



- Board of Directors
Communications and Legislation Committee

3/13/2012 Board Meeting

8-14

Subject

Express Opposition to H.R. 1837 (Nunes, R-CA) - the Sacramento-San Joaquin Valley Water Reliability Act, unless amended

Description

H.R. 1837 (Nunes, R-CA), as proposed, would provide relief to the Central Valley Project (CVP) and its contractors from regulatory and other requirements of the Central Valley Project Improvement Act (CVPIA), the Federal Endangered Species Act (FESA) and certain provisions of state law.

As amended on February 16, 2012, H.R. 1837 (Attachment 1) would codify provisions of the 1994 Bay-Delta Accord (1994 Accord), make changes to the CVPIA of 1992, and repeal and replace the San Joaquin River Restoration Settlement Act. Changes proposed in H.R. 1837 generally would ease regulatory restrictions, and eliminate certain existing fish and wildlife protection and restoration requirements.

Despite provisions that are intended to protect the State Water Project (SWP), staff believes the bill has the potential to shift environmental obligations from the CVP to the SWP which would be borne by Metropolitan and other state water contractors. Further, provisions relating to area-of-origin water rights could result in unintended consequences. The bill also conflicts with the current draft of the Bay Delta Conservation Plan (BDCP) and California's recently enacted coequal goals for the Bay-Delta.

H.R. 1837 was passed by the House of Representatives on February 29 and will require both Senate action and signature of the President in order to become law.

Background and Summary of Key Provisions

Since the federal and state agencies began coordinated operations of the CVP and SWP by statute and by practice, Congress has enacted two significant water laws and a landmark state-federal agreement was reached related to the management of the federal and state water systems and the Sacramento-San Joaquin Bay Delta environment in which they operate:

- The Central Valley Improvement Act (1992)
- The Bay-Delta Accord (1994)
- The San Joaquin River Restoration Act (2006)

These statutes and agreement collectively regulate CVP and SWP project operations in conformance with federal and state environmental laws.

H.R. 1837 seeks to amend these actions by reducing the obligations currently imposed on the CVP to meet environmental objectives in the Bay-Delta.

Relaxing certain of the CVP's obligations might be argued by some interests as reasonable given the development of recent science regarding the impact of project operations and water flows on the environment. The bill also proposes to extend that relief to California's SWP for its obligations under both federal and California law. However, it is not clear that H.R. 1837, as drafted, legally can limit the SWP's obligations under state law. If the

federal bill cannot limit California's jurisdiction to regulate the SWP, any reduction in CVP obligations could be shifted to the SWP. Moreover, it is not clear how the bill might affect the CVP's participation in the environmental protections being considered in the BDCP. Nor is it clear how the bill might impact the authority of the Secretary of the Interior and the Secretary of Commerce to provide the approvals necessary for the BDCP.

Most significantly, the bill provides that

- The CVP and SWP "shall be operated pursuant to the water quality standards and operational restraints" described in the 1994 Bay-Delta Accord "without regard to the Federal Endangered Species Act (FESA)." However, additional requirements have been added to the projects' operations under the FESA, the CVPIA and the California Endangered Species Act (CESA);
- Under H.R. 1837, all federal and California agencies would be prohibited from imposing restrictions on the CVP and SWP greater than those in the 1994 Accord to protect or enhance any species affected by the operation of those projects;
- California would be prohibited from restricting any water right through application of the Public Trust Doctrine;
- "No costs associated with the implementation of" the section specifying the above measures shall be imposed on a CVP contractor or "any other person or entity." It is not clear what these costs would be or who would be required to pay them;
- If the Secretary of the Interior does not increase the CVP's ability to replace the 800,000 acre-feet of water dedicated to the environment under the CVPIA by September 30, 2016, "implementation of any non-mandatory actions under [the CVPIA] shall be suspended"; and
- The bill also prohibits implementation of the San Joaquin River Settlement agreement reached by the CVP, its Friant Division Contractors and the Natural Resources Defense Council; changes a number of provisions of the settlement; and appears to preempt application of California environmental law with respect to CVP operations on the San Joaquin River.

Impacts/Effects on Metropolitan

FESA/CESA Compliance Could be Shifted to SWP - The measure's intent is to improve water supply reliability through providing relief to the CVP and its contractors from regulatory and other requirements of the CVPIA, the FESA and the provisions of California law. These provisions would substantially reduce obligations currently imposed on the CVP to meet environmental objectives in the Bay-Delta. The bill also proposes to similarly reduce obligations on California's SWP for its obligations under both federal and California law. However, it is not clear that H.R. 1837, as drafted, legally can limit the SWP's obligations under state law. If it cannot limit California's jurisdiction to regulate the SWP, any reduction in CVP obligations could potentially be shifted to SWP contractors, including Metropolitan.

Potential Conflicts with the BDCP/Conveyance - Additionally, the United States Bureau of Reclamation and CVP contractors are important parties in the development and eventual implementation of the BDCP. In order to achieve the goal of adopting the BDCP as a Habitat Conservation Plan under FESA or a Natural Community Conservation Plan under California law, the BDCP must be approved by the Secretaries of the Interior and of Commerce as well as California Department of Fish and Game. The BDCP may contain environmental mitigation measures different than those contained in the 1994 Accord. As currently drafted, H. R. 1837 would prohibit these agencies from approving the measures included in the BDCP to the extent they are different or in addition to the 1994 Accord, leading to the failure of the BDCP.

Proponents of H.R.1837 argue that by removing environmental restrictions on CVP (and SWP) operations, the bill eliminates the need for a Delta conveyance facility. Instead, they assert that H.R. 1837 could allow current through-Delta project operations with reduced environmental obligations. This option is contrary to recommendations advanced by the Public Policy Institute of California and numerous economic and environmental experts who have determined that the Delta is unsustainable under a status quo scenario. Worsening environmental conditions, significant seismic threats to the state's water supply and degrading water quality conditions -- due in part to sea level rise -- leave current operations vulnerable to major disruptions and

significantly increased costs. The BDCP is designed to address these and other concerns in conformance with California's law establishing water supply reliability and ecosystem restoration as coequal goals.

Staff Recommendation

The provisions of H.R. 1837 are in direct conflict with the collaborative BDCP effort that has been underway since 2006 to develop a long-term plan consistent with the coequal goals of providing water supply reliability and restoring the ecological health of the Bay-Delta.

Because of H.R. 1837's potential impact on the SWP's environmental obligations and its water supply and operations and because of the bill's potential to undermine the success of the BDCP, staff recommends that Metropolitan oppose H.R. 1837 unless it is amended to avoid those potential impacts. At a minimum, two potential amendments should be considered:

- (i) Protect SWP supplies by providing that, to the extent H.R. 1837 resulted in the shift in the shared environmental obligations in the Bay-Delta from the CVP to the SWP, the CVP would be required to repay the SWP; and
- (ii) Provide that, notwithstanding the terms of the bill, H.R. 1837 will not affect the Secretary of the Interior's or Secretary of Commerce's responsibility or authority as it exists on the date of enactment to approve the BDCP as a habitat conservation plan under FESA.

Policy

Minute Item 46637, dated April 11, 2006, adopting a set of Delta policy principles ensuring a foundation for development of future positions and provide guidance to staff

Minute Item 47135, dated June 12, 2007, adopting Metropolitan's Delta Action Plan

California Environmental Quality Act (CEQA)

CEQA determination for Option #1:

The proposed action is not defined as a project under CEQA because it involves continuing administrative activities, such as general policy and procedure making (Section 15378(b)(2) of the State CEQA Guidelines). In addition, where it can be seen with certainty that there is no possibility that the proposed action in question may have a significant effect on the environment, the proposed action is not subject to CEQA (Section 15061(b)(3) of the State CEQA Guidelines).

The CEQA determination is: Determine that the proposed action is not subject to CEQA pursuant to Sections 15378(b)(2) and 15061(b)(3) of the State CEQA Guidelines.

CEQA determination for Option #2:

None required

Board Options

Option #1

Adopt the CEQA determination and express opposition to H.R. 1837, unless amended.

Fiscal Impact: None

Business Analysis: There would be no impacts to the BDCP process, the San Joaquin River Settlement agreement, and state's water rights would not be impacted.

Option #2


Take no position on H.R. 1837.

Fiscal Impact: None

Business Analysis: Potential impacts to completion of the BDCP, potentially shifts responsibility to meet environmental requirements from CVP contractors to SWP contractors and impacts state's water rights

Staff Recommendation

Option #1


Linda Waade
Deputy General Manager, External Affairs

3/6/2012
Date


Jeffrey Kightlinger
General Manager

3/6/2012
Date

Attachment 1 – Amendment in the Nature of a Substitute to H.R. 1837

Ref# ea12617280

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**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 1837
OFFERED BY M. _____**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Sacramento-San Joa-
3 quin Valley Water Reliability Act”.

4 SEC. 2. TABLE OF CONTENTS.

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY

Sec. 101. Amendment to purposes.
Sec. 102. Amendment to definition.
Sec. 103. Contracts.
Sec. 104. Water transfers, improved water management, and conservation.
Sec. 105. Fish, wildlife, and habitat restoration.
Sec. 106. Restoration fund.
Sec. 107. Additional authorities.
Sec. 108. Bay-Delta Accord.
Sec. 109. Natural and artificially spawned species.
Sec. 110. Authorized service area.
Sec. 111. Regulatory streamlining.

TITLE II—SAN JOAQUIN RIVER RESTORATION

Sec. 201. Repeal of the San Joaquin River settlement.
Sec. 202. Purpose.
Sec. 203. Definitions.
Sec. 204. Implementation of restoration.
Sec. 205. Disposal of property; title to facilities.
Sec. 206. Compliance with applicable law.
Sec. 207. Compliance with Central Valley Project Improvement Act.
Sec. 208. No private right of action.
Sec. 209. Implementation.
Sec. 210. Repayment contracts and acceleration of repayment of construction costs.

- Sec. 211. Repeal.
- Sec. 212. Water supply mitigation.
- Sec. 213. Additional Authorities.

TITLE III—REPAYMENT CONTRACTS AND ACCELERATION OF
REPAYMENT OF CONSTRUCTION COSTS

- Sec. 301. Repayment contracts and acceleration of repayment of construction costs.

TITLE IV—BAY-DELTA WATERSHED WATER RIGHTS
PRESERVATION AND PROTECTION

- Sec. 401. Water rights and area-of-origin protections.
- Sec. 402. Sacramento River settlement contracts.
- Sec. 403. Sacramento River Watershed Water Service Contractors.
- Sec. 404. No redirected adverse impacts.

1 **TITLE I—CENTRAL VALLEY**
2 **PROJECT WATER RELIABILITY**

3 **SEC. 101. AMENDMENT TO PURPOSES.**

4 Section 3402 of the Central Valley Project Improve-
5 ment Act (106 Stat. 4706) is amended—

6 (1) in subsection (f), by striking the period at
7 the end; and

8 (2) by adding at the end the following:

9 “(g) to ensure that water dedicated to fish and wild-
10 life purposes by this title is replaced and provided to Cen-
11 tral Valley Project water contractors by December 31,
12 2016, at the lowest cost reasonably achievable; and

13 “(h) to facilitate and expedite water transfers in ac-
14 cordance with this Act.”.

15 **SEC. 102. AMENDMENT TO DEFINITION.**

16 Section 3403 of the Central Valley Project Improve-
17 ment Act (106 Stat. 4707) is amended—

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1 (1) by amending subsection (a) to read as fol-
2 lows:

3 “(a) the term ‘anadromous fish’ means those native
4 stocks of salmon (including steelhead) and sturgeon that,
5 as of October 30, 1992, were present in the Sacramento
6 and San Joaquin Rivers and their tributaries and ascend
7 those rivers and their tributaries to reproduce after matur-
8 ing in San Francisco Bay or the Pacific Ocean;”;

9 (2) in subsection (l), by striking “and,”

10 (3) in subsection (m), by striking the period
11 and inserting “; and”, and

12 (4) by adding at the end the following:

13 “(n) the term ‘reasonable flows’ means water flows
14 capable of being maintained taking into account com-
15 peting consumptive uses of water and economic, environ-
16 mental, and social factors.”.

17 **SEC. 103. CONTRACTS.**

18 Section 3404 of the Central Valley Project Improve-
19 ment Act (106 Stat. 4708) is amended—

20 (1) in the heading, by striking “**LIMITATION**
21 **ON CONTRACTING AND CONTRACTS REFORM**”
22 and inserting “**CONTRACTS**”; and

23 (2) by striking the language of the section and
24 by adding:

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1 “(a) RENEWAL OF EXISTING LONG-TERM CON-
2 TRACTS.—Upon request of the contractor, the Secretary
3 shall renew any existing long-term repayment or water
4 service contract that provides for the delivery of water
5 from the Central Valley Project for a period of 40 years,
6 and renew such contracts for successive periods of 40
7 years each.

8 “(b) DELIVERY CHARGE.—Beginning on the date of
9 the enactment of this Act, a contract entered into or re-
10 newed pursuant to this section shall include a provision
11 that requires the Secretary to charge the other party to
12 such contract only for water actually delivered by the Sec-
13 retary.”.

14 **SEC. 104. WATER TRANSFERS, IMPROVED WATER MANAGE-**
15 **MENT, AND CONSERVATION.**

16 Section 3405 of the Central Valley Project Improve-
17 ment Act (106 Stat. 4709) is amended as follows:

18 (1) In subsection (a)—

19 (A) by inserting before “Except as pro-
20 vided herein” the following: “The Secretary
21 shall take all necessary actions to facilitate and
22 expedite transfers of Central Valley Project
23 water in accordance with this Act or any other
24 provision of Federal reclamation law and the
25 National Environmental Policy Act of 1969.”;

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1 (B) in paragraph (1)(A), by striking “to
2 combination” and inserting “or combination”;

3 (C) in paragraph (2), by adding at the end
4 the following:

5 “(E) The contracting district from which
6 the water is coming, the agency, or the Sec-
7 retary shall determine if a written transfer pro-
8 posal is complete within 45 days after the date
9 of submission of such proposal. If such district
10 or agency or the Secretary determines that such
11 proposal is incomplete, such district or agency
12 or the Secretary shall state with specificity
13 what must be added to or revised in order for
14 such proposal to be complete.

15 “(F) Except as provided in this section,
16 the Secretary shall not impose mitigation or
17 other requirements on a proposed transfer, but
18 the contracting district from which the water is
19 coming or the agency shall retain all authority
20 under State law to approve or condition a pro-
21 posed transfer.”; and

22 (D) by adding at the end the following:

23 “(4) Notwithstanding any other provision of
24 Federal reclamation law—

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1 “(A) the authority to make transfers or ex-
2 changes of, or banking or recharge arrange-
3 ments using, Central Valley Project water that
4 could have been conducted before October 30,
5 1992, is valid, and such transfers, exchanges,
6 or arrangements shall not be subject to, limited,
7 or conditioned by this title; and

8 “(B) this title shall not supersede or re-
9 voke the authority to transfer, exchange, bank,
10 or recharge Central Valley Project water that
11 existed prior to October 30, 1992.”.

12 (2) In subsection (b)—

13 (A) in the heading, by striking “METER-
14 ING” and inserting “MEASUREMENT”; and

15 (B) by inserting after the first sentence
16 the following: “The contracting district or agen-
17 cy, not including contracting districts serving
18 multiple agencies with separate governing
19 boards, shall ensure that all contractor-owned
20 water delivery systems within its boundaries
21 measure surface water at the district or agen-
22 cy’s facilities up to the point the surface water
23 is commingled with other water supplies.”.

24 (3) By striking subsection (d).

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1 (4) By redesignating subsections (e) and (f) as
2 subsections (d) and (e), respectively.

3 (5) By amending subsection (e)(as redesignated
4 by paragraph (4))—

5 (A) by striking “as a result of the in-
6 creased repayment” and inserting “that exceed
7 the cost-of-service”;

8 (B) by inserting “the delivery of” after
9 “rates applicable to”; and

10 (C) by striking “, and all increased reve-
11 nues received by the Secretary as a result of the
12 increased water prices established under sub-
13 section 3405(d) of this section,”.

14 **SEC. 105. FISH, WILDLIFE, AND HABITAT RESTORATION.**

15 Section 3406 of the Central Valley Project Improve-
16 ment Act (106 Stat. 4714) is amended as follows:

17 (1) In subsection (b)—

18 (A) in paragraph (1)(B)—

19 (i) by striking “is authorized and di-
20 rected to” and inserting “may”;

21 (ii) by inserting “reasonable water”
22 after “to provide”;

23 (iii) by striking “anadromous fish, ex-
24 cept that such” and inserting “anad-
25 romous fish. Such”;

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1 (iv) by striking “Instream flow” and
2 inserting “Reasonable instream flow”;

3 (v) by inserting “and the National
4 Marine Fisheries Service” after “United
5 States Fish and Wildlife Service”; and

6 (vi) by striking “California Depart-
7 ment of Fish and Game” and inserting
8 “United States Geological Survey”;

9 (B) in paragraph (2)—

10 (i) by striking “primary purpose” and
11 inserting “purposes”;

12 (ii) by striking “but not limited to”
13 before “additional obligations”; and

14 (iii) by adding after the period the fol-
15 lowing: “All Central Valley Project water
16 used for the purposes specified in this
17 paragraph shall be credited to the quantity
18 of Central Valley Project yield dedicated
19 and managed under this paragraph by de-
20 termining how the dedication and manage-
21 ment of such water would affect the deliv-
22 ery capability of the Central Valley Project
23 during the 1928 to 1934 drought period
24 after fishery, water quality, and other flow
25 and operational requirements imposed by

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1 terms and conditions existing in licenses,
2 permits, and other agreements pertaining
3 to the Central Valley Project under appli-
4 cable State or Federal law existing on Oc-
5 tober 30, 1992, have been met. To the full-
6 est extent possible and in accordance with
7 section 3411, Central Valley Project water
8 dedicated and managed pursuant to this
9 paragraph shall be reused to fulfill the
10 Secretary's remaining contractual obliga-
11 tions to provide Central Valley Project
12 water for agricultural or municipal and in-
13 dustrial purposes.”;

14 (C) by amending paragraph (2)(C) to read:

15 “(C) If by March 15th of any year the
16 quantity of Central Valley Project water fore-
17 casted to be made available to water service or
18 repayment contractors in the Delta Division of
19 the Central Valley Project is below 75 percent
20 of the total quantity of water to be made avail-
21 able under said contracts, the quantity of Cen-
22 tral Valley Project yield dedicated and managed
23 for that year under this paragraph shall be re-
24 duced by 25 percent.”.

25 (2) By adding at the end the following:

1 “(i) SATISFACTION OF PURPOSES.—
 2 By pursuing the activities described in this
 3 section, the Secretary shall be deemed to
 4 have met the mitigation, protection, res-
 5 toration, and enhancement purposes of this
 6 title.”.

7 **SEC. 106. RESTORATION FUND.**

8 (a) IN GENERAL.—Section 3407(a) of the Central
 9 Valley Project Improvement Act (106 Stat. 4726) is
 10 amended as follows:

11 (1) By inserting “(1) IN GENERAL.—” before
 12 “‘There is hereby”.

13 (2) By striking “Not less than 67 percent” and
 14 all that follows through “Monies” and inserting
 15 “Monies”.

16 (3) By adding at the end the following:

17 “(2) PROHIBITIONS.—The Secretary may not directly
 18 or indirectly require a donation or other payment to the
 19 Restoration Fund—

20 “(A) or environmental restoration or mitigation
 21 fees not otherwise provided by law, as a condition
 22 to—

23 “(i) providing for the storage or convey-
 24 ance of non-Central Valley Project water pursu-
 25 ant to Federal reclamation laws; or

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1 “(ii) the delivery of water pursuant to sec-
2 tion 215 of the Reclamation Reform Act of
3 1982 (Public Law 97–293; 96 Stat. 1270); or
4 “(B) for any water that is delivered with the
5 sole intent of groundwater recharge.”.

6 (b) CERTAIN PAYMENTS.—Section 3407(c)(1) of the
7 Central Valley Project Improvement Act is amended—

8 (1) by striking “mitigation and restoration”;
9 (2) by striking “provided for or”; and
10 (3) by striking “of fish, wildlife” and all that
11 follows through the period and inserting “of carrying
12 out all activities described in this title.”.

13 (c) ADJUSTMENT AND ASSESSMENT OF MITIGATION
14 AND RESTORATION PAYMENTS.—Section 3407(d)(2) of
15 the Central Valley Project Improvement Act is amended
16 by inserting “, or after October 1, 2013, \$4 per megawatt-
17 hour for Central Valley Project power sold to power con-
18 tractors (October 2013 price levels)” after “\$12.00 per
19 acre-foot (October 1992 price levels) for municipal and in-
20 dustrial water sold and delivered by the Central Valley
21 Project”.

22 (d) COMPLETION OF ACTIONS.—Section
23 3407(d)(2)(A) of the Central Valley Project Improvement
24 Act is amended by inserting “, no later than December
25 31, 2020,” after “That upon the completion of the fish,

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1 wildlife, and habitat mitigation and restoration actions
2 mandated under section 3406 of this title.”

3 (e) REPORT; ADVISORY BOARD.—Section 3407 of the
4 Central Valley Project Improvement Act (106 Stat. 4714)
5 is amended by adding at the end the following:

6 “(g) REPORT ON EXPENDITURE OF FUNDS.—At the
7 end of each fiscal year, the Secretary, in consultation with
8 the Restoration Fund Advisory Board, shall submit to
9 Congress a plan for the expenditure of all of the funds
10 deposited into the Restoration Fund during the preceding
11 fiscal year. Such plan shall contain a cost-effectiveness
12 analysis of each expenditure.

13 “(h) ADVISORY BOARD.—

14 “(1) ESTABLISHMENT.—There is hereby estab-
15 lished the Restoration Fund Advisory Board (herein-
16 after in this section referred to as the ‘Advisory
17 Board’) composed of 12 members selected by the
18 Secretary, each for four-year terms, one of whom
19 shall be designated by the Secretary as Chairman.
20 The members shall be selected so as to represent the
21 various Central Valley Project stakeholders, four of
22 whom shall be from CVP agricultural users, three
23 from CVP municipal and industrial users, three
24 from CVP power contractors, and two at the discre-
25 tion of the Secretary. The Secretary and the Sec-

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1 retary of Commerce may each designate a represent-
2 ative to act as an observer of the Advisory Board.

3 “(2) DUTIES.—The duties of the Advisory
4 Board are as follows:

5 “(A) To meet at least semiannually to de-
6 velop and make recommendations to the Sec-
7 retary regarding priorities and spending levels
8 on projects and programs carried out pursuant
9 to the Central Valley Project Improvement Act.

10 “(B) To ensure that any advice or rec-
11 ommendation made by the Advisory Board to
12 the Secretary reflect the independent judgment
13 of the Advisory Board.

14 “(C) Not later than December 31, 2013,
15 and annually thereafter, to transmit to the Sec-
16 retary and Congress recommendations required
17 under subparagraph (A).

18 “(D) Not later than December 31, 2013,
19 and biennially thereafter, to transmit to Con-
20 gress a report that details the progress made in
21 achieving the actions mandated under section
22 3406 of this title.

23 “(3) ADMINISTRATION.—With the consent of
24 the appropriate agency head, the Advisory Board

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1 may use the facilities and services of any Federal
2 agency.”.

3 **SEC. 107. ADDITIONAL AUTHORITIES.**

4 (a) **AUTHORITY FOR CERTAIN ACTIVITIES.**—Section
5 3408(c) of the Central Valley Project Improvement Act
6 (106 Stat. 4728) is amended to read as follows:

7 “(c) **CONTRACTS FOR ADDITIONAL STORAGE AND**
8 **DELIVERY OF WATER.**—

9 “(1) **IN GENERAL.**—The Secretary is authorized
10 to enter into contracts pursuant to Federal reclama-
11 tion law and this title with any Federal agency, Cali-
12 fornia water user or water agency, State agency, or
13 private organization for the exchange, impoundment,
14 storage, carriage, and delivery of nonproject water
15 for domestic, municipal, industrial, fish and wildlife,
16 and any other beneficial purpose.

17 “(2) **LIMITATION.**—Nothing in this subsection
18 shall be deemed to supersede the provisions of sec-
19 tion 103 of Public Law 99–546 (100 Stat. 3051).

20 “(3) **AUTHORITY FOR CERTAIN ACTIVITIES.**—
21 The Secretary shall use the authority granted by
22 this subsection in connection with requests to ex-
23 change, impound, store, carry, or deliver nonproject
24 water using Central Valley Project facilities for any
25 beneficial purpose.

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1 “(4) RATES.—The Secretary shall develop rates
2 not to exceed the amount required to recover the
3 reasonable costs incurred by the Secretary in con-
4 nection with a beneficial purpose under this sub-
5 section. Such rates shall be charged to a party using
6 Central Valley Project facilities for such purpose.
7 Such costs shall not include any donation or other
8 payment to the Restoration Fund.

9 “(5) CONSTRUCTION.—This subsection shall be
10 construed and implemented to facilitate and encour-
11 age the use of Central Valley Project facilities to ex-
12 change, impound, store, carry, or deliver nonproject
13 water for any beneficial purpose.”.

14 (b) REPORTING REQUIREMENTS.—Section 3408(f) of
15 the Central Valley Project Improvement Act (106 Stat.
16 4729) is amended—

17 (1) by striking “Interior and Insular Affairs
18 and the Committee on Merchant Marine and Fish-
19 eries” and inserting “Natural Resources”;

20 (2) in the second sentence, by inserting before
21 the period at the end the following: “, including
22 progress on the plan required by subsection (j)”;

23 (3) by adding at the end the following: “The fil-
24 ing and adequacy of such report shall be personally
25 certified to the Committees referenced above by the

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1 Regional Director of the Mid-Pacific Region of the
2 Bureau of Reclamation.”.

3 (c) PROJECT YIELD INCREASE.—Section 3408(j) of
4 the Central Valley Project Improvement Act (106 Stat.
5 4730) is amended as follows:

6 (1) By redesignating paragraphs (1) through
7 (7) as subparagraphs (A) through (G), respectively.

8 (2) By striking “In order to minimize adverse
9 effects, if any, upon” and inserting “(1) IN GEN-
10 ERAL.—In order to minimize adverse effects upon”.

11 (3) By striking “needs, the Secretary,” and all
12 that follows through “submit to Congress, a” and
13 inserting “needs, the Secretary, on a priority basis
14 and not later than September 30, 2013, shall submit
15 to Congress a”.

16 (4) By striking “increase,” and all that follows
17 through “options—” and inserting “increase, as
18 soon as possible but not later than September 30,
19 2016 (except for the construction of new facilities
20 which shall not be limited by that deadline), the
21 water of the Central Valley Project by the amount
22 dedicated and managed for fish and wildlife pur-
23 poses under this title and otherwise required to meet
24 the purposes of the Central Valley Project including
25 satisfying contractual obligations. The plan required

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1 by this subsection shall include recommendations on
2 appropriate cost-sharing arrangements and author-
3 izing legislation or other measures needed to imple-
4 ment the intent, purposes, and provisions of this
5 subsection and a description of how the Secretary
6 intends to use the following options—”.

7 (5) In subparagraph (A), by inserting “and
8 construction of new water storage facilities” before
9 the semicolon.

10 (6) In subparagraph (F), by striking “and” at
11 the end.

12 (7) In subparagraph (G), by striking the period
13 and all that follows through the end of the sub-
14 section and inserting “; and”.

15 (8) By inserting after subparagraph (G) the fol-
16 lowing:

17 “(H) Water banking and recharge.”.

18 (9) By adding at the end the following:

19 “(2) IMPLEMENTATION OF PLAN.—The Sec-
20 retary shall implement the plan required by para-
21 graph (1) commencing on October 1, 2013. In order
22 to carry out this subsection, the Secretary shall co-
23 ordinate with the State of California in imple-
24 menting measures for the long-term resolution of

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1 problems in the San Francisco Bay/Sacramento-San
2 Joaquin Delta Estuary.

3 “(3) FAILURE OF THE PLAN.—Notwithstanding
4 any other provision of Federal reclamation law, if by
5 September 30, 2016, the plan required by paragraph
6 (1) fails to increase the annual delivery capability of
7 the Central Valley Project by 800,000 acre-feet, im-
8 plementation of any non-mandatory action under
9 section 3406(b)(2) shall be suspended until the plan
10 achieves an increase in the annual delivery capability
11 of the Central Valley Project by 800,000 acre-feet.”.

12 (d) TECHNICAL CORRECTION.—Section 3408(h) of
13 the Central Valley Project Improvement Act (106 Stat.
14 4729) is amended—

15 (1) in paragraph (1), by striking “paragraph
16 (h)(2)” and inserting “paragraph (2)”; and

17 (2) in paragraph (2), by striking “paragraph
18 (h)(i)” and inserting “paragraph (1)”.

19 **SEC. 108. BAY-DELTA ACCORD.**

20 (a) CONGRESSIONAL DIRECTION REGARDING CEN-
21 TRAL VALLEY PROJECT AND CALIFORNIA STATE WATER
22 PROJECT OPERATIONS.—The Central Valley Project and
23 the State Water Project shall be operated pursuant to the
24 water quality standards and operational constraints de-
25 scribed in the “Principles for Agreement on the Bay-Delta

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1 Standards Between the State of California and the Fed-
2 eral Government” dated December 15, 1994, and such op-
3 erations shall proceed without regard to the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other
5 law pertaining to the operation of the Central Valley
6 Project and the California State Water Project. Imple-
7 mentation of this section shall be in strict conformance
8 with the “Principles for Agreement on the Bay-Delta
9 Standards Between the State of California and the Fed-
10 eral Government” dated December 15, 1994.

11 (b) APPLICATION OF LAWS TO OTHERS.—Neither a
12 Federal department nor the State of California, including
13 any agency or board of the State of California, shall im-
14 pose on any valid water right obtained pursuant to State
15 law, including a pre-1914 appropriative right, any condi-
16 tion that restricts the exercise of that water right in order
17 to conserve, enhance, recover or otherwise protect any spe-
18 cies that is affected by operations of the Central Valley
19 Project or California State Water Project. Nor shall the
20 State of California, including any agency or board of the
21 State of California, restrict the exercise of any valid water
22 right obtained pursuant to State law, including a pre-1914
23 appropriative right, in order to protect, enhance, or restore
24 under the Public Trust Doctrine any public trust value.
25 Implementation of the “Principles for Agreement on the

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1 Bay-Delta Standards Between the State of California and
2 the Federal Government” dated December 15, 1994, shall
3 be in strict compliance with the water rights priority sys-
4 tem and statutory protections for areas of origin.

5 (c) COSTS.—No cost associated with the implementa-
6 tion of this section shall be imposed directly or indirectly
7 on any Central Valley Project contractor, or any other per-
8 son or entity, unless such costs are incurred on a voluntary
9 basis.

10 (d) NATIVE SPECIES PROTECTION.—California law is
11 preempted with respect to any restriction on the quantity
12 or size of nonnative fish taken or harvested that preys
13 upon one or more native fish species that occupy the Sac-
14 ramento and San Joaquin Rivers and their tributaries or
15 the Sacramento-San Joaquin Rivers Delta.

16 **SEC. 109. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

17 After the date of the enactment of this title, and re-
18 gardless of the date of listing, the Secretaries of the Inte-
19 rior and Commerce shall not distinguish between natural-
20 spawned and hatchery-spawned or otherwise artificially
21 propagated strains of a species in making any determina-
22 tion under the Endangered Species Act of 1973 (16
23 U.S.C. 1531 et seq.) that relates to any anadromous fish
24 species present in the Sacramento and San Joaquin Rivers
25 or their tributaries and ascend those rivers and their trib-

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1 utaries to reproduce after maturing in San Francisco Bay
2 or the Pacific Ocean.

3 **SEC. 110. AUTHORIZED SERVICE AREA.**

4 The authorized service area of the Central Valley
5 Project shall include the area within the boundaries of the
6 Kettleman City Community Services District, California,
7 as those boundaries exist on the date of the enactment
8 of this title. Notwithstanding the provisions of the Act of
9 October 30, 1992 (Public Law 102-575, 106 Stat. 4600
10 et seq.), upon enactment of this title, the Secretary is au-
11 thorized and directed to enter into a long-term contract
12 in accordance with the reclamation laws with the
13 Kettleman City Community Services District, California,
14 for the delivery of up to 900 acre-feet of Central Valley
15 Project water for municipal and industrial use. The Sec-
16 retary may temporarily reduce deliveries of the quantity
17 of water made available pursuant to up to 25 percent of
18 such total whenever reductions due to hydrologic cir-
19 cumstances are imposed upon agricultural deliveries of
20 Central Valley Project water. If any additional infrastruc-
21 ture or related-costs are needed to implement this section,
22 such costs shall be the responsibility of the non-Federal
23 entity.

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1 **SEC. 111. REGULATORY STREAMLINING.**

2 (a) APPLICABILITY OF CERTAIN LAWS.—Filing of a
3 Notice of Determination or a Notice of Exemption for any
4 project, including the issuance of a permit under State
5 law, related to any project of the CVP or the delivery of
6 water therefrom in accordance with the California Envi-
7 ronmental Quality Act shall be deemed to meet the re-
8 quirements of section 102(2)(C) of the National Environ-
9 mental Protection Act of 1969 (42 U.S.C. 4332(2)(C)) for
10 that project or permit.

11 (b) CONTINUATION OF PROJECT.—The Bureau of
12 Reclamation shall not be required to cease or modify any
13 major Federal action or other activity related to any
14 project of the CVP or the delivery of water there from
15 pending completion of judicial review of any determination
16 made under the National Environmental Protection Act
17 of 1969 (42 U.S.C. 4332(2)(C)).

18 (c) PROJECT DEFINED.—For the purposes of this
19 section:

20 (1) CVP.—The term “CVP” means the Central
21 Valley Project.

22 (2) PROJECT.—The term “project”—

23 (A) means an activity that—

24 (i) is undertaken by a public agency,
25 funded by a public agency, or that requires
26 an issuance of a permit by a public agency;

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1 (ii) has a potential to result in phys-
2 ical change to the environment; and

3 (iii) may be subject to several discre-
4 tionary approvals by governmental agen-
5 cies;

6 (B) may include construction activities,
7 clearing or grading of land, improvements to
8 existing structures, and activities or equipment
9 involving the issuance of a permit; or

10 (C) as defined under the California Envi-
11 ronmental Quality Act in section 21065 of the
12 California Public Resource Code.

13 **TITLE II—SAN JOAQUIN RIVER**
14 **RESTORATION**

15 **SEC. 201. REPEAL OF THE SAN JOAQUIN RIVER SETTLE-**
16 **MENT.**

17 As of the date of enactment of this title, the Secretary
18 shall cease any action to implement the Stipulation of Set-
19 tlement (*Natural Resources Defense Council, et al. v. Kirk*
20 *Rodgers, et al.*, Eastern District of California, No. Civ. S-
21 88-1658 LKK/GGH).

22 **SEC. 202. PURPOSE.**

23 Section 10002 of the San Joaquin River Restoration
24 Settlement Act (Public Law 111-11) is amended by strik-

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1 ing “implementation of the Settlement” and inserting
2 “restoration of the San Joaquin River”.

3 **SEC. 203. DEFINITIONS.**

4 Section 10003 of the San Joaquin River Restoration
5 Settlement Act (Public Law 111–11) is amended—

6 (1) by striking paragraph (1) and inserting the
7 following:

8 “(1) The term ‘Restoration Flows’ means the
9 additional water released or bypassed from Friant
10 Dam to insure that the target flow entering
11 Mendota Pool, located approximately 62 river miles
12 downstream from Friant Dam, does not fall below
13 50 cubic feet per second.”;

14 (2) by striking paragraph (3) and inserting the
15 following:

16 “(3) The term ‘Water Year’ means March 1
17 through the last day of February of the following
18 Calendar Year, both dates inclusive”; and

19 (3) by adding at the end the following new
20 paragraph:

21 “(4) The term ‘Critical Water Year’ means
22 when the total unimpaired runoff at Friant Dam is
23 less than 400,000 acre-feet, as forecasted as of
24 March 1 of that water year by the California De-
25 partment of Water Resources.”.

1 **SEC. 204. IMPLEMENTATION OF RESTORATION.**

2 Section 10004 of the San Joaquin River Restoration
3 Settlement Act (Public Law 111–11) is amended—

4 (1) in subsection (a)—

5 (A) in the matter preceding paragraph (1),
6 by striking “authorized and directed” and all
7 that follows through “in the Settlement” and
8 inserting “authorized to carry out the fol-
9 lowing:”;

10 (B) by striking paragraphs (1), (2), (4),
11 and (5);

12 (C) in paragraph (3)—

13 (i) by striking “(3)” and inserting
14 “(1)”; and

15 (ii) by striking “paragraph 13 of the
16 Settlement” and inserting “this part”

17 (D) by adding at the end the following new
18 paragraphs:

19 “(2) In each Water Year, commencing in the
20 Water Year starting on March 1, 2013—

21 “(A) shall modify Friant Dam operations
22 so as to release the Restoration Flows for that
23 Water Year, except in any Critical Water Year;

24 “(B) shall ensure that the release of Res-
25 toration Flows are maintained at the level pre-

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1 scribed by this part, but that Restoration Flows
2 do not reach downstream of Mendota Pool;

3 “(C) shall release the Restoration Flows in
4 a manner that improves the fishery in the San
5 Joaquin River below Friant Dam, but upstream
6 of Gravelly Ford in existence as of the date of
7 the enactment of this part, and the associated
8 riparian habitat; and

9 “(D) may, without limiting the actions re-
10 quired under paragraphs (A) and (C) and sub-
11 ject to subsections 10004(a)(3) and 10004(l),
12 use the Restoration Flows to enhance or restore
13 a warm water fishery downstream of Gravelly
14 Ford to and including Mendota Pool, if the Sec-
15 retary determines that it is reasonable, prudent,
16 and feasible to do so; and

17 “(3) Not later than 1 year after the date of the
18 enactment of this section, the Secretary shall develop
19 and implement, in cooperation with the State of
20 California, a reasonable plan, to fully recirculate, re-
21 capture, reuse, exchange, or transfer all Restoration
22 Flows and provide such recirculated, recaptured, re-
23 used, exchanged, or transferred flows to those con-
24 tractors within the Friant Division, Hidden Unit,
25 and Buchanan Unit of the Central Valley Project

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1 that relinquished the Restoration Flows so recir-
2 culated, recaptured, reused, exchanged, or trans-
3 ferred. Such a plan shall address any impact on
4 ground water resources within the service area of
5 the Friant Division, Hidden Unit, and Buchanan
6 Unit of the Central Valley Project and mitigation
7 may include ground water banking and recharge
8 projects. Such a plan shall not impact the water
9 supply or water rights of any entity outside the
10 Friant Division, Hidden unit, and Buchanan Unit of
11 the Central Valley Project. Such a plan shall be sub-
12 ject to applicable provisions of California water law
13 and the Secretary's use of Central Valley Project fa-
14 cilities to make Project water (other than water re-
15 leased from Friant Dam pursuant to this part) and
16 water acquired through transfers available to exist-
17 ing south-of-Delta Central Valley Project contrac-
18 tors.”;

19 (2) in subsection (b)—

20 (A) in paragraph (1), by striking “the Set-
21 tlement” and inserting “this part”;

22 (B) in paragraph (2), by striking “the Set-
23 tlement” and inserting “this part”;

24 (3) in subsection (c), by striking “the Settle-
25 ment” and inserting “this part”;

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1 (4) by striking subsection (d) and inserting the
2 following:

3 “(d) MITIGATION OF IMPACTS.—Prior to October 1,
4 2013, the Secretary shall identify—

5 “(1) the impacts associated with the release of
6 Restoration Flows prescribed in this part;

7 “(2) the measures which shall be implemented
8 to mitigate impacts on adjacent and downstream
9 water users, landowners and agencies as a result of
10 Restoration Flows prescribed in this part; and

11 “(3) prior to the implementation of decisions or
12 agreements to construct, improve, operate, or main-
13 tain facilities that the Secretary determines are
14 needed to implement this part, the Secretary shall
15 implement all mitigations measures identified in sub-
16 section (d)(2) before Restoration Flows are com-
17 menced.”;

18 (5) in subsection (e), by striking “the Settle-
19 ment” and inserting “this part”;

20 (6) in subsection (f), by striking “the Settle-
21 ment” and all that follows through “section 10011”
22 and insert “this part”;

23 (7) in subsection (g)—

24 (A) by striking “the Settlement and” be-
25 fore this part; and

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1 (B) by striking “or exchange contract” and
2 inserting “exchange contract, or water rights
3 settlement or holding contracts”;

4 (8) in subsection (h)—

5 (A) by striking “INTERIM” in the header;

6 (B) in paragraph (1)—

7 (i) in the matter preceding subpara-
8 graph (A), by striking “Interim Flows
9 under the Settlement” and inserting “Res-
10 toration Flows under this part”;

11 (ii) in subparagraph (C)—

12 (I) in clause (i), by striking “In-
13 terim” and inserting “Restoration”;
14 and

15 (II) in clause (ii), by inserting
16 “and” after the semicolon;

17 (iii) in subparagraph (D), by striking
18 “and” at the end; and

19 (iv) by striking subparagraph (E);

20 (C) in paragraph (2)—

21 (i) by striking “Interim” and insert-
22 ing “Restoration”;

23 (ii) by striking subparagraph (A); and

24 (iii) by striking “(B) exceed” and in-
25 sserting “exceed”;

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1 (D) in paragraph (3), by striking “In-
2 terim” and inserting “Restoration”; and

3 (E) by striking paragraph (4) and insert-
4 ing the following:

5 “(4) CLAIMS.—Within 60 days of enactment of
6 this Act the Secretary shall promulgate a rule estab-
7 lishing a claims process to address current and fu-
8 ture claims including, but not limited to, ground
9 water seepage, flooding, or levee instability damages
10 caused as a result of, arising out of, or related to
11 implementation of subtitle A of title X of Public
12 Law 111–11.”;

13 (9) in subsection (i)—

14 (A) in paragraph (1)—

15 (i) in the matter preceding subpara-
16 graph (A), by striking “the Settlement and
17 parts I and III” and inserting “this part”;

18 (ii) in subparagraph (A), by inserting
19 “and” after the semicolon;

20 (iii) in subparagraph (B)—

21 (I) by striking “additional
22 amounts authorized to be appro-
23 priated, including the”;

24 (II) by striking “; and” and in-
25 serting a period; and

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1 (iv) by striking subparagraph (C); and
2 (B) by striking paragraph (3); and
3 (10) by adding at the end the following new
4 subsections:

5 “(k) NO IMPACTS ON OTHER INTERESTS.—No Cen-
6 tral Valley Project or other water other than San Joaquin
7 River water impounded by or bypassed from Friant Dam
8 shall be used to implement subsection (a)(2) unless such
9 use is on a voluntary basis. No cost associated with the
10 implementation of this section shall be imposed directly
11 or indirectly on any Central Valley Project contractor, or
12 any other person or entity, outside the Friant Division,
13 the Hidden Unit, or the Buchanan Unit, unless such costs
14 are incurred on a voluntary basis. The implementation of
15 this part shall not result directly or indirectly in any re-
16 duction in water supplies or water reliability on any Cen-
17 tral Valley Project contractor, any State Water Project
18 contractor, or any other person or entity, outside the
19 Friant Division, the Hidden Unit, or the Buchanan Unit,
20 unless such reductions or costs are incurred on a voluntary
21 basis.

22 “(l) PRIORITY.—All actions taken under this part
23 shall be subordinate to the Secretary’s use of Central Val-
24 ley Project facilities to make Project water available to

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1 Project contractors, other than water released from the
2 Friant Dam pursuant to this part.

3 “(m) IN GENERAL.—Notwithstanding section 8 of
4 the Reclamation Act of 1902, except as provided in this
5 part, including Title IV of the Sacramento and San Joa-
6 quin Valleys Water Reliability Act, this part preempts and
7 supersedes any State law, regulation, or requirement that
8 imposes more restrictive requirements or regulations on
9 the activities authorized under this part. Nothing in this
10 part shall alter or modify the obligations, if any, of the
11 Friant Division, Hidden Unit, and Buchanan Unit of the
12 Central Valley Project, or other water users on the San
13 Joaquin River or its tributaries, under orders issued by
14 the State Water Resources Control Board pursuant to the
15 Porter-Cologne Water Quality Control Act (California
16 Water Code sections 13000 et seq.). Any such order shall
17 be consistent with the congressional authorization for any
18 affected Federal facility as it pertains to the Central Val-
19 ley Project.

20 “(n) PROJECT IMPLEMENTATION.—Projects to im-
21 plement this title shall be phased such that each project
22 shall follow the sequencing identified below and include at
23 least the—

24 “(1) project purpose and need;

25 “(2) identification of mitigation measures;

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1 “(3) appropriate environmental review; and

2 “(4) prior to releasing Restoration Flows under
3 this part, the Secretary shall—

4 “(A) complete the implementation of miti-
5 gation measures required; and

6 “(B) complete implementation of the
7 project.”.

8 **SEC. 205. DISPOSAL OF PROPERTY; TITLE TO FACILITIES.**

9 Section 10005 of the San Joaquin River Restoration
10 Settlement Act (Public Law 111–11) is amended—

11 (1) in subsection (a), by striking “the Settle-
12 ment authorized by this part” and inserting “this
13 part”;

14 (2) in subsection (b)—

15 (A) in paragraph (1)—

16 (i) by striking “(1) IN GENERAL.—
17 The Secretary” and inserting “The Sec-
18 retary”; and

19 (ii) by striking “the Settlement au-
20 thorized by this part” and inserting “this
21 part”; and

22 (B) by striking paragraph (2); and

23 (3) in subsection (c)—

24 (A) in paragraph (1), by striking “the Set-
25 tlement” and inserting “this part”;

- 1 (B) in paragraph (2)—
- 2 (i) by striking “through the exercise
- 3 of its eminent domain authority”; and
- 4 (ii) by striking “the Settlement” and
- 5 inserting “this part”; and
- 6 (C) in paragraph (3), by striking “section
- 7 10009(c)” and inserting “section 10009”.

8 **SEC. 206. COMPLIANCE WITH APPLICABLE LAW.**

9 Section 10006 of the San Joaquin River Restoration
10 Settlement Act (Public Law 111–11) is amended—

- 11 (1) in subsection (a)—
- 12 (A) in paragraph (1), by inserting “unless
- 13 otherwise provided by this part” before the pe-
- 14 riod at the end; and
- 15 (B) in paragraph (2), by striking “the Set-
- 16 tlement” and inserting “this part”;
- 17 (2) in subsection (b), by inserting “, unless oth-
- 18 erwise provided by this part” before the period at
- 19 the end;
- 20 (3) in subsection (c)—
- 21 (A) in paragraph (2), by striking “section
- 22 10004” and inserting “this part”; and
- 23 (B) in paragraph (3), by striking “the Set-
- 24 tlement” and inserting “this part”; and
- 25 (4) in subsection (d)—

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1 (A) by inserting “, including without limi-
 2 tation to sections 10004(d) and 10004(h)(4) of
 3 this part,” after “implementing this part”; and

4 (B) by striking “for implementation of the
 5 Settlement”.

6 **SEC. 207. COMPLIANCE WITH CENTRAL VALLEY PROJECT**
 7 **IMPROVEMENT ACT.**

8 Section 10007 of the San Joaquin River Restoration
 9 Settlement Act (Public Law 111–11) is amended—

10 (1) in the matter preceding paragraph (1),

11 (A) by striking “the Settlement” and in-
 12 sserting “enactment of this part”; and

13 (B) by inserting: “and the obligations of
 14 the Secretary and all other parties to protect
 15 and keep in good condition any fish that may
 16 be planted or exist below Friant Dam including
 17 any obligations under section 5937 of the Cali-
 18 fornia Fish and Game Code and the public
 19 trust doctrine, and those of the Secretary and
 20 all other parties under the Endangered Species
 21 Act of 1973 (16 U.S.C. 1531 et seq.)” before
 22 “, provided”; and

23 (2) in paragraph (1), by striking “, as provided
 24 in the Settlement”.

1 **SEC. 208. NO PRIVATE RIGHT OF ACTION.**

2 Section 10008(a) of the San Joaquin River Restora-
3 tion Settlement Act (Public Law 111–11) is amended—

4 (1) by striking “not a party to the Settlement”
5 after “person or entity” ; and

6 (2) by striking “or the Settlement” before the
7 period and inserting “unless otherwise provided by
8 this part. Any Central Valley Project long-term
9 water service or repayment contractor within the
10 Friant Division, Hidden unit, or Buchanan Unit ad-
11 versely affected by the Secretary’s failure to comply
12 with section 10004(a)(3) of this part may bring an
13 action against the Secretary for injunctive relief or
14 damages, or both.”.

15 **SEC. 209. IMPLEMENTATION.**

16 Section 10009 of the San Joaquin River Restoration
17 Settlement Act (Public Law 111–11) is amended—

18 (1) in the header by striking “; **SETTLEMENT**
19 **FUND**”;

20 (2) in subsection (a)—

21 (A) in paragraph (1)—

22 (i) by striking “the Settlement” and
23 inserting “this part”;

24 (ii) by striking “, estimated to total”
25 and all that follows through “subsection
26 (b)(1),”; and

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- 1 (iii) by striking “, provided; however,”
2 and all that follows through
3 “\$110,000,000 of State funds”;
4 (B) in paragraph (2)—
5 (i) in subparagraph (A), by striking
6 “(A) IN GENERAL.—The Secretary” and
7 inserting “The Secretary”;
8 (ii) by striking subparagraph (B); and
9 (C) in paragraph (3)—
10 (i) by striking “Except as provided in
11 the Settlement, to” and inserting “To”;
12 and
13 (ii) by striking “this Settlement” and
14 inserting “this part”;
15 (3) in subsection (b)(1)—
16 (A) by striking “In addition” through
17 “however, that the” and inserting “The”;
18 (B) by striking “such additional appropria-
19 tions only in amounts equal to”; and
20 (C) by striking “or the Settlement” before
21 the period;
22 (4) in subsection (c)—
23 (A) in paragraph (1)—

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1 (i) in the matter preceding subpara-
 2 graph (A), by striking “the Settlement”
 3 and inserting “this part”;

4 (ii) in subparagraph (C), by striking
 5 “from the sale of water pursuant to the
 6 Settlement, or”; and

7 (iii) in subparagraph (D), by striking
 8 “the Settlement” and inserting “this
 9 part”;

10 (B) in paragraph (2), by striking “the Set-
 11 tlement and” before “this part”; and

12 (5) by striking subsections (d) through (f).

13 **SEC. 210. REPAYMENT CONTRACTS AND ACCELERATION OF**
 14 **REPAYMENT OF CONSTRUCTION COSTS.**

15 Section 10010 of the San Joaquin River Restoration
 16 Settlement Act (Public Law 111–11) is amended—

17 (1) in subsection (a)—

18 (A) in paragraph (3)(D), by striking “the
 19 Settlement and” after “this part”; and

20 (B) in paragraph (4)(C), by striking “the
 21 Settlement and” after “this part”;

22 (2) in subsection (c), by striking paragraph (3);

23 (3) in subsection (d)(1), by striking “the Settle-
 24 ment” in both places it appears and inserting “this
 25 part”;

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- 1 (4) in subsection (e)—
- 2 (A) in paragraph (1)—
- 3 (i) by striking “Interim Flows or Res-
- 4 toration Flows, pursuant to paragraphs 13
- 5 or 15 of the Settlement” and inserting
- 6 “Restoration Flows, pursuant to this
- 7 part”;
- 8 (ii) by striking “Interim Flows or” be-
- 9 fore “Restoration Flows”; and
- 10 (iii) by striking “the Interim Flows or
- 11 Restoration Flows or is intended to other-
- 12 wise facilitate the Water Management
- 13 Goal, as described in the Settlement” and
- 14 inserting “Restoration Flows”; and
- 15 (B) in paragraph (2)—
- 16 (i) by striking “except as provided in
- 17 paragraph 16(b) of the Settlement” after
- 18 “Friant Division long-term contractor”;
- 19 and
- 20 (ii) by striking “the Interim Flows or
- 21 Restoration Flows or to facilitate the
- 22 Water Management Goal” and inserting
- 23 “Restoration Flows”.

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1 **SEC. 211. REPEAL.**

2 Section 10011 of the San Joaquin River Restoration
3 Settlement Act (Public Law 111–11) is repealed.

4 **SEC. 212. WATER SUPPLY MITIGATION.**

5 Section 10202(b) of the San Joaquin River Restora-
6 tion Settlement Act (Public Law 111–11) is amended—

7 (1) in paragraph (1), by striking “the Interim
8 or Restoration Flows authorized in part I of this
9 subtitle” and inserting “Restoration Flows author-
10 ized in this part”;

11 (2) in paragraph (2), by striking “the Interim
12 or Restoration Flows authorized in part I of this
13 subtitle” and inserting “Restoration Flows author-
14 ized in this part”; and

15 (3) in paragraph (3)—

16 (A) in subparagraph (A), by striking
17 “meet the Restoration Goal as described in part
18 I of this subtitle” and inserting “recover Res-
19 toration Flows as described in this part”;

20 (B) in subparagraph (C)—

21 (i) by striking “the Interim or Res-
22 toration Flows authorized in part I of this
23 subtitle” and inserting “Restoration Flows
24 authorized in this part”; and

25 (ii) by striking “, and for ensuring ap-
26 propriate adjustment in the recovered

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1 water account pursuant to section
2 10004(a)(5)”.

3 **SEC. 213. ADDITIONAL AUTHORITIES.**

4 Section 10203 of the San Joaquin River Restoration
5 Settlement Act (Public Law 111–11) is amended—

6 (1) in subsection (b)—

7 (A) by striking “section 10004(a)(4)” and
8 inserting “section 10004(a)(3)”;

9 (B) by striking “, provided” and all that
10 follows through “section 10009(f)(2)”;

11 (2) by striking subsection (c).

12 **TITLE III—REPAYMENT CON-**
13 **TRACTS AND ACCELERATION**
14 **OF REPAYMENT OF CON-**
15 **STRUCTION COSTS**

16 **SEC. 301. REPAYMENT CONTRACTS AND ACCELERATION OF**
17 **REPAYMENT OF CONSTRUCTION COSTS.**

18 (a) CONVERSION OF CONTRACTS.—

19 (1) Not later than 1 year after enactment, the
20 Secretary of the Interior, upon request of the con-
21 tractor, shall convert all existing long-term Central
22 Valley Project contracts entered under subsection (e)
23 of section 9 of the Act of August 4, 1939 (53 Stat.
24 1196), to a contract under subsection (d) of section

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1 9 of said Act (53 Stat. 1195), under mutually agree-
2 able terms and conditions.

3 (2) Upon request of the contractor, the Sec-
4 retary is further authorized to convert, not later
5 than 1 year after enactment, any Central Valley
6 Project long-term contract entered under subsection
7 (c)(2) of section 9 of the Act of August 4, 1939 (53
8 Stat. 1194), to a contract under subsection (c)(1) of
9 section 9 of said Act, under mutually agreeable
10 terms and conditions.

11 (3) All contracts entered into pursuant to para-
12 graph (1) shall—

13 (A) require the repayment, either in lump
14 sum or by accelerated prepayment, of the re-
15 maining amount of construction costs identified
16 in the most current version of the Central Val-
17 ley Project Schedule of Irrigation Capital Allo-
18 cations by Contractor, as adjusted to reflect
19 payments not reflected in such schedule, and
20 properly assignable for ultimate return by the
21 contractor, no later than January 31, 2013, or
22 if made in approximately equal annual install-
23 ments, no later than January 31, 2016; such
24 amount to be discounted by the Treasury Rate.
25 An estimate of the remaining amount of con-

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1 construction costs as of January 31, 2013, as ad-
2 justed, shall be provided by the Secretary of the
3 Interior to each contractor no later than 180
4 days after enactment;

5 (B) require that, notwithstanding sub-
6 section (c)(2), construction costs or other cap-
7 italized costs incurred after the effective date of
8 the converted contract or not reflected in the
9 schedule referenced in subparagraph (A), and
10 properly assignable to such contractor, shall be
11 repaid in not more than 5 years after notifica-
12 tion of the allocation if such amount is a result
13 of a collective annual allocation of capital costs
14 to the contractors exercising contract conver-
15 sions under this subsection of less than
16 \$5,000,000. If such amount is \$5,000,000 or
17 greater, such cost shall be repaid as provided by
18 applicable reclamation law, provided that the
19 reference to the amount of \$5,000,000 shall not
20 be a precedent in any other context; and

21 (C) provide that power revenues will not be
22 available to aid in repayment of construction
23 costs allocated to irrigation under the contract.

24 (4) All contracts entered into pursuant to para-
25 graph (2) shall—

1 (A) require the repayment in lump sum of
2 the remaining amount of construction costs
3 identified in the most current version of the
4 Central Valley Project Schedule of Municipal
5 and Industrial Water Rates, as adjusted to re-
6 flect payments not reflected in such schedule,
7 and properly assignable for ultimate return by
8 the contractor, no later than January 31, 2016.
9 An estimate of the remaining amount of con-
10 struction costs as of January 31, 2016, as ad-
11 justed, shall be provided by the Secretary of the
12 Interior to each contractor no later than 180
13 days after enactment; and

14 (B) require that, notwithstanding sub-
15 section (c)(2), construction costs or other cap-
16 italized costs incurred after the effective date of
17 the contract or not reflected in the schedule ref-
18 erenced in subparagraph (A), and properly as-
19 signable to such contractor, shall be repaid in
20 not more than 5 years after notification of the
21 allocation if such amount is a result of a collec-
22 tive annual allocation of capital costs to the
23 contractors exercising contract conversions
24 under this subsection of less than \$5,000,000.
25 If such amount is \$5,000,000 or greater, such

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1 cost shall be repaid as provided by applicable
2 reclamation law, provided that the reference to
3 the amount of \$5,000,000 shall not be a prece-
4 dent in any other context.

5 (b) FINAL ADJUSTMENT.—The amounts paid pursu-
6 ant to subsection (a) shall be subject to adjustment fol-
7 lowing a final cost allocation by the Secretary of the Inte-
8 rior upon completion of the construction of the Central
9 Valley Project. In the event that the final cost allocation
10 indicates that the costs properly assignable to the con-
11 tractor are greater than what has been paid by the con-
12 tractor, the contractor shall be obligated to pay the re-
13 maining allocated costs. The term of such additional re-
14 payment contract shall be no less than 1 year and no more
15 than 10 years, however, mutually agreeable provisions re-
16 garding the rate of repayment of such amount may be de-
17 veloped by the parties. In the event that the final cost allo-
18 cation indicates that the costs properly assignable to the
19 contractor are less than what the contractor has paid, the
20 Secretary of the Interior is authorized and directed to
21 credit such overpayment as an offset against any out-
22 standing or future obligation of the contractor.

23 (c) APPLICABILITY OF CERTAIN PROVISIONS.—

24 (1) Notwithstanding any repayment obligation
25 under subsection (a)(3)(B) or subsection (b), upon a

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1 contractor's compliance with and discharge of the
2 obligation of repayment of the construction costs as
3 provided in subsection (a)(3)(A), the ownership and
4 full-cost pricing limitations of any provision of Fed-
5 eral reclamation law shall not apply to lands in such
6 district.

7 (2) Notwithstanding any repayment obligation
8 under paragraph (3)(B) or paragraph (4)(B) of sub-
9 section (a), or subsection (b), upon a contractor's
10 compliance with and discharge of the obligation of
11 repayment of the construction costs as provided in
12 paragraphs (3)(A) and (4)(A) of subsection (a), such
13 contractor shall continue to pay applicable operation
14 and maintenance costs and other charges applicable
15 to such repayment contracts pursuant to the then-
16 current rate-setting policy and applicable law.

17 (d) CERTAIN REPAYMENT OBLIGATIONS NOT AL-
18 TERED.—Implementation of the provisions of this section
19 shall not alter the repayment obligation of any other long-
20 term water service or repayment contractor receiving
21 water from the Central Valley Project, or shift any costs
22 that would otherwise have been properly assignable to any
23 contractors absent this section, including operations and
24 maintenance costs, construction costs, or other capitalized

1 costs incurred after the date of enactment of this Act, to
2 other such contractors.

3 (e) STATUTORY INTERPRETATION.—Nothing in this
4 part shall be construed to affect the right of any long-
5 term contractor to use a particular type of financing to
6 make the payments required in paragraph (3)(A) or para-
7 graph (4)(A) of subsection (a).

8 (f) DEFINITION OF TREASURY RATE.—For purposes
9 of this section, “Treasury Rate” shall be defined as the
10 20-year Constant Maturity Treasury rate published by the
11 United States Department of the Treasury as of October
12 1, 2012.

13 **TITLE IV—BAY-DELTA WATER-**
14 **SHED WATER RIGHTS PRES-**
15 **ERVATION AND PROTECTION**

16 **SEC. 401. WATER RIGHTS AND AREA-OF-ORIGIN PROTEC-**
17 **TIONS.**

18 Notwithstanding the provisions of this Act, Federal
19 reclamation law, or the Endangered Species Act of 1973
20 (16 U.S.C. 1531 et seq.)—

21 (1) the Secretary of the Interior (“Secretary”)
22 is directed, in the operation of the Central Valley
23 Project, to strictly adhere to State water rights law
24 governing water rights priorities by honoring water

1 rights senior to those belonging to the Central Valley
2 Project, regardless of the source of priority;

3 (2) the Secretary is directed, in the operation of
4 the Central Valley Project, to strictly adhere to and
5 honor water rights and other priorities that are ob-
6 tained or exist pursuant to the provisions of Cali-
7 fornia Water Code sections 10505, 10505:5, 11128,
8 11460, and 11463; and sections 12200 to 12220, in-
9 clusive; and

10 (3) any action that affects the diversion of
11 water or involves the release of water from any
12 water storage facility taken by the Secretary or the
13 Secretary of the Department of Commerce to con-
14 serve, enhance, recover, or otherwise protect any
15 species listed under the Endangered Species Act of
16 1973 (16 U.S.C. 1531 et seq.) shall be applied in a
17 manner that is consistent with water right priorities
18 established by State law.

19 **SEC. 402. SACRAMENTO RIVER SETTLEMENT CONTRACTS.**

20 In the implementation of the Endangered Species Act
21 of 1973 (16 U.S.C. 1531 et seq.), in the Bay-Delta and
22 on the Sacramento River, the Secretary and the Secretary
23 of Commerce are directed to apply any limitations on the
24 operation of the Central Valley Project or to formulate any
25 “reasonable prudent alternative” associated with the oper-

1 ation of the Central Valley Project in a manner that strict-
2 ly adheres to and applies the water rights priorities for
3 “Project Water” and “Base Supply” provided for in the
4 Sacramento River Settlement Contracts. Article 3(i) of the
5 Sacramento River Settlement Contracts shall not be uti-
6 lized by the United States as means to provide shortages
7 to the Sacramento River Settlement Contracts that are
8 different than those provided for in Article 5(a) of those
9 contracts.

10 **SEC. 403. SACRAMENTO RIVER WATERSHED WATER SERV-**
11 **ICE CONTRACTORS.**

12 (a) IN GENERAL.—Subject to subsection (b) and the
13 absolute priority of the Sacramento River Settlement Con-
14 tractors to Sacramento River supplies over Central Valley
15 Project diversions and deliveries to other contractors, the
16 Secretary is directed, in the operation of the Central Val-
17 ley Project, to allocate water provided for irrigation pur-
18 poses to existing Central Valley Project agricultural water
19 service contractors within the Sacramento River Water-
20 shed in compliance with the following:

21 (1) Not less than 100% of their contract quan-
22 tities in a “Wet” year.

23 (2) Not less than 100% of their contract quan-
24 tities in an “Above Normal” year.

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1 (3) Not less than 100% of their contract quan-
2 tities in a “Below Normal” year.

3 (4) Not less than 75% of their contract quan-
4 tities in a “Dry” year.

5 (5) Not less than 50% of their contract quan-
6 tities in a “Critically Dry” year.

7 (b) PROTECTION OF MUNICIPAL AND INDUSTRIAL
8 SUPPLIES.—Nothing in subsection (a) shall be deemed to
9 (i) modify any provision of a water service contract that
10 addresses municipal and industrial water shortage policies
11 of the Secretary, (ii) affect or limit the authority of the
12 Secretary to adopt or modify municipal and industrial
13 water shortage policies, (iii) affect or limit the authority
14 of the Secretary to implement municipal and industrial
15 water shortage policies, or (iv) affect allocations to Central
16 Valley Project municipal and industrial contractors pursu-
17 ant to such policies. Neither subsection (a) nor the Sec-
18 retary’s implementation of subsection (a) shall constrain,
19 govern or affect, directly or indirectly, the operations of
20 the Central Valley Project’s American River Division or
21 any deliveries from that Division, its units or its facilities.

22 (c) DEFINITIONS.—In this section:

23 (1) The term “existing Central Valley Project
24 agricultural water service contractors within the
25 Sacramento River Watershed” means water service

1 contractors within the Shasta, Trinity, and Sac-
2 ramento River Divisions of the Central Valley
3 Project, that have a water service contract in effect,
4 on the date of the enactment of this section, that
5 provides water for irrigation.

6 (2) The year type terms used in subsection (a)
7 have the meaning given those year types in the Sac-
8 ramento Valley Water Year Type (40–30–30) Index.

9 **SEC. 404. NO REDIRECTED ADVERSE IMPACTS.**

10 The Secretary shall insure that there are no redi-
11 rected adverse water supply or fiscal impacts to those
12 within the Sacramento River watershed or to the State
13 Water Project arising from the Secretary’s operation of
14 the Central Valley Project to meet legal obligations im-
15 posed by or through any State or Federal agency, includ-
16 ing, but not limited to those legal obligations emanating
17 from the Endangered Species Act of 1973 (16 U.S.C.
18 1531 et seq.) or this Act, or actions or activities imple-
19 mented to meet the twin goals of improving water supply
20 or addressing environmental needs of the Bay Delta.

