



State of California  
Office of the Attorney General

XAVIER BECERRA  
ATTORNEY GENERAL

July 11, 2017

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

The Honorable Nancy Pelosi  
House Minority Leader  
House of Representatives  
U.S. Capitol  
Washington D.C. 20515

RE: H.R. 23 (Valadao)

Dear House Speaker Ryan and House Minority Leader Pelosi:

I am writing to express my opposition to H.R. 23, the Gaining Responsibility on Water Act of 2017. 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 of the 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Valley Project (CVP) and the California State Water Project (SWP), the largest water projects in the State, operate to outdated water quality standards for the Sacramento-San Joaquin Delta developed over twenty-two years ago, and would preclude state authorities from altering such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 overturn settled principles of cooperative federalism by materially altering 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. California supported the compromise settlement and the implementing legislation and is a partner in the San Joaquin River Restoration Program.

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 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."

California law grants the SWRCB the continuing authority 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 doctrine of the public trust. 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 subject to such disparate treatment as to its sovereign authority to manage its natural resources.

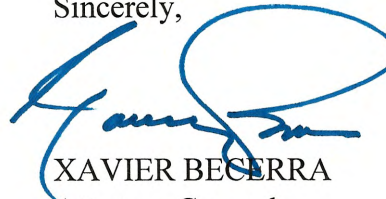
In addition, H.R. 23 takes these steps in violation of settled constitutional principles of state sovereignty. Relying upon separation of powers principles set forth in the Tenth Amendment and elsewhere in the U.S. Constitution, the U.S. Supreme Court in *New York v. United States* has held that "even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts." (*New York v. United States* (1992) 505 U.S. 144, 166-167.) In *Printz v. United States*, the U.S. Supreme Court expanded its ruling in *New York* and held that "[t]oday we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly." (*Printz v. United States* (1997) 521 U.S. 898, 935.)

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 of H.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.)

I urge you to oppose H.R. 23. Congress cannot justify the legislation’s disparate treatment of California’s sovereign authority to manage its natural resources and cannot compel California to act as its regional agent to enforce congressional policy. I ask that you affirm the 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.

Sincerely,



XAVIER BECERRA  
Attorney General