it necessary to integrate these three elements so that they are a complete description of each of the issues.

We are engaged at this moment and have been for several months in extensive discussions with CALFED in an effort to integrate the AFRP and the PEIS issues with the CALFED program as it moves forward. What is obvious to us is that all of these things are operating or take in—all of these issues occur on the same river systems and so they cannot be isolated and our effort is to make sure that they are appropriately integrated.

Mr. DOOLITTLE. Mr. Miller, I recognize you.

Mr. MILLER. I will reserve my time.

Mr. DOOLITTLE. OK. If you are going to reserve your time, we will alternate over to Mr. Radanovich and then we will hit Mr. Dooley. You are recognized, Mr. Radanovich.

Mr. RADANOVICH. Thank you, Mr. Chairman. Thank you, Mr. Secretary, for being here. I do have one question with regard to some of the issues—current issues that can be done while this project does not appear to be going anywhere. The friant water users have expressed concerns that the current Restoration Fund surcharges specifically for class two water used in direct groundwater recharge are in fact inhibiting groundwater recharge.

There is some question about the $6.00 surcharge and the question I would be asking is would the Department be willing to reduce or eliminate the charge on water provided for district groundwater recharge purposes where there is demonstrable wildlife and wetlands benefit for basically eliminating or alleviating the $6.00 charge on groundwater or on paid water that goes into groundwater recharge?

Mr. GARAMENDI. I am going to ask Roger Patterson to respond to your question.

Mr. PATTERSON. That is an issue that we had in one of the papers that we put out and we suggested in fact that we would be willing to look at it is called the 215 water but it is the nonstorable water diverted in friant at times when it can be put in groundwater. And we indicated we would be willing to look at the price of the water including some reduction in price in order to make that happen. And so we are committed to fully investigate that.

Mr. RADANOVICH. Can you associate that with some timetable that—when will this happen, I guess is what——

Mr. PATTERSON. In '95 we had this situation arise. We worked with Fish and Wildlife and we in fact worked our way through '95. Our intent would be prior to the next operation season to be able to have that kind of guideline in place.

The river is down to 500 CFS today so the opportunity to do that this year is essentially behind us. I talked with Dick Moss yesterday and I think he agreed with that. But it is an issue that we need to look at and we will look at it.

Mr. RADANOVICH. Thanks. No other questions.

Mr. DOOLITTLE. Mr. Dooley is recognized.

Mr. DOOLEY. Again, I would just like to follow up a little bit on Mr. Radanovich's question there is that even though it is beyond the 215 water though we really have a situation where the class two water when we have almost 100 percent of class two availability is that we have a situation where a lot of our local water districts are in a very difficult financial situation when we have these heavy runoffs.

And, in fact, we have one irrigation district in my area where they are having to assess a $35 an acre surcharge, and that is on the acreage, in that district so that they can afford to take a lot of their class two supplies because the class two supplies that they are trying to recharge, you know they are not directly associated with any one user.

And the magnitude of this when you look at our rental rates are $150, around $150, it is an additional 25 percent of a normal rental rate. It is very expensive. This is not to be taken lightly. And we

almost have a situation where a lot of these districts which are trying to do the right thing in terms of recharging the aquifer and are also interested in moving forward in a way which you can provide some environmental benefits by using some of the recharge ponds and make them better water habitat are in a position where they cannot do that because of financial limitations that result from the CVPIA.

So I would hope that in the consideration that it goes beyond just the 215 and would actually even look at the class two and I would be interested if that consideration is underway.

Mr. PATTERSON. I would say, Mr. Dooley, that we will look at class two as well. In my view there is a difference in the type of water and it is going to be I think a little more difficult to get to where you are suggesting with class two but we will take a look at that. And to the degree that we are generating benefits of that particularly associated with Fish and Wildlife that we may have some latitude to work with the Service on that so we will look at it as well. I just want to raise the flag that it is a little more difficult.

Mr. DOOLEY. I guess getting to a different issue and this deals with the provision in the CVPIA that requires interim renewal contracts until PEIS is done is that we currently have I think about 60 contracts that are going to be subject to renewal of an interim contract.

The Department, when they negotiated the interim contracts a couple years ago, which was not nearly as smooth a process as it should have been, gave some assurances to the water districts that we would just basically be rolling over these interim contracts.

Well, here we come when these interims have expired. They are subject to renewal and it appears that the Department of Interior is not going to be rolling these over as they had indicated but want to reengage in negotiations of those interim contracts with specific attention being given to the shortage provisions.

I have to tell you that this raises a great deal of concern with myself and a lot of the water users in my area because we thought we were making progress on a number of issues, be it Bay-Delta or whatever else because of a greater degree of cooperation between the Department and the various users, and this is something that is running counter to that.

And I guess my question to be a little bit specific, when we renegotiated the interim contracts we included language in the interim contracts as it dealt with shortages that reads if there is a reduction in total water supply available to the contractor during any year because of errors in physical operations of the project, drought or other physical or legal causes beyond the control of the contracting officer no liability shall accrue against the United States.

Now from my reading of this, this gives—prevents any liability for the Secretary, and we have mistakes in operations by the Bureau, it gives no liability to the Secretary for natural events such as drought. It gives no liability to the Secretary for legal issues related to environmental regulations.

My question is why do we need any modification in this? I mean the only shortage that can occur from my reading of this that is

not covered under this language would be arbitrary or illegal actions by the Secretary and some of us ask what kind of contract do you have if you can allow the Secretary to take any action that he should want or she should want regardless of whether or not it is arbitrary or legal.

Mr. GARAMENDI. Mr. Dooley, you have hit upon what has now become a very controversial and major issue in the Central Valley.

Mr. DOOLEY. I would say I spoke to the Family Farm Alliance which included representatives from the entire western United States that have Bureau contracts and it is beyond the Central Valley.

Mr. GARAMENDI. Indeed it is. Last summer when we told you that we intended to roll the contracts over we did that just days before a United States Supreme Court decision called the *Windstar decision*. That decision brought into question the clause that you just read to us.

The solicitor in the Department of the Interior and other government lawyers are reviewing, and have been for the last several months, the implications of the *Windstar decision* given the language you just read. There are many who perceive that language taken with the *Windstar decision* to allow farmers to farm the American treasury rather than land. That would be of concern to all of us if that were to be the interpretation.

There are others, and I think you have indicated who some of them are, that see it quite differently and hold a view very similar to what you have that it does not make any difference at all and life goes on and *Windstar* is not applicable. This is a significant debate of great interest to the United States Government and its treasury.

We have not yet been able to resolve it. We hope to have a resolution amongst our lawyers in a very short order. If it is decided that this issue is of significance and requires change in the language in order to protect the American treasury then we will initiate negotiations very, very soon so there will be plenty of time to have a lengthy debate about this particular clause. We hope to have a decision made on this in very, very short order so we can get on with this. It is a very difficult, very complex, and potentially troublesome issue.

Mr. DOOLEY. Mr. Chairman, can I follow up on that?

Mr. DOOLITTLE. Sure.

Mr. DOOLEY. Mr. Garamendi, I would say as a farmer and yourself as a farmer there is a lot of us what would take exception of implying and I would hope the Department of the Interior is not implying that there are a lot of farmers out there that are interested in farming the treasury because they are looking for a redefinition of—or a continuation of—the shortage provision that was agreed to by both the U.S. Government, the Bureau, as well as the parties to those water districts.

I think that is a little bit insulting. And, furthermore, there is no motivation for farmers in water districts who have to maintain an ongoing relationship with the Bureau to engage in legal actions which are certainly going to destroy it. But at the same part what you are implying is that you are asking for a water district to agree to a contract if you accept this premise of which there is no legal

right or recourse for a shortage that occurs for issues even for errors in physical operations but the only thing that I can see that is not included in here would be something that could even be construed as arbitrary or illegal.

And I guess that is difficult for me to accept that it is going to be the policy of this government and the policy of the Department that we would go so far as to say that there could be the opportunity for the Secretary to take an arbitrary and an illegal act to short a water contractor that could result in financial damages and that there be no recourse for that party that is harmed. And that appears as what you are implying that the Department is considering.

Mr. GARAMENDI. Sir, that is not what I am implying at all. What we are concerned about or the lawyers are concerned about is the opportunity presented with the language you read taken together with the *Windstar* decision that the Federal Government, the Bureau of Reclamation for the first time ever could be sued for financial monetary damages.

We have no problem with anybody suing to overturn a decision that we might make. I personally think that is a perfectly appropriate thing to do but to open the Federal treasury to a suit for the first time ever is of great concern to us. Now it may very well turn out that our concerns are not well founded and that is being wrestled with by our lawyers today.

It may turn out that the lawyers believe it is extraordinarily well founded in which case we are going to have to work our way through this. I want to make it clear, however, that we do not intend to set up a situation assuming that we choose to seek a change here which is not yet clear, assuming that we do seek to make a change we would not want a situation in which there is no recourse by any of our contractors to seek redress in the courts.

We think our actions should be subject to redress in the courts with immediate review by the court to overturn a decision that we make with regard to water allocation. Furthermore, I want to make this clear this is not only an issue for the Department of Interior's Bureau of Reclamation. The *Windstar decision* affects all government and it is an issue that is being reviewed by government lawyers in every agency because it affects all that we do in government.

Mr. DOOLITTLE. Mrs. Chenoweth is recognized.

Mrs. CHENOWETH. Thank you, Mr. Chairman. I am addressing my questions to either one, Mr. Secretary or Mr. Patterson. I do not understand what the legal significance of the Garamendi process proposals are. In asking that question what I mean is are these official Interior policy statements associated with a yet to be noticed rulemaking procedure or are these draft guidelines or where do they fit in the whole legal process?

Mr. GARAMENDI. It is part of an official rulemaking process.

Mrs. CHENOWETH. It is part of—OK, and so they will yet be noticed and published in the——

Mr. GARAMENDI. They have been.

Mrs. CHENOWETH. They have already been noticed?

Mr. GARAMENDI. The notice was two years ago.

Mrs. CHENOWETH. Two years ago.

Mr. GARAMENDI. At least a couple years ago we put out a notice of intent to do rulemaking and this process has been trying to build toward that.

Mrs. CHENOWETH. But I am talking about the entire Garamendi process has not been noticed in the Code of Federal Regulations. The intent, the notice of intent was published but the processes——

Mr. PATTERSON. We did put out a notice of intent to do rulemaking. We view the final Garamendi papers as being essentially the Department's policy and guidance for implementation of those relevant provisions of the Act which will precede the actual draft rules and regulations that we will be putting out some time in the future.

So in essence this paper would probably, when it is reformatted into the form of a rule, become a proposal to go through the formal APA rulemaking process. We put a notice out to that intent. I think we stated in our papers that that is our intent.

Mrs. CHENOWETH. OK. My concern is the legal basis for everything that has gone on in these 100 plus meetings on the Garamendi proposals, what legal foundation is there for the government's sake, for the stakeholders' sake. I am concerned. So, Mr. Chairman, I yield back the balance of my time to the Chairman. Thank you.

Mr. DOOLITTLE. Thank you. Mr. Farr is recognized.

Mr. FARR. Thank you very much, Mr. Chairman. First of all, I want to commend you. You have got a tough role here. It is your State. You understand this problem. It goes way back and I just want to try to clarify some of the issues that you know I stand on with the Pajaro Valley situation and I appreciate your personal interest in it from visiting and understanding the Pajaro Valley.

Let me just outline the facts because I think it ends up, Mr. Chairman, coming back to this Committee. In 1975 the U.S. Bureau of Reclamation entitled the Pajaro Valley to 19,900 acre feet of water from the Central Valley Project. The valley, Pajaro Valley, never claimed their entitlement because they did not need it until recently for several factors.

One, the agriculture production in the valley has increased. Secondly, serious salt water intrusion has occurred on the coastal plain throughout California; Oxnard, Salinas Valley, Pajaro Valley; everywhere there is agriculture on the coast, we have salt water intrusion.

This was recognized by the State. In fact, the Chairman of this Subcommittee, Mr. Doolittle, when you were in the State Senate you adopted a bill, I think it was authored by Senator Mello, to set up a special district, a water district, in the Pajaro Valley called the Pajaro Valley Water Management Agency.

And you charged that agency with developing a comprehensive plan to stabilize the water supplies in an economically and environmentally acceptable manner. In order to do that now the valley must call upon the water that it has been entitled to in the CVP.

However, under the legislation that we are discussing the Central Valley Project Improvement Actof 1992, no new contracts to receive water are permitted. And, I just have a couple of questions that sort of lead us to where we legally can go from here in both administrative action and perhaps congressional action.

I am aware of correspondence from the Department of Interior's solicitor to you addressing the impact of the moratorium on the Pajaro Valley. Based on that correspondence, is it your impression that the CVPIA prohibits the Bureau of Reclamation from entering into contracts with the Pajaro Valley Water Management Agency for its 19,900 acre foot entitlement?

Mr. GARAMENDI. Prior to the completion of the PEIS such a contract cannot be completed.

Mr. FARR. Can the Bureau wheel non-CVP water through the Bureau facilities to the Pajaro Valley agency?

Mr. GARAMENDI. Yes.

Mr. FARR. Does the moratorium prohibit the Pajaro Valley Water Management Agency from acquiring CVP water from the existing CVP contract holder?

Mr. GARAMENDI. With Roger's help I can answer your question. We all need Roger's help. We do indeed. The answer is no. It is possible assuming it is a transfer.

Mr. FARR. A transfer is possible?

Mr. GARAMENDI. Yes.

Mr. FARR. Even with the moratorium?

Mr. GARAMENDI. Yes.

Mr. FARR. Then it leads us back to this Committee, I think, which is that the only way to really insure the contract with the Bureau for its entitlement is to enact the legislation that I have introduced. What we have tried to do is to consider if there is an administrative remedy that can solve this problem and from your answers you say that it is very difficult, which gets back to the bill that I have introduced to try to clear up this problem.

This is a situation where the first law said you could have it, the second law said, no, we are going to put a moratorium on it. Now they need it, they've got to have it. They've got salt water intrusion. It is in nobody's interest not to be able to acquire it. How do we best do that?

Mr. GARAMENDI. Before I get to the broad question you just asked, let me add to the first question an additional answer and that is that in addition to the completion of the PEIS there are some additional requirements that would have to be met before a new contract could be issued.

I do not know what those are but I want you to be aware that it is more than just the PEIS. We can get you the specifics on that.

Mr. FARR. Could the district meet those requirements? It is a small district.

Mr. GARAMENDI. Go ahead, Roger.

Mr. PATTERSON. Mr. Farr, it is not the requirements the district has to meet, it is requirements in CVP that say prior to issuing new contracts you have to complete the PEIS and then there are a number of other activities that we have to complete and those are going to take some substantial period of time which we have advised Pajaro Valley so there are several specific requirements.

Mr. GARAMENDI. Now with regard to the question you raised about legislation. We think legislation would be ill advised. The requirements in the CVPIA we think should be met including the overall PEIS so as to understand the implication of additional contracts.

Therefore, we think it unwise to move forward with specific legislation. I would like to suggest to you and——

Mr. FARR. Well, what is the solution? Come on, we are all problem solvers here. How do we solve this problem? You just tell everybody that you've got salt water intrusion, your wells are drying up, you have got an incredibly successful agricultural area that is dependent on it and I am sorry, you and government cannot help us.

Mr. GARAMENDI. I am glad you asked that question because I have an idea that I would like to present to you. There are 40,000 acre feet of water 60 miles away from the Pajaro Valley that is available most any time you want it.

Mr. FARR. Where is that?

Mr. GARAMENDI. San Jose.

Mr. FARR. The city of San Jose?

Mr. GARAMENDI. The city of San Jose has 40,000 acre feet of water that they need to dispose of. It is reclaimed water. The water quality can be virtually whatever you would want and it is available. It seems to me that with the Santa Clara County—get the right water district here, but the water district of Santa Clara Water District working together with the city of San Jose and the Pajaro Valley district that it is possible to achieve a solution to the Pajaro Valley issue as well as to other needs that may exist in the Gilroy, San Benito area. It would be very wise to pursue.

Mr. FARR. I certainly will pursue it. I know my time has expired but if I—may I have it, Mr. Chairman? Thank you. We are doing the largest reclamation project in the United States at the mouth of the Salinas Valley with reclaimed water. I will tell you the difficulty is that you have to assess the farmers who have never had to be assessed in most of these coastal plains because we have never been part of a major water system. We just live off local water.

Mr. GARAMENDI. So much so that you create a problem.

Mr. FARR. The question really is, is that water going to be as cost effective—is all of that cost effective compared to accessing the CVP water and the delay? I am willing to look into it. Essentially what San Jose says, we will give you the water but you got to pay for it.

Mr. GARAMENDI. I think it would be in everybody's interest to engage in a very intense discussion on this matter. The ability to pay is certainly a factor. The availability of water is real.

Mr. FARR. Will your Department of Interior allow—I mean one of the ways to transport that water is to put it in the headwaters of the Pajaro River. Are you going to allow reclaimed water to go into a river system?

Mr. GARAMENDI. It does in Sacramento. The answer to that question is unknown at this time but the potential is there for a solution and a very far-reaching solution both to San Jose's problem. They need to have the water used somewhere, and it is also water that does not have to come from the Central Valley and thereby reducing pressure on the Central Valley and it is also water that is available every year, every day of every year, as opposed to what some people are negotiating for which are interruptable supplies from the Central Valley.

Mr. FARR. Can you pledge your Department's help with this Committee, Mr. Chairman? I do not want to speak for the Chair but I think that the reclaimed water is the way we need to go, but we have not yet developed a very sound program to do that. It is on a case by case basis, and very expensive. Essentially you are talking about rural areas that need the water and urban areas which have it, and it will be costly to match the two. We need some help.

Mr. GARAMENDI. You certainly have my commitment. I have been engaged in this particular effort for several months now personally. With regard to the Department, the Bureau of Reclamation reorganized itself and redirected itself some four years ago and included in that redirection is the management of water and the use of reclaimed water.

We are to the tune of some $35 million a year assisting districts throughout the west in reclaiming, reusing water. The city of San Jose is one of the entities that benefits from that program, not as much as they would like but nonetheless does benefit.

Other areas particularly in southern California are doing exceptional work so, yes, we will work on it. It may be that Pajaro does not use the water directly but the water may be swapped in other areas, perhaps from the San Felipe project in some sort of a swap.

And as you know the Pajaro district is considering a pipeline rather than use of the river so these are all open questions and ought to be explored as alternatives to a solution to a very difficult problem in the Pajaro Valley.

Mr. DOOLITTLE. Mr. Pombo is recognized.

Mr. POMBO. I thank the Chairman, and I kept waiting for Mr. Farr to ask the next question and that is if they have a contract and the Bureau is not able to perform on that contract then it seems like they should perfect that contract by obtaining water from another source.

And if this source is available, and as Mr. Garamendi has pointed out, the water is available on an ongoing basis maybe that is the way that the Bureau can perfect their contract.

Mr. GARAMENDI. The Pajaro district does not have a contract but your point of assisting Pajaro and other districts in meeting its water needs is one of the purposes that the Bureau has within its service areas and the Pajaro district is within the service area. So while they do not have a contract we nonetheless will work with them to——

Mr. POMBO. But they have an entitlement?

Mr. GARAMENDI. I would not use the word entitlement here. I think that may get us into a difficult area.

Mr. POMBO. They are authorized to stand in line? As long as they are standing in line behind Stockton East——

Mr. MILLER. The reason we are here today is we have oversubscribed the system. We authorized all kinds of people to get water except the water turned out to be rather finite and that is the problem. It is that we kept adding people and saying, oh, just go there and they will get you a contract, get you a contract. And the water turned out not to be there in those quantities. This million acre feet that we were always divvying up about 12 times a year.

Mr. POMBO. Does that come off of my time or his?

Mr. MILLER. It is like the deficit. He will understand.

Mr. POMBO. I thought you guys did not worry about that.

Mr. MILLER. We did not worry about either one of them.

Mr. POMBO. It is definitely a new day. Mr. Garamendi, as we have worked through this process over the last couple of years there have been several other processes that have been out there, the CALFED process, trying to work our way through the EIS, local groups that have tried to come to a solution.

Do you expect when you are done to actually have solutions? Is there—or is it going to have a few recommendations that do not really get us there?

Mr. GARAMENDI. California is on the threshold of one of the most remarkable achievements in water policy perhaps in the last half century. The CVPIA is an important element in that process and we have already moved the CVPIA issues well forward. I think before you arrived I read through a partial list of what has been accomplished in the last year to 18 months.

And we have now positioned the Central Valley Project and will soon complete the positioning of that project to become a very critical partner in the Bay-Delta Program. The Bay-Delta Program has already met success in lining up about $1 billion of money from Proposition 204.

The process because of the advancements we have made in the CVPIA together with the Bay-Delta and 204 has successfully persuaded the Administration and the President to propose $143 million of funding this year plus another $143 million in the next two years, in each of the next two years.

We are on the threshold of a remarkable advancement in water policy in California. The CVPIA issues are an integral part, an important part of that, and we are similarly as I said in my opening sentence on the threshold of completing our process. As I told the Chairman earlier, that will have two different types of answers. One is a definition of a set of issues or several sets of issues and the other will be a process that will move the issues forward because there is no definitive answer at this time in certain areas.

Mr. POMBO. In terms of the accomplishments that you have listed here most of these were issues that were on the table long before this process started. They were issues that people were working on long before this process started, and one of the things that concerns me is that CALFED is running off in one direction and they feel making positive strives and that they are moving along.

When you come in with your report is it going to say the same things that CALFED is working toward or is it—I mean how well coordinated are you with some of the other projects that are already in the process?

Mr. GARAMENDI. Part of the reason why these issues were not resolved last year is that we were faced with a choice. We could easily have put out a paper and had met the deadlines that I had given you before but because of the significant progress that was being made with Bay-Delta as well as with these issues we felt important, in fact, critically important and well worth coming back here and humbly saying we did not meet our deadlines to delay the resolution that was possible then and to rework our papers to continue to bring people together to seek the common ground, the zone

of reasonableness, while advancing and integrating our work with the Bay-Delta Program.

That is exactly what we have done. Our work is designed to be integrated into the CALFED Bay-Delta process, each of the issues, the AFRP issue, the (b)(2) issues, the issues of conservation of transfers of water. In fact, all 12 issues are integrated and designed to be coordinated with the Bay-Delta. That is our goal and in fact that is one of the reasons why we have been delayed in completing the task.

Mr. POMBO. Thank you, Mr. Chairman.

Mr. DOOLITTLE. Mr. Miller is recognized.

Mr. MILLER. Thank you, and I see that we have a vote on but, Mr. Chairman, I want to thank you again. You mentioned that the AFRP would be out this spring because there had been some discussion that maybe because of the rains and all this there is no reason to do this.

It seems to me we ought to get it on when there is a lot of rain, get it out there and get it on the ground and let us let people start figuring out how we are going to go about with implementation with the rest of it so that we can expect this to come forward from the Service.

Mr. GARAMENDI. Yes, and we agree with your logic.

Mr. MILLER. Finally, let me just say that I think the realization is starting to settle in that this is the only way we are going to resolve these issues is through this process. I think it is very important that the Chairman—that we have these periodic reviews with you and other parties to this discussion because to say that this is the only way is not to say that it is always going smoothly or it is going to according to—you know, that everybody feels that they are being treated equally but I think when we look at the complexity of the State and we look at the competing needs there really is no other process by which we can work our way through this and the fact is that as you have reported to us today some pieces of the jigsaw are being put in place and maybe not in the order in which we would all like them and some are more difficult than others but the fact is it is starting to happen and hopefully as we get past some of the easier issues we will get more focus on the more difficult issues.

But I just think that all of the parties to this should be commended for really the energy that they have continued to expend and it has been expensive for a number of parties. It has been long. It has been difficult and all of the rest of it. But I think that again that this is the process that is going to take us to the fair implementation of CVPIA and Mr. Farr's questions to you sort of laid out the problem we have in the State that we have oversubscribed some of these systems if we do not move on to reclamation and we do not move on to some other components of an integrated water plan for our State.

So I want to thank the Chair for holding the hearings. I think they are important. I think we do need an airing of these issues so that we can respond to our constituents and hopefully maybe from time to time to see if we could get this process moving a little bit faster because I think there is a real sense that people would like to get to the end of it but thank you very much.

Mr. DOOLITTLE. At this point, I do not think we are going to have many more questions, but I have at least a couple more. I think at this point we will recess the hearing and we will come back after the vote.

[Recess.]

Mr. DOOLITTLE. I am sorry to have kept you all waiting. We had about four votes there and as fate would have it, it happened in the middle of the hearing. But let me proceed and ask you, Mr. Hall, a couple of questions. Could you tell us what position the Fish and Wildlife Service is taking in the CALFED negotiations with respect to the accounting of the 800,000 acre feet?

Mr. HALL. For the CALFED negotiations on the accounting?

Mr. DOOLITTLE. Yes, in other words, how are you going to account for the 800,000 acre feet specified in the CVPIA? This has been one of the major issues that remains unresolved.

Mr. HALL. We have been working with the Bureau of Reclamation even as recently as last week getting model runs comparing, looking at the 28 to 34 period, trying to look at all the pieces of the act to see what is the proper way to account for the water.

As you may know, we have been working forward on the basic policy issues of (b)(2) in general on the paper and had a separate work group of hydrologists trying to help us figure out the right way to account, how to interpret yield and those sorts of things.

We are, in my view, in a home stretch and reaching—getting much closer to full agreement on how we would account for the water and how it will be done so that people will know, not just in this year but in any year that follows exactly how the process will work. And, frankly, I am very encouraged at the progress that we have made and hopefully we will include that in the final (b)(2) paper that we also want to get out relatively soon too.

Mr. DOOLITTLE. So, do you have a sense of when you will be able to finalize the 800,000 acre-foot issue?

Mr. HALL. We have been—we need to get it out for applicable use during this water year so we are shooting, as Mr. Garamendi said earlier, to have all of the papers done but there are some that are of particular interest in the actual management of the project and we hope to get those out within at least a month or two because they are important for the operations of the '97 water year.

Mr. DOOLITTLE. And is it you who works with Mr. Patterson in having these conversations?

Mr. HALL. Yes, sir.

Mr. DOOLITTLE. And you are based in Portland?

Mr. HALL. I am in Portland.

Mr. DOOLITTLE. Do you think that the fact that you have such a large region where the headquarters for all of California ends up being in Portland is causing problems in the effective administration of Fish and Wildlife Service policies?

Mr. HALL. That is a loaded question. Without question a very strenuous exercise on my part, my personal part, to spend the amount of time that I spend in California so that I can be there and I can be involved in these discussions primarily because we have not delegated down below my level any decisionmaking authority at the policy levels.

We are keeping it where we can make sure that the management in Interior both the Bureau of Reclamation and the Fish and Wildlife Service are clear and on the same track so we can come out and make sure if there are questions we have an answer at the policy level.

I do not know because we do not have any other system whether or not another one would be better but I do know that there is an awful lot of demand for my time in California that frankly is justified.

Mr. DOOLITTLE. Let me ask the Secretary to comment on that, if I might.

Mr. GARAMENDI. We have been discussing within the Department how to address the extraordinary workload that exists in the west and particularly in California. There are different options available to us. We have very serious limiting factors that preclude us from taking advantage of many of those options.

Our budget for the Fish and Wildlife Service is very tight and was even more severely restricted in the previous two years as a result of the discourses in this Congress, so the budget is part of the issue. There are other issues having to do with the allocation of management slots. There are very few SES slots in the Fish and Wildlife Service and that further restricts options that we might otherwise have available to us.

We are going to have a new director for the Fish and Wildlife Service and one of the tasks that the director will address are the issues that you are raising now.

Mr. DOOLITTLE. Do you within Interior have it in your discretion to reorganize the Service and cause its office for California to be located in Sacramento?

Mr. GARAMENDI. You mean the establishment of a new regional office?

Mr. DOOLITTLE. Yes.

Mr. GARAMENDI. I believe we do have that power. We would have to work with the Budget Committee or the Appropriations Committee.

Mr. HALL. If I might add to that. The Secretary does have that authority but I do believe that in the late '80's we were asked by the House, and I do not know whether or not it was this Committee or another, to run by this Committee or at that time it might have been Merchant Marine and Fisheries, any proposed changes for their review, but the authority does rest with Mr. Garamendi and Mr. Babbitt.

Mr. DOOLITTLE. I will mention this to get your response. We get a lot of input from the agricultural water users, the urban interests, even environmentalists, and people within the Interior Department are expressing the viewpoint that the Service seems out of control.

I was interested in your comment just a minute ago, Mr. Hall, because the comments that we are getting are that low level personnel are—in effect—calling the shots and in some cases contradicting the policymakers. These comments suggest that there is no effective management and no clear plan for making real on the ground environmental improvements. Would you be willing to respond to those concerns?

Mr. HALL. Yes, actually I would like to. The Fish and Wildlife Service as has been discussed here is an organization that is not large but has a large area and over the past ten years the mission and the demands upon the Fish and Wildlife Service have changed dramatically.

We are now in a mode that some see us as a regulator. I personally do not like that sort of connotation for what we do. We certainly do have regulatory authority but 70 percent or more of the Fish and Wildlife resources in the United States are on private lands and if the mission of the Fish and Wildlife Service is to conserve and protect Fish and Wildlife resources for the future then our mission should be more in tune with working with those people so that they will voluntarily help us. And I think that they do want to and my experience is that they want to rather than being seen as or take the role of a regulator that comes in and says this is how it has to be done.

I do not think that is conducive for good working relationships or good accomplishments for the Fish and Wildlife resources. And if our goal is the sustenance of the natural resources then we ought to be looking for partnerships instead of regulators and the regulated.

Now the Fish and Wildlife Service has not delegated down, as I said before, any decisionmaking authority to anyone below me on the policies of the CVPIA. When our biologists go to a meeting I am not completely sure what happens because I am not there and the complaints I have heard are that it is when I leave town they are not following my directions, etc.

I can neither accept that nor reject it because I am not there. But I would say that I hope that when our biologists go to a meeting that are not policy level people and do not make the decisions that they are respected for being at that level and in an open discussion they are afforded the same opportunity to give their views on what ought to happen in a collaborative process just as anyone else around the table is.

One of the suspicions that I have is that if our biologists bring something up that it is taken as the position of the Service, this is where we are, we are not going anywhere, rather than that biologist being afforded the opportunity to express their views and be able to have it discussed and debated back and forth.

I really do not know the answer of what happens when I am not there, but I think that often times our staff is labeled, labeled possibly based on historic operations or historic circumstances and I would like to ask—my wish would be that everyone afford the same opportunity to our biologists to try and change in the attitude and the way that we operate going from a comment or a regulator to a true partner and a solution finder and that takes a little time.

Mr. DOOLITTLE. So in those meetings where you are not there presumably then they are not making decisions, they are informational meetings, is that what you are saying?

Mr. HALL. Yes, sir.

Mr. DOOLITTLE. Because if it were a decisionmaking meeting then I guess you would have to be there, is that right?

Mr. HALL. What generally happens is staff from the Bureau and from the Service work with stakeholders or each other and they

come up with this opinion or that opinion or a series of options and then at that point it should come to Roger and me and then we will listen to the discussion and make the policy decision.

I can only suspect that either it is represented incorrectly their role at a meeting or that they are misunderstanding my position in trying to represent it that might cause this kind of misunderstanding because no one else has the authority to make those decisions.

Mr. DOOLITTLE. Do we have any kind of an office in Sacramento for the Fish and Wildlife Service?

Mr. HALL. Oh, yes, sir.

Mr. DOOLITTLE. We do?

Mr. HALL. Yes, sir.

Mr. DOOLITTLE. It is just not——

Mr. HALL. It is a field operation.

Mr. DOOLITTLE. A field operation, OK. So then you are traveling down there frequently when you have these meetings?

Mr. HALL. Yes, sir.

Mr. DOOLITTLE. Well, I hope you are able to make your philosophy take hold a little more. It seems that the other perception is fairly widespread. It sounds like we would be greatly benefited if you could be based—either you be based in Sacramento or have a new region where that person is able to interact with our State and with the other Federal officials in these matters. Do you know, Mr. Garamendi, are there plans to do something about this?

Mr. GARAMENDI. Discussions have been underway within the Department about these matters. A decision has not been made.

Mr. DOOLITTLE. Does the Secretary of the Interior seem to appreciate the need to get this issue resolved, since it seems like it will be a number of years into the future when we will be having extensive consultations between the different agencies within Interior?

Mr. GARAMENDI. Well, he is certainly aware that California is the single most intensely—the State with the single most intense issues for the Fish and Wildlife Service. He is aware of that. He is searching and deliberating as to what would be the best solution for that.

And, as I said earlier, the new director when appointed and confirmed will be addressing this series of issues that you have raised here today.

Mr. DOOLITTLE. Do you expect that event to happen within the next month?

Mr. GARAMENDI. Oh, it would be very, very wrong for me to place any deadline on any presidential action with regard to appointments. I have already suffered greatly before you today. Things that presumably I have more control of.

Mr. DOOLITTLE. Well, let me ask you this. The Supreme Court opinion yesterday found that individuals alleging economic interest could challenge a biological opinion. What impact do you folks anticipate that may have on the way these issues are handled in the future?

Mr. GARAMENDI. We really do not see a great impact as a result of that decision. It may lead to additional lawsuits and whatever that outcome might be. It will probably lead to the employment of more lawyers by both sides. And our argument was very narrowly

based, the Department of Interior argument was very narrowly based when we presented it to the Supreme Court.

The bottom line, there is not a great impact. It will probably lead to additional lawsuits from others that previously were denied access to the courts.

Mr. HALL. May I add something?

I would like to add something to that because I am not sure that you and the Committee often understand that when a court case comes about and we are sued for one reason or another which this opinion could allow additional suits and open it up for that, that there is a tremendous amount of staff time of our biological staff and our on-the-ground operations staff that has to be dedicated to building the court case and the biological justifications for what we have done and all that when we have to go to court.

Lawsuits drain more of our capability to be present and involved in issues that solve problems than any other factor that I think we have going starting with the Front for Animals court settlement for listing species and going to cases like this. It is often not understood that when a court case comes in like that we have to pull our knowledgeable biologists off of what they are doing so that they can help support the Department of Justice in building the government's case and it is a tremendous drain.

Mr. DOOLITTLE. Mr. Garamendi, we have heard that you would have two of those papers on those 12 issue areas coming out today. Is there such a plan?

Mr. GARAMENDI. Mr. Chairman, the fortunate hiatus in this hearing allowed us sufficient time to have brought to this hearing two issue papers. Had there been eight votes instead of four, who knows what we could have accomplished.

The issue paper on the Trinity River and the issue paper on the water conservation are prepared and they have been presented to your staff and are available. Thank you for giving us this time.

Mr. DOOLITTLE. Well, that is a positive development. Let me ask—since I have not seen the issue papers—do these actually resolve anything? Are there solutions in there or are we just having further discussions?

Mr. GARAMENDI. These two papers are what I would categorize as definitive papers rather than process papers. There is some process in the Trinity which because of the nature of the issue it requires that a process go—it is also definitive. The conservation paper is definitive also.

These papers, if we had issued them six months ago would have been highly controversial given our position and level of knowledge at that time. Because of the extra time that we took both of these papers are going to be relatively noncontroversial. The common ground was found in both cases and so we were pleased with the effort of all of the stakeholders in moving from their strongly held previous positions to ones that I think are reflected in these papers.

Mr. DOOLITTLE. Well, I appreciate very much the testimony that you gentlemen have offered. Obviously, we will have continued oversight from time to time. I know it has been a very difficult set of issues to get resolved. I am somewhat dismayed by the number of months that we have gone beyond these deadlines.

Let me ask you, Mr. Garamendi, you indicated I think in June the PEIS is coming out. How firm in your mind is that date?

Mr. GARAMENDI. It is in everybody's interest including ours to meet those dates or to complete the process at that period. There are other things that we must get on to this year. The Bay-Delta issues become increasingly important as the days roll by.

The action of the Congress on the appropriation, the additional work that needs to be done on the preferred alternative for the Bay-Delta, those become dominating issues and in some respects depend upon our completion of these remaining pieces of work.

And for that reason we are heavily motivated to complete the tasks to get them out of the way and we are also finding that the stakeholders recognizing that it is time to reach a conclusion are more willing and seem to be more willing to come to the zone of reasonableness. So I think we are going to be able to meet those deadlines.

Mr. DOOLITTLE. OK. Well, I thank you for your testimony this afternoon and I am sure we will have a few additional questions and accept your personal commitment to get us a more timely response than the last time.

Mr. GARAMENDI. Mr. Chairman, if I might interrupt for just a second. I asked your staff during the break to let me know personally if we are not responding in a timeframe satisfactory from your point of view.

Mr. DOOLITTLE. I very much appreciate that. That will be quite helpful. We will hold the record open for the response to come in and with that the hearing is adjourned.

[Whereupon, at 4:40 p.m., the Subcommittee was adjourned; and the following was submitted for the record:]

HONORABLE JOHN GARAMENDI
DEPUTY SECRETARY, DEPARTMENT OF THE INTERIOR
ON
IMPLEMENTATION OF THE CENTRAL VALLEY PROJECT IMPROVEMENT ACT
BEFORE THE
HOUSE SUBCOMMITTEE ON WATER AND POWER RESOURCES

March 20, 1997

Mr. Chairman and members of the subcommittee, thank you for inviting me to be here this afternoon to discuss with you our progress in implementing the Central Valley Project Improvement Act (CVPIA). We are on the homestretch in addressing most of the issues that have been raised regarding implementation of the CVPIA, and I appreciate your continuing interest in and oversight of our efforts. This afternoon I would like to briefly describe for you the progress we have made on many fronts this past year in implementing the provisions of the CVPIA. I will then summarize for you the status of the administrative proposals and close with a discussion of the relationship between the CVPIA and the long-term CalFED Bay-Delta Program.

CVPIA Accomplishments in 1996 and 1997

* The **flood flows** created by the massive January storms will enable the Bureau of Reclamation to provide full water supplies for agricultural and urban contractors, wildlife refuges, and the aquatic environment. At the same time, supplies will be available for accomplishing the fish restoration flows recommended by the Fish and Wildlife Service (Service) as part of an adaptive management program under the CVPIA. We are repairing levees and working to reduce damage from future floods. At the same time, we are working to identify ways in which these actions can create opportunities for environmental restoration in the Bay-Delta.

* The **Shasta Temperature Control Device** (TCD) -- the first of this kind -- has now been completed. On Friday, February 28, 1997, the TCD was operated for the first time for cool water conservation. The TCD gives Reclamation the flexibility to provide cooler water temperatures in the upper Sacramento River and optimize the quality of water releases for downstream salmon without bypassing the powerplant.
* Reclamation, the Service, and other cooperating Federal agencies are reviewing a **draft Programmatic Environmental Impact Statement (PEIS)** which is scheduled for release in June. This draft includes descriptions and impact analyses for the New Alternatives 3 and 4, which were developed based on public input and discussed at meetings held November 21, 1996, and January 21, 1997. New Alternatives 3 and 4 both incorporate the most current flow objectives for CVP-controlled and non-CVP streams based on the Service's Anadromous Fish Restoration Plan (AFRP).
* Reclamation finalized the ***1996 Criteria for Evaluating Water Conservation Plans*** and will use these new criteria to evaluate water districts' water conservation plans. These criteria were first developed in 1993 as a requirement of CVPIA. Sixty water districts already have plans that meet these criteria.
* In December an important step was taken in the process leading to the construction of a **new fish screen for the Glenn Colusa Irrigation District pump station** at Hamilton City. Representatives from Reclamation, the Service, National Marine Fisheries Service, and State agencies agreed upon a proposed plan which will be identified and fully analyzed in the environmental impact report/environmental impact statement. It is anticipated that the EIR/EIS will be released for public review this spring, with public meetings scheduled

during the spring and summer months. After consideration of the comments received on the EIR/EIS, a final decision on the alternative to be built will be made and, if all goes well, construction could begin in 1998.

* The Service expects to release the **AFRP** this spring. Release of the plan was originally delayed while the Anadromous Fish Restoration Program developed and refined guidelines and objectives for use of the water management tools provided by the CVPIA. Development of these guidelines and objectives were highlighted in two public workshops in October 1996. Although the final restoration plan is still being drafted, efforts to implement sections of the CVPIA that contribute to restoring natural production of anadromous fish are continuing as they have over the last several years. These include modifying CVP operations, managing Section 3406 (b)(2) water, acquiring water, installing and operating the temperature control device at Shasta Dam, restoring and replenishing spawning gravel, and screening unscreened or inadequately screened diversions.

* In addition, the CVPIA supported other important activities in 1996 that contributed to restoring anadramous fish. These include improving fish passage at Daguerre Point Dam on the Yuba River; restoring degraded riparian habitat along the lower reaches of Mill Creek; continuing development of comprehensive watershed management strategies for Deer and Butte Creeks; developing a restoration plan and proposed work plan for the lower Tuolumne River; evaluating intermittent streams as rearing habitat for chinook salmon; installing real-time flow monitoring systems in four creeks that support production of spring-run chinook salmon; acquiring and protecting riparian habitat on the

Sacramento River, and Big Chico and Mud creeks; and reducing siltation in Big Chico Creek.

* The first public announcement requesting participation in the **Agricultural Waterfowl Incentive Program**, under section 3406 (b)(22), was sent out in November 1996. The program, managed by the Service in cooperation with Reclamation, provides incentives to eligible Central Valley and Delta farmers to flood their fields during appropriate periods of the year for the benefit of waterfowl. The intent of the program is to demonstrate that the creation of waterfowl habitat can be incorporated within the landowners' on-going agricultural operations, with the long-term goal of having farms provide such waterfowl habitat after the Federal incentive program ends. To date 75 applicants have submitted proposals to provide either wintering or breeding waterfowl habitat for a commitment of 1-5 years.

The CVPIA Administrative Process

Even while Interior moved forward on these and other CVPIA programs during the course of the past year, we have continued to work closely with stakeholders and the interested public to identify the best ways to implement certain provisions of the CVPIA. Last summer we prepared and released for public comment draft proposals on twelve major areas of concern identified in public meetings on the CVPIA. As you will recall, those twelve areas are: 1) Anadromous Fish Restoration Plan, 2)management of Section 3406(b)(2) water, 3)contracting, 4) refuge supply, 5) Restoration Fund, 6)San Joaquin River, 7) stakeholder process, 8) Stanislaus River, 9) transfers, 10) Trinity River, 11) urban reliability, and 12) water conservation. We are in the process of finalizing those proposals. With one exception, the proposals should be released in

final form in the next few months. The only proposal that may take a little longer to finalize is the Stakeholder Process proposal, which has been held up at the request of the stakeholders to give them more time to consider their recommendations regarding this key element of CVPIA implementation.

Relationship of CVPIA and the Long-Term CalFed Bay-Delta Program

The solutions we are developing through the CVPIA administrative process represent what I have termed the "zone of reasonableness," the common ground. While consensus has not yet been reached on all aspects of CVPIA implementation, I firmly believe that it is now important to complete that process and build upon our achievements as we move forward in the CalFED Bay-Delta process. The key to water supply reliability as well as restoration of the Bay-Delta ecosystem is successful implementation of the Bay-Delta long-term program. We look forward to working closely with all stakeholders, the public, and members of this subcommittee in this endeavor.

This concludes my statement. I would be pleased to answer any questions you may have.

ATTENTION

NATURAL RESOURCES LAs

WESTERN WATER BRIEFING

** TOMORROW **

MARCH 21, 10:30 a.m. 188 RUSSELL

(See attached Dear Colleague)

Briefing for Members and staff
on the

WESTERN WATER POLICY REVIEW ADVISORY COMMISSION

Friday, March 21, 10:30, 188 Russell

Dear Colleague: March 13, 1997

The Congressional Western Water Caucus invites you and your staff to attend a briefing on the work of the **Western Water Policy Advisory Commission**, a panel created by Congress to assist the President in performing a comprehensive review of all federal activities affecting the allocation of water in the 19 Western states.

The Western Water Policy Act of 1992 requires the President to examine federal programs, laws and policies affecting water allocation in the West and to report to Congress on whether and how they should be changed to meet the current and future needs of the region. The final report is due October 2, 1997.

The 22-member Western Water Policy Review Advisory Commission is composed of the Secretary of the Interior, the Assistant Secretary of the Army for Civil Works, eight members of the public, including representatives of agriculture and environmental interests and Native Americans, and 12 Members of Congress.

Mr. Donald Glazer, Executive Director of the Western Water Policy Review Advisory Commission, will brief Members and staff on the goals and status of the Commission's work on **Friday, March 21, from 10:30 a.m. to 12:30 p.m. in 188 Russell**.

We encourage Members and staff from the West and all other regions of the country to attend the briefing. It is the first of several briefings that the bipartisan Western Water Caucus plans to sponsor this session on key water resources issues.

If you have any questions about the briefing, please contact Will Hollier 225-5531 (House) or Ben Thinnes 224-4521 (Senate).

Sincerely,

Hon. Jon Kyl
Co-Chairman,
Western Water Caucus

Hon. Cal Dooley
Co-Chairman,
Western Water Caucus

Hon. Wayne Allard
Co-Chairman,
Western Water Caucus

Hon. Mike Crapo
Co-Chairman,
Western Water Caucus