



State of California
Office of the Attorney General

XAVIER BECERRA
ATTORNEY GENERAL

July 31, 2018

The Honorable Paul Ryan
Speaker of the House
House of Representatives
1233 Longworth House Office Building
Washington, D.C. 20515

The Honorable Mitch McConnell
Majority Leader
United States Senate
317 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Nancy Pelosi
Minority Leader
House of Representatives
233 Cannon House Office Building
Washington, D.C. 20515

The Honorable Charles Schumer
Minority Leader
United States Senate
322 Hart Senate Office Building
Washington, D.C. 20510

Dear Senators McConnell and Schumer, and Representatives Ryan and Pelosi:

I am writing to express opposition to the policy riders contained in the appropriations bill, H.R. 6147 as passed by the House on July 19, 2018, and to urge you to keep these provisions out of a future conference report. The House version of this bill contains several unprecedented provisions that would disable California's ability to manage its water resources in the public interest. Specifically, H.R. 6147 attempts to bar Californians from using state and federal courts to challenge the construction, operation and management of state and federal water projects in California; to exempt federal New Melones water projects from the state's water quality planning laws; and to direct the U.S. Environmental Protection Agency (EPA) to weaken state powers under the Clean Water Act.

As Justice Rehnquist observed in *California v. United States*, 438 U.S. 645, 653 (1978), “[t]he history of the relationship between the Federal Government and the States in the reclamation of the arid lands of 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.” H.R. 6147 violates this settled principle of “cooperative federalism” in at least four significant respects. *Id.*

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- Section 437 of the House bill purports to deny Californians their day in court by eliminating judicial review of California WaterFix environmental documents and decisions that rely upon those documents. The bill raises “serious constitutional questions” to the extent that it can be read “to bar all remedies for enforcing federal constitutional rights” such as those arising under the Due Process Clause. *Bowen v Michigan Academy of Family Physicians*, 476 U.S. 667, 681, n. 12 (1986); *Battaglia v. General Motors*, 169 F.2d 254, 257 (2nd Cir. 1948).
- Section 441 of the House bill further purports to bar judicial review of all state and federal water projects operated by the California Department of Water Resources and the U.S. Bureau of Reclamation (Bureau). This rider similarly contravenes state sovereignty principles and raises “serious constitutional questions.” *Bowen, supra*, 276 U.S. at 681, n. 12.
- Section 454 of the House bill also would prohibit the Bureau from expending funds to implement California water quality control plans in operating the New Melones Dam on the Stanislaus River. The New Melones Dam is a Bureau facility located on a tributary to the San Joaquin River and its operation affects the Sacramento-San Joaquin Delta. These plans are essential to protect beneficial uses in the Delta watershed, including fish and wildlife and agricultural water quality uses. California has protected these beneficial uses by allocating the responsibility for meeting water quality requirements among all significant water diverters from the Delta watershed. The bill would exempt the United States from this obligation, unfairly shifting its share of this public interest responsibility onto other non-federal water diverters.
- In a statement of intent on page 60, the bill’s committee report directs the EPA to provide guidance that would weaken state powers to enforce state water quality requirements under section 401 of the Clean Water Act, notwithstanding the U.S. Supreme Court’s conclusion that such powers “are essential to the scheme to preserve state authority to address the broad range of pollution.” *S.D. Warren Co. v. Maine Board of Environmental Protection*, 547 U.S. 370, 386 (2006).

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H.R. 6147's derogation of state sovereignty principles sets a dangerous precedent for federal water policies in the West. A water policy directed by Congress rather than one developed and managed by the individual states would overturn the long-standing Congressional deference to state water law that has been in place since at least the Federal Reclamation Act of 1902. I strongly urge the House and Senate to reject the water resource riders in the House bill and to retain the principles of "cooperative federalism".

Sincerely,

A handwritten signature in blue ink, appearing to read "Xavier Becerra", with a large, stylized flourish above the name.

XAVIER BECERRA
California Attorney General

cc: Senator Dianne Feinstein
Senator Kamala D. Harris