



Oral Testimony of Steve Ellis  
Vice President, Taxpayers for Common Sense

Subcommittee on Water, Power and Oceans  
Committee on Natural Resources

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Good morning Chairman Fleming, Ranking Member Huffman, members of the Subcommittee. Thank you for the opportunity to testify on H.R. 4366 and H.R. 5217. I am Steve Ellis, Vice President of Taxpayers for Common Sense, a national non-partisan budget watchdog.

In essence, the two agreements that would be implemented by these bills absolve the U.S. from providing drainage to several California water districts in exchange for numerous new benefits to the districts. At this time, Taxpayers for Common Sense opposes the legislation. It is not that we don't want to see a resolution to this fight. We absolutely do. We just don't think this is the best or even a good deal for taxpayers.

This deal would end the court-mandated requirement that the U.S. provide drainage and shift that responsibility to the districts. But considering Reclamation estimated the effort would cost billions of dollars, it's not clear how the districts would pay for it. The legislation contains no practical enforcement measures to ensure adequate drainage, or even provisions for monitoring and testing.

Westlands Water District has estimated that drainage will cost "hundreds of millions of dollars." Not billions. It may not initially seem relevant, but Westlands recently paid a penalty to settle an SEC enforcement action over misleading investors regarding their finances during a bond offering in 2012. How?

Westlands used self-described "Enron accounting" to manipulate their books to avoid raising water rates for their customers. Similar accounting practices might explain how Westlands anticipates lower costs. But that doesn't assure taxpayers that Westlands can meet its drainage obligation.

Under this agreement Westlands landowners could continue to grow crops on their land until they can't anymore and then start reselling the promised water. Or they could use the affected lands for solar energy development and sell the

water. Or they could retire more acres and grow more profitable crops on a smaller subset of lands. TCS wouldn't oppose any of these options, but it would mean that the value of the drainage obligation that the U.S. is shedding is a pittance compared to what Westlands is getting.

Land retirement is a primary strategy for reducing drainage impacts, but the Northerly Districts' agreement requires no land retirement at all, and the Westlands agreement only retires 100,000 acres. It has been widely reported that much of this land has already been retired. Both Westlands and Reclamation have previously suggested that 200,000 acres should be retired – so only including half as much in the agreement is surprising. Since drainage impact and costs will likely push Westlands to retire at least 200,000 acres, in my opinion this deal is really about the water.

In a 2010 letter to Sen. Feinstein, then-Commissioner Connor stipulated that the contract amount of water for Westlands should be reduced by a proportion equivalent to the amount of land retired. Less land to irrigate, less water needed. The agreement abandons this common sense proposition and doesn't reduce the

contract amount. Instead it keeps the total contract amount, then stipulates that Westlands should get 75 percent of the contracted amount or 895,000 acre-feet.

By promising that future annual allocations will be based on the full 100 percent contract total, rather than a reduced amount, it ensures that Westlands will always get a larger share relative to other CVP junior contractors.

In addition, under the agreement Westlands would be considered to be “paid out” and their water contract would convert from a 9(e) water service contract to a permanent 9(d) contract. If Westlands retires more land in the future, the excess water not used on that land would be money in the bank. The excess water delivered at artificially low rates would become highly valuable in the market.

The right choices for water distribution in California vary over time based on a myriad of factors. At a minimum, giving Westlands permanent rights to water should have been analyzed for its impact on other future federal and taxpayer obligations.

Reclamation has presented a calculation of the purported financial savings to the U.S. from this deal. Economic analyses are only as good as the assumptions that accompany it. That is where this analysis fails.

Deputy Secretary Connor stipulates that the analysis relies on “current applicable law.” This fails to recognize these bills are in fact making law, and could improve financial terms for the taxpayer. Under “current applicable law,” which dates back to 1902, the districts would have 40 years to repay billions of dollars at no interest. The last dollar would be paid in 2070. I reject the savings analysis because of this fundamental assumption.

Though current law allows for such repayment terms, current law also provides only \$513 million in remaining construction authority for the San Luis Unit. Additional legislation providing billions of dollars in budget authority and appropriations would be necessary before drainage construction could start. New law, new terms. Taxpayers for Common Sense has long been on the record that there should be significant reforms to water project financing and to price water to reflect market realities. A reauthorization of the San Luis Unit would provide an ideal opportunity to change these decades-old policies.

I want to reiterate that TCS wants this issue to be resolved. But these agreements and this legislation don't resolve the issue in a way that is fair to taxpayers. Thank you for the opportunity to testify, and I will be happy to take any questions you might have.