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July 12, 2017

The Honorable Paul Ryan
Speaker of the House of Representatives
Office of the Speaker
U.S. Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
House of Representatives
U.S. Capitol
Washington, DC 20515

Subject: H.R. 23 - Gaining Responsibility on Water Act of 2017

Dear House Speaker Ryan and House Minority Leader Pelosi:

We write to express our opposition to H.R. 23, the Gaining Responsibility on Water Act of 2017. We are grateful that California Governor Jerry Brown and Senators Dianne Feinstein and Kamala Harris recently expressed pointed opposition to H.R. 23. Many California politicians oppose similar legislation in recent years, including opposition to H.R. 3964 (Valadao, R-CA) and H.R. 5781 (Valadao, R-CA) in 2014, and H.R. 2898 (Valadao, R-CA) in 2015.

There are a legion of problems with this legislation. They are economic, environmental, and legal in character. Furthermore, H.R. 23 has been done behind closed doors, without benefit of public hearings during committee work. This is unacceptable as a legislative practice.

Economic Problems

H.R. 23 would have devastating effects on salmon fishermen and thousands of small businesses that rely on salmon. California's Bay-Delta estuary is a key waterway traversed by salmon. This bill would have significant negative impacts on the system and harm commercial and recreational fishermen and communities that depend on salmon. The closure of the salmon fishery in 2008 and 2009 resulted in thousands of

lost jobs in California and Oregon. On top of that the last several fishing seasons have been very poor due to the drought and water management decisions that deprioritized salmon and salmon fishermen. Now, with H.R. 23, the livelihoods of commercial and recreational salmon fishermen, Delta farmers, fishing guides, tackle shops, and communities across California and along the West Coast all hang in the balance.

Ecological Problems

HR 23 would eliminate protections for salmon and other native fisheries: Section 108 would eliminate scientifically based protections for salmon and other native species under the Endangered Species Act. Since 2009, under both Republican and Democratic governors, the State of California has been on record opposing riders and legislation to weaken, suspend or overturn the Endangered Species Act in the Bay-Delta. These protections are the bare minimum needed to keep listed species on life support.

The bill would overturn the historic settlement to restore the San Joaquin River: H.R. 23 would overturn the 2004 court decision, undermine the 2006 settlement, and undo the Congressionally-approved 2009 San Joaquin River Restoration Settlement Act which ended twenty years of litigation on the San Joaquin River. As a consequence, H.R. 23 would likely result in 60 miles of California's second longest river likely drying up.

H.R. 23 significantly weakens the 1992 Central Valley Project Improvement Act: The bill would undermine the 1992 Central Valley Project Improvement Act, signed into law by President George H.W. Bush, to encourage water conservation, protect salmon, and reduce taxpayer subsidies, and establish water supply and environmental protection as co-equal goals of the Central Valley Project. Undercutting these most basic water management laws would bring tremendous legal and institutional uncertainty into state and federal water conveyance systems of the State of California, setting back efforts to settle these incredibly contentious water issues by at least 50 years.

Process is Missing

H.R. 23 has never been subject to a single committee hearing to receive public input from the State of California, hunting organizations, sport and commercial fishermen, tribes, or environmental groups, even though the bill could weaken the ability of state and federal agencies to manage limited water resources for all beneficial uses. Last year Congress passed legislation addressing California's water operations in the Water Infrastructure Improvements for the Nation Act of 2016 (P. L. 114-322). H.R. 23 would undermine that legislation, which supporters claim requires that operations of the SWP and CVP comply with state law and the Endangered Species Act. We are committed to addressing natural resources challenges in California through long-term solutions that restore and maintain the health of the environment on which the state's

We opposed the legislative rider at the end of 2016, but HR 23 would eliminate any environmental safeguards that our communities and jobs depend on. Our organization is committed to addressing natural resources challenges in California through long-term solutions that restore and maintain the health of the environment on which the state's

economy and quality of community lives depend. This bill would do the opposite. Investments in water recycling, stormwater capture, water use efficiency, groundwater cleanup and other regional water supplies will provide communities with drought-resistant water supplies, create local jobs, and sustain our economy and environment. These are true solutions to California's drought, not H.R. 23.

Legal Problems

This legislation would exempt California from the long-standing principle that Congress should defer to the individual states in the management of their water resources. While H.R. 23 purports to affirm state authority to regulate the waters within their borders as to other western states, the legislation singles out California by abrogating California water resource law and effectively federalizing the State's water resource management to the injury ofthe State's fish and wildlife resources.

Like its predecessors H.R. 1873 and H.R. 3964, H.R. 23 would transgress state sovereignty in at least three important respects. First, the legislation would mandate that the federal Central Valley Project (CVP) and the California State Water Project (SWP), the largest water projects in the State, operate to outdated water quality standards for the Sacramento-San Joaquin Delta developed over twenty-two years ago, and would preclude state authorities from altering such standards notwithstanding the cumulative scientific evidence that these standards are insufficient to protect the State's fisheries. Second, the legislation would prohibit the California State Water Resources Control Board (SWRCB) and the California Department of Fish and Wildlife (DFW) from exercising their state law duties to protect fishery resources and public trust values, not only as to CVP and SWP operations, but as to all water right holders in California. Third,the legislation would materially alter the San Joaquin River Restoration Settlement Act, an act that implements a settlement reached by the United States, several environmental organizations, and local water users resolving a dispute over application of state fishery law to federal facilities on the San Joaquin River.

These proposed constraints on California's ability to manage its natural resources conflict with historic principles of western water law. In *California v. United States* (1978) 438 U.S. 645, 654, the U.S. Supreme Court affirmed California's ability to impose state law terms and conditions on federal reclamation projects, and declared that, "[t]he history of the relationship between the Federal government and the States in the reclamation of the arid lands o f the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress."

California law grants the SWRCB continuing jurisdiction to review and reconsider all water rights for the purpose of determining whether their exercise would violate the reasonable use requirement of the Article X, Section 2 of the California Constitution and California's common law public trust doctrine. According to the California Supreme Court, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." *(National Audubon Society v. Superior Court* (1983) 33 Cal.3d 319, 446.) The

California Legislature has adopted these principles as “the foundation of state water management policy.” (Cal. Wat. Code,§ 85023.) H.R. 23 would abrogate California's ability to apply its water resource laws while purporting to maintain and protect the ability of other western states to manage their water resources. H.R.23 provides no explanation as to why California should be singled out to have its sovereign authority impaired when managing its natural resources.

By compelling the SWP, a state-funded and managed water project, to operate based upon congressionally-mandated Delta water quality standards, rather than allowing California to develop standards that reflect the most recent scientific information regarding the Delta, H.R. 23 is "requiring" a state agency to comply with a federal policy. By preventing the SWRCB, the DFW, and other state agencies from taking actions to protect fishery and other public trust values, H.R. 23 is "prohibiting" the State from enforcing state law. These provisions of H.R. 23 violate settled state sovereignty principles. Congressional passage ofH.R. 23 would have, in effect, unconstitutionally "dragooned" state agencies and state officials “into administering federal law.” *(Printz, supra,* 521 U.S. at p. 928.)

Congress must not justify the legislation's disparate treatment of California's sovereign authority to manage its natural resources and must not compel California to act as its regional agent to enforce congressional policy. Instead, Congress should affirm long-standing congressional tradition of cooperative federalism and dual sovereignty in water and reject H.R. 23's attempt to federalize water resource management in the California.

For all of these reasons, we strongly urge you to oppose H.R. 23.

Sincerely,

Barbara Barrigan-Parrilla Executive Director	Tim Stroshane Policy Analyst

cc: Senator Dianne Feinstein
Senator Kamala Harris
Governor Jerry Brown