



● **Board of Directors**
Communications and Legislation Committee

8/15/2017 Board Meeting

8-9

Subject

Adopt CEQA determination and express opposition unless amended to HR 23 (Valadao, R-CA): Gaining Responsibility on Water Act of 2017

Executive Summary

HR 23 (Valadao, D-CA), the Gaining Responsibility on Water Act of 2017 (“GROW Act”), is a lengthy bill aimed at drought relief and water supply improvements in California and throughout the Western states. The bill proposes several significant policy shifts in the management of the California State Water Project (SWP) and federal Central Valley Project (CVP). While some of the titles of the bill would promote beneficial water supply improvements in California, several of the bill provisions are inconsistent with Metropolitan’s legislative priorities for federal drought legislation.

Details

HR 23 was introduced in early January 2017. The bill passed out of the House on a vote of 230-190 on July 12, 2017 and it has now been referred to the Senate Committee on Energy and Natural Resources.

In its current form, HR 23 ([Attachment 1](#)) includes seven separate titles addressing a number of important topics. The seven titles in the bill cover the following subjects:

- Title I – CVP Reliability and CVPIA reform
- Title II – CALFED Storage Feasibility and Headwaters Restoration Studies
- Title III – Water Rights Protections
- Title IV – Miscellaneous Provisions, including Trinity River Division and Klamath Project consultation
- Title V – Water Supply Project Permitting
- Title VI – Bureau of Reclamation Project Streamlining
- Title VII – Water Rights Protection

Several of these titles include beneficial improvements that would promote water supply improvements and drought planning, which we would support. Title II, for example, sets forth provisions to require the completion of feasibility studies for CALFED storage projects, and includes a section allowing the U.S. Bureau of Reclamation (Reclamation) to partner with the University of California and state and local water agencies to develop a study to enhance runoff from headwaters restoration. Title V of the bill seeks to streamline permitting for new Reclamation surface water storage projects, which would likewise be helpful.

There are, however, also a number of sections that are inconsistent with Metropolitan’s adopted legislative priorities. Most of these provisions are in Title I of HR 23.

Section 108(a) of Title I states that the Central Valley Project (CVP) and State Water Project (SWP) shall be operated pursuant to the water quality standards and operational constraints described in the 1994 Bay-Delta Accord (1994 Accord), which is a state and federal agreement that predates the 1995 Water Quality Control Plan (WQCP), Water Rights Decision 1641, and the current biological opinions. While the 1994 Accord is a very short agreement that includes only six water quality and operational constraints, the WQCP, D-1641, and the

reasonable and prudent alternatives in the biological opinions include many criteria for the protection of multiple beneficial uses (e.g., agricultural, municipal/industrial, and fish and wildlife). Many of these beneficial uses would receive less protection as compared to current conditions if the provisions of Section 108(a) become law. Significantly, Section 108(a) provides that the SWP and CVP operations shall proceed without regard to the federal or state Endangered Species Acts (ESA) or any other law pertaining to the operations of the CVP and SWP. These provisions are apparently intended to preclude any federal regulation of the coordinated operations and to preempt any state regulation that would be more restrictive than the 1994 Accord provisions.

Section 108(b) would prohibit federal departments and the state of California from imposing any condition on a water right acquired under California law that restricts the exercise of that right in order to conserve, enhance, recover or otherwise protect any species that is affected by operations of the CVP and SWP. The section would also prohibit California from restricting the exercise of any water right anywhere in the state in order to protect, enhance, or restore public trust values under the public trust doctrine. These provisions overrule legal precedent and would essentially exempt the SWP and CVP, as well as all holders of water rights in the Delta watershed from the state and federal Endangered Species Acts, as well as certain provisions of the Clean Water Act, Porter Cologne, and the California Water Code intended to protect fish and wildlife. This section also states that the implementation of the 1994 Accord should be done in strict compliance with the water rights priority system. Because the SWP was constructed after the federal CVP and DWR holds some rights that are junior to those of the CVP, the state could be responsible for a greater share of the regulatory obligations under the 1994 Accord as compared to the CVP.

Together, Sections 108(a) and (b) represent a significant shift in policy that would remove environmental protections intended to avoid jeopardy to species and to protect beneficial uses of water. Relying solely on the 1994 Accord for operations could benefit CVP and SWP water supplies. However, the impact of these sections on sensitive fish species, including Delta smelt, Longfin smelt, chinook salmon, steelhead, and sturgeon is likely biologically significant. For instance, these sections appear to remove cold water pool protection for multiple species below the existing reservoirs, which could adversely affect winter-run and spring-run chinook salmon abundance.

These provisions of HR 23 have the potential to shift regulatory burdens to the SWP. Although there is language in Sections 301 and 303, discussed below, that is intended to avoid any adverse impacts to SWP that may occur if the state imposes more restrictive operational criteria on the SWP, those provisions differ from similar language in the Water Infrastructure Improvements for the Nation Act of 2016 (WIIN Act) that Metropolitan negotiated. Even if Sections 108(a) and (b) were beneficial to SWP supplies, they are inconsistent with Metropolitan's Board-adopted legislative principles to work within the current federal and state Endangered Species Acts to increase operational flexibility of coordinated operations of the CVP and SWP while maintaining protections for listed species; to support legislative action and funding to advance near-term Delta improvements consistent with the coequal goals, California EcoRestore, and the California Water Action Plan; and to support measures that reflect broad, bipartisan agreement. Metropolitan was an original sponsor of the 2009 Delta Reform Act that adopted the "co-equal goals" for Delta policy of ecosystem restoration and water supply reliability. These provisions are inconsistent with the co-equal goals policy.

Section 110 states that the filing of a CEQA Notice of Determination or Notice of Exemption for a CVP-related activity, including construction activities, and the issuance of a permit, shall be deemed to meet the requirements of the National Environmental Policy Act (NEPA). The section also prevents a CVP-related action from being enjoined by a court pending the resolution of a NEPA challenge, even if the challenger can show an imminent irreparable harm to the environment and a likelihood of success on the merits. While the provision would remove the possibility that certain Delta-related activities could be halted by a federal court injunction, it also lessens the environmental protections provided by NEPA.

Section 114 makes significant modifications to the San Joaquin River Restoration Settlement Act. Section 114 was recently amended to be more consistent with the goals of that Act. While the amendments may not directly impact SWP supplies, the provision is potentially inconsistent with Metropolitan's legislative priority to support federal legislation to address drought while maintaining existing environmental protections. This provision also does not have broad bipartisan support.

Finally, Title III includes provisions to protect water rights, including the water rights of SWP. Sections 301 and 303 are intended to protect against a water supply or fiscal impact to the SWP or to any other water contractor resulting from the implementation of this Act. The protection extends to the maintenance of current supplies, and would not ensure that the SWP would benefit from the Act. The extent that the current language in these sections would provide the promised protection is unclear. Similar language was negotiated as part of the WIIN Act, but it is unclear if the revised language in HR 23 would provide the same protections.

Many of the provisions of Titles II through VI are consistent with Metropolitan's legislative priorities and principles and could result in water supply benefits.

Title II of HR 23 addresses feasibility studies for various CALFED storage projects, including the expansion of Shasta Reservoir and Los Vaqueros Reservoir, as well as measures to address the San Luis Reservoir low point issue. The provision directs the Secretary to complete these studies by specified dates. This provision is consistent with Metropolitan's principle to support legislative action to add surface storage.

Section 305 provides that none of the provisions in Title III preempt or modify the existing obligation of the United States to operate the CVP in conformity with state law. This provision likely reflects broad, bipartisan agreement and is consistent with Metropolitan's principles.

Title IV includes several provisions that do not impact Metropolitan or SWP supplies. Section 408 of this Title, which was recently added to the bill, extends the sunset date for the program established by the WIIN Act to protect native anadromous fish in the Stanislaus River. This program, which is funded by the districts in that area, will improve management and information on listed fish species and is consistent with Metropolitan's legislative principles.

Title V includes provisions to promote streamlined permitting and approval for certain federal surface storage projects, with participation from the affected stakeholder water agencies. While the provision has no direct impact on Metropolitan or Metropolitan's supplies, it will assist in making the federal project operations more flexible and could assist in adding to the state's water supplies and improving drought planning and drought response.

Title VI includes measures to streamline review of Reclamation projects and promote greater coordination of the environmental review process. While the provisions are unlikely to have a direct impact on Metropolitan, they are consistent with Metropolitan's principles to support actions that improve the clarity and workability of NEPA and promote regulatory compliance flexibility.

Conclusion

Even though many of the provisions of HR 23 will have little direct impact on Metropolitan's water supplies, they are consistent with Metropolitan's policy principles and will assist in facilitating surface water storage in California. However, there are provisions in Title I that could adversely impact SWP water supplies, and which are inconsistent with Metropolitan's policy principles mainly due to their potential to diminish environmental protections and reduce the protections available for listed species.

At this point, it is also difficult to discern how Section 108 of Title I – which presents the most concerns – could be effectively amended, and the best means of eliminating any inconsistencies with Metropolitan's legislative priorities and principles would be to eliminate it from the bill.

Staff recommends opposing HR 23, unless the problematic provisions are removed from the bill.

In the event that the problematic provisions are removed from HR 23, staff will reevaluate the recommended position on this bill and determine whether additional clarifications or revisions should be proposed.

Policy

By Minute Items 50705 and 50706, dated January 10, 2017, the Board adopted the Federal Legislative Priorities and Principles for 2017/18

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 defined as a project and 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 that the proposed action is not defined as a project and is not subject to CEQA, and

Authorize the General Manager to oppose HR 23, unless amended.

Fiscal Impact: Unknown

Business Analysis: Portions of HR 23 are inconsistent with Metropolitan’s policies and could lead to shifting regulatory burdens onto SWP operations and significant adverse impacts to sensitive fish species in the Delta watershed. By opposing the bill and seeking amendments, Metropolitan can try to avoid or reduce these inconsistencies and potential adverse impacts.

Option #2

Take no action.

Fiscal Impact: Unknown

Business Analysis: Metropolitan would miss an opportunity to clarify that portions of HR 23 are contrary to Metropolitan’s policies, and it would not be able to seek amendments to HR 23 that may reduce potential adverse impacts.

Staff Recommendation

Option #1



Dee Zinke
Assistant General Manager/Chief External
Affairs Officer
8/10/2017
Date



Jeffrey Knightlinger
General Manager
8/10/2017
Date

Attachment 1 – HR 23, dated 7/18/17

IIB

115TH CONGRESS
1ST SESSION

H. R. 23

IN THE SENATE OF THE UNITED STATES

JULY 18, 2017

Received; read twice and referred to the Committee on Energy and Natural
Resources

AN ACT

To provide drought relief in the State of California, and
for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Gaining Responsibility
3 on Water Act of 2017”.

4 SEC. 2. TABLE OF CONTENTS.

5 The table of contents for this Act is as follows:

- 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. Regulatory streamlining.
- Sec. 111. Additional emergency consultation.
- Sec. 112. Applicants.
- Sec. 113. San Joaquin River settlement.

TITLE II—CALFED STORAGE FEASIBILITY STUDIES

- Sec. 201. Studies.
- Sec. 202. Temperance Flat.
- Sec. 203. Water storage project construction.
- Sec. 204. Geophysical survey.
- Sec. 205. Headwater-Restoration Scoping Study.

TITLE III—WATER RIGHTS PROTECTIONS

- Sec. 301. Offset for State Water Project.
- Sec. 302. Area of origin protections.
- Sec. 303. No redirected adverse impacts.
- Sec. 304. Allocations for Sacramento Valley contractors.
- Sec. 305. Effect on existing obligations.

TITLE IV—MISCELLANEOUS

- Sec. 401. Water supply accounting.
- Sec. 402. Operations of the Trinity River Division.
- Sec. 403. Report on results of water usage.
- Sec. 404. Klamath project consultation applicants.
- Sec. 405. CA State Water Resources Control Board.
- Sec. 406. New melones reservoir.
- Sec. 407. Actions to benefit threatened and endangered species and other wild-
 life.

Sec. 408. Non-federal program to protect native anadromous fish in stanislaus river.

TITLE V—WATER SUPPLY PERMITTING ACT

- Sec. 501. Short title.
- Sec. 502. Definitions.
- Sec. 503. Establishment of lead agency and cooperating agencies.
- Sec. 504. Bureau responsibilities.
- Sec. 505. Cooperating agency responsibilities.
- Sec. 506. Funding to process permits.

TITLE VI—BUREAU OF RECLAMATION PROJECT STREAMLINING

- Sec. 601. Short title.
- Sec. 602. Definitions.
- Sec. 603. Acceleration of studies.
- Sec. 604. Expedited completion of reports.
- Sec. 605. Project acceleration.
- Sec. 606. Annual report to Congress.
- Sec. 607. Applicability of WIN Act.

TITLE VII—WATER RIGHTS PROTECTION

- Sec. 701. Short title.
- Sec. 702. Definitions.
- Sec. 703. Treatment of water rights.
- Sec. 704. Policy development.
- Sec. 705. Effect.

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 part is replaced and provided to Cen-
 11 tral Valley Project water contractors by December 31,
 12 2018, at the lowest cost reasonably achievable; and

4

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

3 **SEC. 102. AMENDMENT TO DEFINITION.**

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

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

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

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

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

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

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

22 **SEC. 103. CONTRACTS.**

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

1 (1) in the heading, by striking “**LIMITATION**
2 **ON CONTRACTING AND CONTRACT REFORM**”
3 and inserting “**CONTRACTS**”; and

4 (2) by striking the language of the section and
5 by adding:

6 “(a) **RENEWAL OF EXISTING LONG-TERM CON-**
7 **TRACTS.**—Upon request of the contractor, the Secretary
8 shall renew any existing long-term repayment or water
9 service contract that provides for the delivery of water
10 from the Central Valley Project for a period of 40 years.

11 “(b) **ADMINISTRATION OF CONTRACTS.**—Except as
12 expressly provided by this Act, any existing long-term re-
13 payment or water service contract for the delivery of water
14 from the Central Valley Project shall be administered pur-
15 suant to the Act of July 2, 1956 (70 Stat. 483).

16 “(c) **DELIVERY CHARGE.**—Beginning on the date of
17 the enactment of this Act, a contract entered into or re-
18 newed pursuant to this section shall include a provision
19 that requires the Secretary to charge the other party to
20 such contract only for water actually delivered by the Sec-
21 retary.”.

22 **SEC. 104. WATER TRANSFERS, IMPROVED WATER MANAGE-**
23 **MENT, AND CONSERVATION.**

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

6

1 (1) In subsection (a)—

2 (A) by inserting before “Except as pro-
3 vided herein” the following: “The Secretary
4 shall take all necessary actions to facilitate and
5 expedite transfers of Central Valley Project
6 water in accordance with this Act or any other
7 provision of Federal reclamation law and the
8 National Environmental Policy Act of 1969.”;

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

11 (C) in paragraph (2), by adding at the end
12 the following:

13 “(E) The contracting district from which
14 the water is coming, the agency, or the Sec-
15 retary shall determine if a written transfer pro-
16 posal is complete within 45 days after the date
17 of submission of such proposal. If such district
18 or agency or the Secretary determines that such
19 proposal is incomplete, such district or agency
20 or the Secretary shall state with specificity
21 what must be added to or revised in order for
22 such proposal to be complete.

23 “(F) Except as provided in this section,
24 the Secretary shall not impose mitigation or
25 other requirements on a proposed transfer, but

7

1 the contracting district from which the water is
2 coming or the agency shall retain all authority
3 under State law to approve or condition a pro-
4 posed transfer.”; and

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

6 “(4) Notwithstanding any other provision of
7 Federal reclamation law—

8 “(A) the authority to make transfers or ex-
9 changes of, or banking or recharge arrange-
10 ments using, Central Valley Project water that
11 could have been conducted before October 30,
12 1992, is valid, and such transfers, exchanges,
13 or arrangements shall not be subject to, limited,
14 or conditioned by this title; and

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

19 (2) In subsection (b)—

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

22 (B) by inserting after the first sentence
23 the following: “The contracting district or agen-
24 cy, not including contracting districts serving
25 multiple agencies with separate governing

8

1 boards, shall ensure that all contractor-owned
2 water delivery systems within its boundaries
3 measure surface water at the district or agen-
4 cy's facilities up to the point the surface water
5 is commingled with other water supplies.”.

6 (3) By striking subsection (d).

7 (4) By redesignating subsections (e) and (f) as
8 subsections (d) and (e), respectively.

9 (5) By amending subsection (e) (as redesign-
10 nated by paragraph (4))—

11 (A) by striking “as a result of the in-
12 creased repayment” and inserting “that exceed
13 the cost-of-service”;

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

16 (C) by striking “, and all increased reve-
17 nues received by the Secretary as a result of the
18 increased water prices established under sub-
19 section 3405(d) of this section,”.

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

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

23 (1) In subsection (b)—

24 (A) in paragraph (1)(B)—

9

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

3 (ii) by inserting “reasonable water”
4 after “to provide”;

5 (iii) by striking “anadromous fish, ex-
6 cept that such” and inserting “anad-
7 romous fish. Such”;

8 (iv) by striking “Instream flow” and
9 inserting “Reasonable instream flow”;

10 (v) by inserting “and the National
11 Marine Fisheries Service” after “United
12 States Fish and Wildlife Service”; and

13 (vi) by striking “California Depart-
14 ment of Fish and Game” and inserting
15 “United States Geological Survey”;

16 (B) in paragraph (2)—

17 (i) by striking “primary purpose” and
18 inserting “purposes”;

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

21 (iii) by adding after the period the fol-
22 lowing: “All Central Valley Project water
23 used for the purposes specified in this
24 paragraph shall be credited to the quantity
25 of Central Valley Project yield dedicated

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1 and managed under this paragraph by de-
2 termining how the dedication and manage-
3 ment of such water would affect the deliv-
4 ery capability of the Central Valley Project
5 during the 1928 to 1934 drought period
6 after fishery, water quality, and other flow
7 and operational requirements imposed by
8 terms and conditions existing in licenses,
9 permits, and other agreements pertaining
10 to the Central Valley Project under appli-
11 cable State or Federal law existing on Oc-
12 tober 30, 1992, have been met. To the full-
13 est extent possible and in accordance with
14 section 3411, Central Valley Project water
15 dedicated and managed pursuant to this
16 paragraph shall be reused to fulfill the
17 Secretary's remaining contractual obliga-
18 tions to provide Central Valley Project
19 water for agricultural or municipal and in-
20 dustrial purposes.”; and

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

22 “(C) If by March 15th of any year the
23 quantity of Central Valley Project water fore-
24 casted to be made available to water service or
25 repayment contractors in the Delta Division of

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1 the Central Valley Project is below 75 percent
2 of the total quantity of water to be made avail-
3 able under said contracts, the quantity of Cen-
4 tral Valley Project yield dedicated and managed
5 for that year under this paragraph shall be re-
6 duced by 25 percent.”.

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

8 “(i) SATISFACTION OF PURPOSES.—
9 By pursuing the activities described in this
10 section, the Secretary shall be deemed to
11 have met the mitigation, protection, res-
12 toration, and enhancement purposes of this
13 title.”.

14 **SEC. 106. RESTORATION FUND.**

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

18 (1) By inserting “(1) IN GENERAL.—” before
19 “There is hereby”.

20 (2) By striking “Not less than 67 percent” and
21 all that follows through “Monies” and inserting
22 “Monies”.

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

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

4 “(A) or environmental restoration or mitigation
5 fees not otherwise provided by law, as a condition
6 to—

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

10 “(ii) the delivery of water pursuant to sec-
11 tion 215 of the Reclamation Reform Act of
12 1982 (Public Law 97–293; 96 Stat. 1270); or

13 “(B) for any water that is delivered with the
14 sole intent of groundwater recharge.”.

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

17 (1) by striking “mitigation and restoration”;

18 (2) by striking “provided for or”; and

19 (3) by striking “of fish, wildlife” and all that
20 follows through the period and inserting “of carrying
21 out all activities described in this title.”.

22 (c) ADJUSTMENT AND ASSESSMENT OF MITIGATION
23 AND RESTORATION PAYMENTS.—Section 3407(d)(2) of
24 the Central Valley Project Improvement Act is amended
25 by inserting “, or after October 1, 2016, \$4 per megawatt-

1 hour for Central Valley Project power sold to power con-
2 tractors (October 2016 price levels)” after “\$12 per acre-
3 foot (October 1992 price levels) for municipal and indus-
4 trial water sold and delivered by the Central Valley
5 Project”.

6 (d) COMPLETION OF ACTIONS.—Section
7 3407(d)(2)(A) of the Central Valley Project Improvement
8 Act is amended by inserting “no later than December 31,
9 2020,” after “That upon the completion of the fish, wild-
10 life, and habitat mitigation and restoration actions man-
11 dated under section 3406 of this title,”.

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

15 “(g) REPORT ON EXPENDITURE OF FUNDS.—At the
16 end of each fiscal year, the Secretary, in consultation with
17 the Restoration Fund Advisory Board, shall submit to
18 Congress a plan for the expenditure of all of the funds
19 deposited into the Restoration Fund during the preceding
20 fiscal year. Such plan shall contain a cost-effectiveness
21 analysis of each expenditure.

22 “(h) ADVISORY BOARD.—

23 “(1) ESTABLISHMENT.—There is hereby estab-
24 lished the Restoration Fund Advisory Board (herein-
25 after in this section referred to as the ‘Advisory

1 Board') composed of 12 members selected by the
2 Secretary, each for four-year terms, one of whom
3 shall be designated by the Secretary as Chairman.
4 The members shall be selected so as to represent the
5 various Central Valley Project stakeholders, four of
6 whom shall be from CVP agricultural users, three
7 from CVP municipal and industrial users, three
8 from CVP power contractors, and two at the discre-
9 tion of the Secretary. The Secretary and the Sec-
10 retary of Commerce may each designate a represent-
11 ative to act as an observer of the Advisory Board.

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

14 “(A) To meet at least semiannually to de-
15 velop and make recommendations to the Sec-
16 retary regarding priorities and spending levels
17 on projects and programs carried out pursuant
18 to the Central Valley Project Improvement Act.

19 “(B) To ensure that any advice or rec-
20 ommendation made by the Advisory Board to
21 the Secretary reflect the independent judgment
22 of the Advisory Board.

23 “(C) Not later than December 31, 2018,
24 and annually thereafter, to transmit to the Sec-

1 retary and Congress recommendations required
2 under subparagraph (A).

3 “(D) Not later than December 31, 2018,
4 and biennially thereafter, to transmit to Con-
5 gress a report that details the progress made in
6 achieving the actions mandated under section
7 3406.

8 “(3) ADMINISTRATION.—With the consent of
9 the appropriate agency head, the Advisory Board
10 may use the facilities and services of any Federal
11 agency.”.

12 **SEC. 107. ADDITIONAL AUTHORITIES.**

13 (a) AUTHORITY FOR CERTAIN ACTIVITIES.—Section
14 3408(c) of the Central Valley Project Improvement Act
15 (106 Stat. 4728) is amended to read as follows:

16 “(c) CONTRACTS FOR ADDITIONAL STORAGE AND
17 DELIVERY OF WATER.—

18 “(1) IN GENERAL.—The Secretary is authorized
19 to enter into contracts pursuant to Federal reclama-
20 tion law and this title with any Federal agency, Cali-
21 fornia water user or water agency, State agency, or
22 private organization for the exchange, impoundment,
23 storage, carriage, and delivery of nonproject water
24 for domestic, municipal, industrial, fish and wildlife,
25 and any other beneficial purpose.

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

4 “(3) AUTHORITY FOR CERTAIN ACTIVITIES.—
5 The Secretary shall use the authority granted by
6 this subsection in connection with requests to ex-
7 change, impound, store, carry, or deliver nonproject
8 water using Central Valley Project facilities for any
9 beneficial purpose.

10 “(4) RATES.—The Secretary shall develop rates
11 not to exceed the amount required to recover the
12 reasonable costs incurred by the Secretary in con-
13 nection with a beneficial purpose under this sub-
14 section. Such rates shall be charged to a party using
15 Central Valley Project facilities for such purpose.
16 Such costs shall not include any donation or other
17 payment to the Restoration Fund.

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

23 (b) REPORTING REQUIREMENTS.—Section 3408(f) of
24 the Central Valley Project Improvement Act (106 Stat.
25 4729) is amended—

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

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

7 (3) by adding at the end the following: “The fil-
8 ing and adequacy of such report shall be personally
9 certified to the committees referenced above by the
10 Regional Director of the Mid-Pacific Region of the
11 Bureau of Reclamation.”.

12 (c) PROJECT YIELD INCREASE.—Section 3408(j) of
13 the Central Valley Project Improvement Act (106 Stat.
14 4730) is amended as follows:

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

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

20 (3) By striking “needs, the Secretary,” and all
21 that follows through “submit to the Congress, a”
22 and inserting “needs, the Secretary, on a priority
23 basis and not later than September 30, 2018, shall
24 submit to Congress a”.

1 (4) By striking “increase,” and all that follows
2 through “options:” and inserting “increase, as soon
3 as possible but not later than September 30, 2017
4 (except for the construction of new facilities which
5 shall not be limited by that deadline), the water of
6 the Central Valley Project by the amount dedicated
7 and managed for fish and wildlife purposes under
8 this title and otherwise required to meet the pur-
9 poses of the Central Valley Project including satis-
10 fying contractual obligations. The plan required by
11 this subsection shall include recommendations on ap-
12 propriate cost-sharing arrangements and authorizing
13 legislation or other measures needed to implement
14 the intent, purposes, and provisions of this sub-
15 section and a description of how the Secretary in-
16 tends to use the following options—”.

17 (5) In subparagraph (A), by inserting “and
18 construction of new water storage facilities” before
19 the semicolon.

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

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

1 (8) By inserting after subparagraph (G) the fol-
2 lowing:

3 “(H) Water banking and recharge.”.

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

5 “(2) IMPLEMENTATION OF PLAN.—The Sec-
6 retary shall implement the plan required by para-
7 graph (1) commencing on October 1, 2017. In order
8 to carry out this subsection, the Secretary shall co-
9 ordinate with the State of California in imple-
10 menting measures for the long-term resolution of
11 problems in the San Francisco Bay/Sacramento-San
12 Joaquin Delta Estuary.

13 “(3) FAILURE OF THE PLAN.—Notwithstanding
14 any other provision of Federal reclamation law, if by
15 September 30, 2018, the plan required by paragraph
16 (1) fails to increase the annual delivery capability of
17 the Central Valley Project by 800,000 acre-feet, im-
18 plementation of any non-mandatory action under
19 section 3406(b)(2) shall be suspended until the plan
20 achieves an increase in the annual delivery capability
21 of the Central Valley Project by 800,000 acre-feet.”.

22 (d) TECHNICAL CORRECTION.—Section 3408(h) of
23 the Central Valley Project Improvement Act (106 Stat.
24 4729) is amended—

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

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

5 (e) WATER STORAGE PROJECT CONSTRUCTION.—

6 The Secretary, acting through the Commissioner of the
7 Bureau of Reclamation, may partner or enter into an
8 agreement on the water storage projects identified in sec-
9 tion 103(d)(1) of the Water Supply Reliability, and Envi-
10 ronmental Improvement Act (Public Law 108–361) (and
11 Acts supplemental and amendatory to the Act) with local
12 joint powers authorities formed pursuant to State law by
13 irrigation districts and other local water districts and local
14 governments within the applicable hydrologic region, to
15 advance these projects. No additional Federal funds are
16 authorized for the activities authorized in sections
17 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and 103(d)(1)(A)(iii) of
18 Public Law 108–361. However, each water storage project
19 under sections 103(d)(1)(A)(i), 103(d)(1)(A)(ii), and
20 103(d)(1)(A)(iii) of Public Law 108–361 is authorized for
21 construction if non-Federal funds are used for financing
22 and constructing the project.

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

24 (a) CONGRESSIONAL DIRECTION REGARDING CEN-
25 TRAL VALLEY PROJECT AND CALIFORNIA STATE WATER

21

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

15 (b) APPLICATION OF LAWS TO OTHERS.—Neither a
16 Federal department nor the State of California, including
17 any agency or board of the State of California, shall im-
18 pose on any water right obtained pursuant to State law,
19 including a pre-1914 appropriative right, any condition
20 that restricts the exercise of that water right in order to
21 conserve, enhance, recover or otherwise protect any species
22 that is affected by operations of the Central Valley Project
23 or California State Water Project. Nor shall the State of
24 California, including any agency or board of the State of
25 California, restrict the exercise of any water right obtained

1 pursuant to State law, including a pre-1914 appropriative
2 right, in order to protect, enhance, or restore under the
3 Public Trust Doctrine any public trust value. Implementa-
4 tion of the “Principles for Agreement on the Bay-Delta
5 Standards Between the State of California and the Fed-
6 eral Government” dated December 15, 1994, shall be in
7 strict compliance with the water rights priority system and
8 statutory protections for areas of origin.

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

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

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

21 After the date of the enactment of this title, and re-
22 gardless of the date of listing, the Secretaries of the Inte-
23 rior and Commerce shall not distinguish between natural-
24 spawned and hatchery-spawned or otherwise artificially
25 propagated strains of a species in making any determina-

1 tion under the Endangered Species Act of 1973 (16
2 U.S.C. 1531 et seq.) that relates to any anadromous fish
3 species present in the Sacramento and San Joaquin Rivers
4 or their tributaries and ascend those rivers and their trib-
5 utaries to reproduce after maturing in San Francisco Bay
6 or the Pacific Ocean.

7 **SEC. 110. REGULATORY STREAMLINING.**

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

17 (b) **CONTINUATION OF PROJECT.**—The Bureau of
18 Reclamation shall not be required to cease or modify any
19 major Federal action or other activity related to any
20 project of the CVP or the delivery of water therefrom
21 pending completion of judicial review of any determination
22 made under the National Environmental Protection Act
23 of 1969 (42 U.S.C. 4332(2)(C)).

24 (c) **PROJECT DEFINED.**—For the purposes of this
25 section:

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

3 (2) PROJECT.—The term “project”—

4 (A) means an activity that—

5 (i) is undertaken by a public agency,
6 funded by a public agency, or that requires
7 an issuance of a permit by a public agency;

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

10 (iii) may be subject to several discre-
11 tionary approvals by governmental agen-
12 cies;

13 (B) may include construction activities,
14 clearing or grading of land, improvements to
15 existing structures, and activities or equipment
16 involving the issuance of a permit; or

17 (C) as defined under the California Envi-
18 ronmental Quality Act in section 21065 of the
19 California Public Resource Code.

20 **SEC. 111. ADDITIONAL EMERGENCY CONSULTATION.**

21 For adjustments to operating criteria other than
22 under section 108 or to take urgent actions to address
23 water supply shortages for the least amount of time or
24 volume of diversion necessary as determined by the Com-
25 missioner of Reclamation, no mitigation measures shall be

1 required during any year that the Sacramento Valley
2 index is 6.5 or lower, or at the request of the State of
3 California, and until two succeeding years following either
4 of those events have been completed where the final Sac-
5 ramento Valley Index is 7.8 or greater, and any mitigation
6 measures imposed must be based on quantitative data and
7 required only to the extent that such data demonstrates
8 actual harm to species.

9 **SEC. 112. APPLICANTS.**

10 In the event that the Bureau of Reclamation or an-
11 other Federal agency initiates or reinitiates consultation
12 with the U.S. Fish and Wildlife Service or the National
13 Marine Fisheries Service under section 7(a)(2) of the En-
14 dangered Species Act of 1973 (16 U.S.C. 1536(a)(2)),
15 with respect to construction or operation of the Central
16 Valley Project and State Water Project, or any part there-
17 of, the State Water Project contractors and the Central
18 Valley Project contractors will be accorded all the rights
19 and responsibilities extended to applicants in the consulta-
20 tion process.

21 **SEC. 113. SAN JOAQUIN RIVER SETTLEMENT.**

22 (a) PURPOSE AND FINDINGS.—

23 (1) PURPOSE AND FINDINGS.—Section 10002
24 of the San Joaquin River Restoration Settlement

1 Act (Public Law 111–11) is amended to read as fol-
2 lows:

3 **“SEC. 10002. PURPOSE AND FINDINGS.**

4 “(a) PURPOSE.—The purpose of this part is to au-
5 thorize implementation of the Settlement.

6 “(b) FINDINGS.—Congress finds that since the date
7 of the enactment of this Act, the following conditions now
8 persist with regard to implementation of the Settlement:

9 “(1) Millions of dollars of economic damages
10 have occurred due to seepage from rivers flows and
11 other impacts to third parties affected by the Settle-
12 ment and San Joaquin River Restoration Program
13 and such impacts will continue for the duration of
14 the Settlement and Restoration Program implemen-
15 tation.

16 “(2) Estimated costs of implementing the Set-
17 tlement have more than doubled from the initial esti-
18 mates for implementing the Settlement, from a high-
19 end estimate of \$800,000,000 to more than
20 \$1,700,000,000, due to unrealistic initial cost esti-
21 mates, additional, unanticipated cost increases re-
22 lated to damages to land from seepage and to infra-
23 structure from subsidence, and from increased con-
24 struction costs to complete channel improvements,
25 and other improvements not originally identified, but

1 anticipated in the Settlement as necessary to imple-
2 ment the Restoration Goal.

3 “(3) Achievement of the Settlement’s Water
4 Management Goal, to reduce or avoid water supply
5 impacts to Friant Division long-term contractors, in-
6 cluding the Friant-Kern Canal and Madera Canal
7 capacity restoration projects have not progressed
8 and are likely impossible given available and likely
9 future funding and regulatory constraints.

10 “(4) Implementation of the Settlement’s Res-
11 toration Goal has already fallen short of the sched-
12 ule agreed to by the Settling Parties and Congress,
13 which required the reintroduction of Spring-run and
14 Fall-run Chinook salmon in the river by December
15 31, 2012, and the majority of Paragraph 11 im-
16 provements construction to be complete by Decem-
17 ber 31, 2013, with the remainder of the paragraph
18 (11) improvements to be completed by December 31,
19 2016, neither of which deadlines have been met and
20 the Secretary has now made findings that such im-
21 provements will not be completed until 2030 at the
22 earliest and likely beyond that timeframe, which
23 schedule assumes full funding of the Restoration
24 Program, which has not occurred.

1 “(5) Catastrophic species declines in the Sac-
2 ramento-San Joaquin Delta and other changed con-
3 ditions have affected the Friant Division’s water
4 supply in ways unimagined during the time of the
5 Settlement’s signing, resulting in additional reduc-
6 tions in water supply for the Friant Division beyond
7 what was agreed to in the Settlement.

8 “(6) Recent scientific assessments of likely fu-
9 ture climate change suggest that no amount of addi-
10 tional flow in the San Joaquin River will sustain
11 Spring-run Chinook salmon, one of the target spe-
12 cies for maintaining a self-sustaining population
13 below Friant Dam.

14 “(7) In consideration of existing conditions, it
15 is not reasonable, prudent and feasible to implement
16 the Settlement as originally authorized.”.

17 (2) DEFINITIONS.—Section 10003 of the San
18 Joaquin River Restoration Settlement Act (Public
19 Law 111–11) is amended by adding at the end the
20 following:

21 “(4) The term ‘Exchange Contractors’ means
22 San Joaquin River Exchange Contractors Water Au-
23 thority, whose members are the Central California
24 Irrigation District, Columbia Canal Company, the

1 Firebaugh Canal Water District, and the San Luis
2 Canal Company.

3 “(5) The term ‘Governor’ means the Governor
4 of the State of California.

5 “(6) The term ‘Gravelly Ford’ means the Grav-
6 elly Ford gaging station in the San Joaquin River
7 located at approximately River Mile 230.

8 “(7) The term ‘Restoration Area’ means the
9 San Joaquin River between Friant Dam and the
10 Merced River confluence, and generally within 1,500
11 feet of the centerline of the river.

12 “(8) The term ‘Restoration Flow’ means the
13 hydrograph flows (as provided in paragraph 18 and
14 exhibit B of the Settlement), buffer flows of up to
15 10 percent of the applicable hydrograph flows, and
16 any additional water acquired by the Secretary of
17 the Interior from willing sellers to meet the Restora-
18 tion Goal of the Settlement.

19 “(9) The term ‘Restoration Fund’ means that
20 fund established by this part.

21 “(10) The term ‘Sack Dam’ means a low-head
22 earth and concrete structure with wooden flap gates
23 that diverts San Joaquin River flows into the Arroyo
24 Canal at approximately River Mile 182.1.

1 “(11) The term ‘Warm Water Fishery’ means
2 a water system that has an environment suitable for
3 species of fish other than salmon (including any sub-
4 species) and trout (including all subspecies).

5 “(12) The term ‘third party’ means the Ex-
6 change Contractors or any member thereof, current
7 or former members of the San Joaquin Tributaries
8 Authority, and current or former members of the
9 San Luis and Delta Mendota Water Authority.”;
10 and

11 (3) IMPLEMENTATION OF SETTLEMENT.—Sec-
12 tion 10004 of the San Joaquin River Restoration
13 Settlement Act (Public Law 111–11) is amended—

14 (A) in subsection (f), by striking “pursu-
15 ant to the Settlement and section 10011” and
16 inserting “or other species for any reason”;

17 (B) in subsection (g), by inserting “or the
18 implementation of the Settlement and the re-
19 introduction of California Central Valley Spring
20 Run Chinook salmon or any other species,”
21 after “nothing in this part”;

22 (C) in subsection (h)—

23 (i) in the header by striking “IN-
24 TERIM”;

25 (ii) in paragraph (1)—

31

1 (I) by striking “Interim Flows”
2 and inserting “Flows” each place it
3 appears;

4 (II) in subparagraph (C)(ii), by
5 inserting “which shall be imple-
6 mented” after “significant”; and

7 (III) in subparagraph (E), by
8 striking “as a result of the Interim
9 Flows” and inserting “or State laws
10 as a result of Flows.”; and

11 (iii) by striking paragraphs (2), (3),
12 and (4) and inserting the following:

13 “(2) CONDITIONS FOR RELEASE.—The Sec-
14 retary is authorized to release Flows—

15 “(A) if all improvements and mitigation
16 measures are completed or implemented, includ-
17 ing all actions necessary to mitigate impacts on
18 landowners, water agencies, and water users;
19 and

20 “(B) if such Flows will not exceed existing
21 downstream channel capacities.

22 “(3) SEEPAGE IMPACTS.—(A) The Secretary, in
23 implementing this Act, shall not cause material ad-
24 verse impacts to third parties. The Secretary shall
25 reduce Flows to the extent necessary to address any

1 material adverse impacts to third parties from
2 groundwater seepage or levee instability caused by
3 such flows identified based on the monitoring pro-
4 gram of the Secretary. Notwithstanding the fore-
5 going, the Secretary shall not directly or indirectly
6 cause groundwater to rise above 10 feet below
7 ground surface and shall provide at least 10 feet
8 below ground surface as a minimum threshold ele-
9 vation for groundwater beneath any fields where per-
10 manent or other deep rooted crops are grown, and
11 at least 6 feet below ground surface as a minimum
12 threshold elevation for groundwater beneath any
13 fields where annual or shallow rooted crops are
14 grown. These minimum thresholds shall be adjusted
15 yearly based upon information provided by individual
16 landowners regarding the minimum threshold that
17 they will need in order to grow their crop(s) that
18 year. If during the course of the year the landowner
19 informs the Secretary that detrimental seepage is
20 being experienced or is reasonably likely to occur de-
21 spite the adherence to the minimum threshold, the
22 Secretary shall reduce Restoration Flows to a vol-
23 ume sufficient to reduce seepage impacts by reduc-
24 ing the occurrence of groundwater to a non-dam-
25 aging level below ground surface.

1 “(B) If Flow reduction alone is not sufficient to
2 mitigate for seepage impacts the Secretary shall
3 mitigate by real estate transaction or installation of
4 physical measures, whichever option is requested by
5 the landowner.

6 “(C) Any water that seeps onto private prop-
7 erty shall thereupon become the property of that
8 landowner if the landowner takes control of the
9 water including by re-diverting it to the San Joaquin
10 River. If seepage water is returned to the San Joa-
11 quin River it shall meet applicable water quality re-
12 quirements.

13 “(4) TEMPORARY FISH BARRIER PROGRAM.—
14 Using funds otherwise available from the San Joa-
15 quin River Restoration Fund if necessary, the Sec-
16 retary is authorized to make improvements to the
17 Hills Ferry Barrier or any replacement thereof in
18 order to prevent upstream migration of any pro-
19 tected species to the restoration area. The Secretary
20 is further authorized to work with the California De-
21 partment of Fish and Wildlife for the improvement
22 or replacement of the Hills Ferry Barrier in order
23 to prevent the upstream migration of any protected
24 species. If third parties south of the confluence with
25 the Merced River are required to install their screens

1 or fish bypass facilities in order to comply with the
2 Endangered Species Act of 1973, the Secretary shall
3 bear the costs of such screens or facilities, except to
4 the extent that such costs are already or are further
5 willingly borne by the State of California or by the
6 third parties. Expenditures by Reclamation are non-
7 reimbursable. Any protected species recovered at the
8 Hills Ferry Barrier or in the Restoration Area or
9 any river or false pathways thereto that is to be relo-
10 cated outside of the Restoration Area shall only be
11 relocated to an area where there is an established
12 self-sustaining population of that same genotype or
13 phenotype.”; and

14 (D) by amending subsection (j) to read as
15 follows:

16 “(j) SAN JOAQUIN RIVER EXCHANGE CONTRACT AND
17 RELATED.—Subject to section 10006(b), nothing in this
18 part shall modify or amend the rights and obligations
19 under the Purchase Contract between Miller and Lux and
20 the United States including without exclusion of others,
21 any right to enforce the power contracts identified in the
22 Purchase Contract, the Second Amended Exchange Con-
23 tract between the United States, Department of the Inte-
24 rior Bureau of Reclamation and Central California Irriga-
25 tion District, San Luis Canal Company, Firebaugh Canal

1 Water District, and Columbia Canal Company. Prior to
2 releasing any restoration flow, the Secretary shall deter-
3 mine that such release will not affect its contractual obli-
4 gations to the Exchange Contractors.”.

5 (4) ACQUISITION OF PROPERTY.—Section
6 10005 of the San Joaquin River Restoration Settle-
7 ment Act (Public Law 111–11) is amended by strik-
8 ing subsections (b) and (c) and inserting the fol-
9 lowing:

10 “(b) ACQUISITION OF PROPERTY.—The Secretary is
11 authorized to acquire property solely through purchase
12 from willing sellers any property, interests in property, or
13 options to acquire real property needed to implement the
14 Settlement authorized by this part. The Secretary shall
15 not acquire property through the exercise of eminent do-
16 main unless the owner of said property does not object
17 to an eminent domain action.

18 “(c) DISPOSAL OF PROPERTY.—Any property or in-
19 terests therein acquired by the Secretary and for which
20 the Secretary determines that the property or interest
21 therein is no longer needed to be held by the United States
22 for the furtherance of the Settlement, shall be first offered
23 for repurchase to the prior owner of the property from
24 whom the United States acquired the property and at the
25 same price for which the United States acquired the prop-

1 erty unless it is demonstrated that the property has de-
2 creased in value in which case the Secretary shall sell the
3 property back to the prior owner at the decreased price.
4 If the prior owner does not want the property, the Sec-
5 retary shall sell the property on the open market.”.

6 (5) COMPLIANCE WITH APPLICABLE LAW.—Sec-
7 tion 10006 of the San Joaquin River Restoration
8 Settlement Act (Public Law 111–11) is amended—

9 (A) in subsection (a)—

10 (i) in paragraph (1), by striking “as
11 necessary” and inserting “as necessary, as
12 provided for in this part and in a manner
13 that does not conflict with the intent of
14 Congress as expressed in this title which
15 intent shall be afforded the greatest def-
16 erence and any difference or ambiguity
17 shall be resolved in favor of said intent”
18 before the period at the end; and

19 (ii) in paragraph (2), by adding at the
20 end the following: “Any statutory exemp-
21 tions from conducting environmental re-
22 view or consultation are not applicable.”;

23 (B) in subsection (b)—

37

1 (i) by striking “Nothing” and insert-
2 ing “Except as provided in subsection (e)
3 below, nothing”; and

4 (ii) by striking “State law.” and in-
5 sserting “State law, except as otherwise
6 provided for herein or would conflict with
7 achieving the purposes or intent of this
8 title.”; and

9 (C) by adding at the end the following:

10 “(e) IN GENERAL.—Sections 5930 through 5948 of
11 the California Fish and Game Code and all applicable
12 Federal laws, including this part, as amended by the Gain-
13 ing Responsibility on Water Act of 2017, and the Stipula-
14 tion of Settlement (Natural Resources Defense Council,
15 et al. v. Kirk Rodgers, et al., Eastern District of Cali-
16 fornia, No. Civ. S-88-1658—LKK/GGH), shall be satis-
17 fied by implementation of the Settlement as provided in
18 section 10014(b) or the plan provided in section 10014(a)
19 of the Gaining Responsibility on Water Act of 2017.

20 “(f) COMPLIANCE WITH EXISTING FRIANT DIVISION
21 CONTRACTS.—Congress hereby finds and declares that
22 compliance with the provisions of this Act by Friant Divi-
23 sion Contractors shall fulfill all requirements for compli-
24 ance with this part, contained in contracts between the
25 Secretary and Friant Division Contractors.”.

1 (6) NO PRIVATE RIGHT OF ACTION.—Section
2 10008(a) of the San Joaquin River Restoration Set-
3 tlement Act (Public Law 111–11) is amended by
4 striking “the Settlement” and inserting “the Settle-
5 ment or a third party”.

6 (7) SETTLEMENT FUND.—Section 10009 of the
7 San Joaquin River Restoration Settlement Act (Pub-
8 lic Law 111–11) is amended—

9 (A) in subsection (a), by amending para-
10 graph (3) to read as follows:

11 “(3) LIMITATION.—Except as provided in the
12 Settlement, to the extent that costs incurred solely
13 to implement this Settlement would not otherwise
14 have been incurred by any entity or public or local
15 agency or subdivision of the State of California, such
16 costs shall not be borne by any such entity, agency,
17 or subdivision of the State of California, unless such
18 costs are incurred on a voluntary basis. Any appro-
19 priations by Congress to implement this part shall
20 be on the basis of line item authorizations and ap-
21 propriations and shall not be part of the pro-
22 grammatic funding for the Secretary or the Bureau
23 of Reclamation.”; and

24 (B) by striking subsection (f) and inserting
25 the following:

1 “(f) REACH 4B.—No Restoration Flows released
2 shall be routed through section 4B of the San Joaquin
3 River. The Secretary shall seek to make use of modified
4 and/or existing conveyance facilities such as flood control
5 channels in order to provide conveyance for the restoration
6 flows. Congress finds that such use of multi-use facilities
7 is more economical and cost-effective than seeking to re-
8 store certain sections of the San Joaquin River. The Sec-
9 retary shall provide non-reimbursable funding for the in-
10 cremental increase in maintenance costs for use of the
11 flood control channels.

12 “(g) NO IMPACT ON WATER SUPPLIES.—Re-intro-
13 duction or migration of species to the San Joaquin River
14 upstream of the confluence with the Merced River made
15 possible by or aided by the existence of restoration flows
16 or any improvements to the river made hereunder shall
17 not result in water supply reductions, additional storage
18 releases, or bypass flows on unwilling third parties due
19 to such re-introduction.

20 “(h) NO TRANSFERENCE OF LIABILITY.—Congress
21 finds that the Federal interest in the restoration of the
22 San Joaquin River upstream of the confluence with the
23 Merced River has been satisfied with regard to the devel-
24 opment of the Friant Division, Delta Mendota canal, the
25 continued performance of and compliance with the terms

1 of agreements of the United States to purchase water
2 rights and for exchange of water, its Agreements with the
3 entities that comprise the Exchange Contractors to deliver
4 their water rights in the San Joaquin River pursuant to
5 the terms of the agreements. The enactment of the San
6 Joaquin River Restoration Settlement Act, together with
7 findings in this legislation including the Settling Parties
8 and agencies of the State of California tried to implement
9 the Restoration Program for ten years and the Bureau
10 of Reclamation has stated it will take at least another 15
11 years to implement assuming full funding is provided, even
12 though that full funding has never been provided since the
13 Settlement was executed or the Restoration Act enacted,
14 and that absent implementation of that funding, there is
15 no possibility of establishing a viable self-sustaining
16 salmonid population and the restoration of the upper San
17 Joaquin River has proven infeasible on terms originally
18 conceived by the parties to the Settlement and Congress
19 in the Restoration Act. Therefore, notwithstanding that
20 the United States and water users and agencies within the
21 Friant Division are released of any existing or future obli-
22 gations with regard to the Restoration Program, or any
23 similar program, no responsibility for achieving the goals
24 of the Restoration Program, including the provision of
25 flows and the re-introduction of salmon, or other fish spe-

1 cies to the San Joaquin River, shall be imposed on the
2 United States, upon the Exchange Contractors or any of
3 its members nor shall the rights to delivery of water re-
4 served to the Exchange Contractors by any agency of the
5 United States or the State of California be abridged or
6 impaired.

7 “(i) ABSENCE OF AGREEMENT.—In the absence of
8 an agreement with Friant Division long-term contractors,
9 in the event the State of California, acting through the
10 State Water Resources Control Board or otherwise, or any
11 other party requires the flow of the San Joaquin River
12 below Friant Dam to exceed the amounts stated in Exhibit
13 B of the Settlement, then the authorization to implement
14 the Settlement as provided in this Act shall terminate and
15 the Secretary of the Interior shall cease any action to im-
16 plement this part and the Stipulation of Settlement (Nat-
17 ural Resources Defense Council, et al. v. Kirk Rodgers,
18 et al., Eastern District of California, No. Civ-S–88–1658
19 LLK/GGH); provided, further, the Secretary shall also
20 cease to collect or expend any funds from the San Joaquin
21 River Restoration Fund.”.

22 (b) REVIEW AND DETERMINATION.—San Joaquin
23 River Restoration Settlement Act (Public Law 111–11 et
24 seq.) is amended by adding at the end the following:

1 **“SEC. 10012. REVIEW AND DETERMINATION.**

2 “(a) DETERMINATION REQUIRED.—The Governor
3 and the Secretary, shall determine, in consideration of the
4 overall public interest of both the State of California and
5 the Nation, if it is reasonable, prudent, and feasible to
6 implement the Settlement as provided in section 10014(b)
7 and shall submit a joint report to Congress not later than
8 1 year after the date of the enactment of this Act, stating
9 their findings and recommended action, including—

10 “(1) financial considerations;

11 “(2) available scientific evidence;

12 “(3) water temperature in the lower reaches of
13 the upper San Joaquin River; and

14 “(4) alternative uses for the funds required to
15 implement the Settlement.

16 “(b) ABSENCE OF TIMELY DETERMINATION.—If the
17 Governor and the Secretary, do not provide a joint rec-
18 ommendation within the time specified in subsection (a),
19 then it shall be deemed that implementing the Settlement
20 consistent with section 10014(b) is not reasonable, pru-
21 dent, and feasible, and the Secretary shall proceed to im-
22 plement the Settlement consistent with section 10014(a).

23 **“SEC. 10013. INTERIM OPERATIONS.**

24 “Beginning on the date of the enactment of the Gain-
25 ing Responsibility on Water Act of 2017 and continuing
26 until a determination and final plan has been developed

1 and approved by the Secretary and Governor as provided
2 under section 10014(b), and if applicable, the warm water
3 fishery plan developed under section 10014(a), the Sec-
4 retary shall only take the following actions to implement
5 the Settlement according to the this Act:

6 “(1) Implementation of the Restoration Goal
7 and the Water Management Goal of the Settlement
8 only to the extent consistent with section 10014(b).

9 “(2) No Restoration Flow releases shall be per-
10 mitted on the San Joaquin River downstream of
11 Sack Dam to the confluence with the Merced River.

12 “(3) No salmonids shall be placed into or al-
13 lowed to migrate to the Restoration Area. If any
14 salmonids are caught at the Hills Ferry Barrier,
15 they shall be salvaged to the extent feasible and re-
16 turned to an area where there is a viable sustainable
17 salmonid population of substantially the same geno-
18 type or phenotype.

19 “(4) Implementation of a plan to recirculate,
20 recapture, reuse, exchange and transfer Restoration
21 Flows for the purpose of reducing or avoiding im-
22 pacts to water deliveries to all Friant Division long-
23 term contractors caused by the Restoration Flows ,
24 to the greatest extent feasible.

1 **“SEC. 10014. ALTERNATE LONG-TERM ACTIONS.**

2 “(a) GRAVELLY FORD—WARM WATER FISHERY.—

3 “(1) If it is determined under section 10012(a)
4 that the Settlement should not be implemented as
5 provided in subsection (b), then not later than 1
6 year after such determination, the Secretary and the
7 Governor shall develop and approve a reasonable,
8 prudent, and feasible plan for maintaining a warm
9 water fishery on the San Joaquin River below Friant
10 Dam, but upstream of Gravelly Ford, consistent
11 with the following:

12 “(A) No water shall be released into the
13 San Joaquin River for fishery purposes down-
14 stream of Gravelly Ford.

15 “(B) Existing and future contributions to
16 the Restoration Fund shall be expended for the
17 purposes of—

18 “(i) warm water fishery improvements
19 within the San Joaquin River channel up-
20 stream of Gravelly Ford; and

21 “(ii) water and fishery improvements
22 in the San Joaquin River channel down-
23 stream of the confluence with the Merced
24 River and other areas for benefit of fall
25 run salmon.

1 “(C) The Secretary shall establish a fund
2 to be jointly administered by the Friant Water
3 Authority, Exchange Contractors, San Joaquin
4 Tributaries Authority, and San Luis Delta
5 Mendota Water Authority to fund restoration
6 actions along the San Joaquin River and its
7 tributaries that achieve water quality objectives
8 for the protection of fish and wildlife. The Sec-
9 retary shall transfer the following into the fund:

10 “(i) All funds in the San Joaquin
11 River Restoration Fund authorized by this
12 part.

13 “(ii) All future payments by Friant
14 Division long-term contractors pursuant to
15 section 3406(c)(1) of the Reclamation
16 Projects, Authorization and Adjustment
17 Act of 1992 (Public Law 102–575; 106
18 Stat. 4721) as provided in the Settlement.

19 “(D) In the absence of an agreement with
20 Friant Division long-term contractors, in the
21 event the State of California, acting through
22 the State Water Resources Control Board or
23 otherwise, or any other party requires the flow
24 of the San Joaquin River to continue below

1 Gravelly Ford for fish and wildlife purposes
2 then—

3 “(i) all funding specified for transfer
4 under this subsection shall cease, and any
5 funds remaining in the San Joaquin River
6 Basin Restoration Fund shall be trans-
7 ferred to the Friant Water Authority for
8 implementing conveyance improvements on
9 the Friant Kern Canal and Madera Canal
10 to mitigate for subsidence impacts since
11 their original construction; and

12 “(ii) the authorization to implement
13 the Settlement as provided in this part, as
14 amended by the Gaining Responsibility on
15 Water Act of 2017, shall terminate and
16 the Secretary shall cease any action to im-
17 plement this part and the Stipulation of
18 Settlement (Natural Resources Defense
19 Council, et al. v. Kirk Rodgers, et al.,
20 Eastern District of California, No. Civ-S-
21 88-1658 LLK/GGH); provided, further,
22 the Secretary shall also cease to collect or
23 expend any funds from the San Joaquin
24 River Restoration Fund.

1 “(b) CONTINUED IMPLEMENTATION.—If, in the deci-
2 sion required by section 10012(a), it is determined that
3 the Settlement should continue to be implemented as pro-
4 vided in section 10014(b), then the following terms are
5 required for Continued Implementation of Settlement and
6 no funds shall be expended to implement the Settlement
7 other than as provided for herein:

8 “(1) IMPROVEMENTS.—The improvements de-
9 scribed in paragraph (11) of the Settlement and any
10 additional improvements identified in the Frame-
11 work for Implementation published in 2015 and any
12 successors thereto shall be completed before any
13 Restoration Flows are released to the San Joaquin
14 River.

15 “(2) PRIORITY PROJECTS.—The improvements
16 shall be constructed in the following order:

17 “(A) Mendota Pool bypass and fish screen.

18 “(B) Arroyo Canal fish screen and Sack
19 Dam fish passage facilities.

20 “(C) Seepage mitigation actions to allow
21 Restoration Flows of up to 4500 CFS such that
22 there will be no involuntarily incurred damage
23 to private property and no damage to levees.

24 “(3) OTHER IMPROVEMENTS.—The remainder
25 of the Improvements shall be constructed in an

1 order deemed appropriate by the Secretary after the
2 foregoing projects are completed.

3 “(4) CONSTRUCTION ASSISTANCE.—If agreed to
4 by the Exchange Contractors or any of its members,
5 the Secretary shall enter into an agreement with the
6 Exchange Contractors or any of its members to as-
7 sume construction responsibility from initial design
8 through completion of such improvements as the Ex-
9 change Contractors or any of its members may agree
10 to, provided that the Secretary shall retain financial
11 responsibility for such improvements and shall reim-
12 burse the Exchange Contractors or any of its mem-
13 bers for costs incurred by them and their contrac-
14 tors, if any, expended in the construction of the im-
15 provements. The Secretary shall enter into a con-
16 struction agreement with the Exchange Contractors
17 or its members, as applicable, and subject to their
18 approval, consistent with the terms of this title.

19 “(5) TECHNICAL ADVISORY COMMITTEE AND
20 RESTORATION ADMINISTRATOR.—The Secretary
21 shall add to the Technical Advisory Committee
22 (TAC), established pursuant to the Settlement, one
23 representative from the Exchange Contractors and
24 one representative from the San Luis & Delta-
25 Mendota Water Authority. Any decisions and/or rec-

1 ommendations made by the Restoration Adminis-
2 trator shall be first discussed with the TAC and
3 made on the basis of consensus to maximum extent
4 possible. Any recommendations made by the Res-
5 toration Administrator are advisory only, shall be in
6 writing, shall include references to the science relied
7 on and specify the benefits to fish in the river, and
8 include the level of consensus reached by the TAC.
9 The Secretary's final decision on any action, includ-
10 ing flows, can deviate from the Restoration Adminis-
11 trator's recommendation provided that the Sec-
12 retary's final decision is based upon sound and ob-
13 jective science, and is otherwise consistent with this
14 title.

15 “(6) RESTORATION FLOWS.—The appropriate
16 level of Restoration Flows under any circumstance
17 shall be no greater than that set forth in the
18 hydrographs attached as exhibit B to the Settle-
19 ment, and shall be no greater than the real-time
20 fishery needs required to meet the Restoration Goal.
21 The Secretary shall make the final decision as to the
22 appropriate level of Restoration Flows and other ac-
23 tions regarding implementation of the Restoration
24 Program. The appropriate level of Restoration Flows
25 shall at a minimum not exceed channel capacity,

1 cause seepage damage, or be inconsistent with any
2 other requirements in this section. The Secretary's
3 decisions and those of the Secretary of Commerce
4 shall be fully supported by the best commercial and
5 scientific information available, shall be made in an
6 open and transparent manner, and shall be based on
7 objective information capable of replication.

8 “(7) FISH REINTRODUCTION.—No fishery shall
9 be introduced or placed for any reason in to the San
10 Joaquin River upstream of the Merced River, until
11 Reclamation has released Restoration Flows down
12 the San Joaquin River in each hydrologic year type:
13 wet, above normal, below normal, dry, and critically
14 dry and determined that the improvements are fully
15 functional and that seepage impacts have been fully
16 mitigated. At least 180 days before the introduction
17 of spring run Chinook salmon the Bureau of Rec-
18 lamation shall submit a report to Congress that pro-
19 vides a critical examination of the impact of Res-
20 toration Flows on seepage and the improvements,
21 and the likelihood of success in restoring a salmon
22 fishery that is viable, sustainable and capable of voli-
23 tional passage.

24 “(8) PROTECTED SPECIES.—Any protected spe-
25 cies migrating into the Restoration Area shall be

1 deemed to be a nonessential experimental popu-
2 lation. Congress finds that due to human-caused
3 physical changes to the pathways of the San Joaquin
4 River upstream of the confluence of the Merced
5 River the San Joaquin River is deemed a distinct
6 and separate geographic area and no agency shall
7 take any action pursuant to any authority or re-
8 quirement of the Endangered Species Act of 1973
9 (16 U.S.C. 1531 et seq.) or any other Federal or
10 State species protection law that will have an ad-
11 verse impact on landowners or water agencies within
12 the Restoration Area unless such impacts are in-
13 curred on a voluntary basis.

14 “(9) SUBSIDENCE.—Prior to implementing any
15 other actions, the Secretary shall work with local
16 water districts and landowners to ensure the actions
17 include appropriate solutions to past and likely fu-
18 ture subsidence. Without resolution to the subsid-
19 ence issue, the improvements described in the Settle-
20 ment and the San Joaquin River and/or the flood
21 control system will continue to be irreparability dam-
22 aged. Any costs incurred by the Secretary, including
23 but not limited to acquisition of property from will-
24 ing sellers shall be non-reimbursable.

1 “(10) FULL FUNDING.—Prior to commencing
2 construction of any Improvement, the Secretary
3 shall approve a funding plan that demonstrates that
4 the United States has obtained all authorizations for
5 appropriations combined with other authorized and
6 reasonably foreseeable funding sources necessary for
7 the orderly completion of all improvements described
8 in paragraph (11) of the Settlement and any addi-
9 tional improvements identified in the Framework for
10 Implementation published in 2015, including any
11 amendments thereto.

12 “(11) MITIGATION OF IMPACTS.—Prior to the
13 implementation of decisions or agreements to con-
14 struct, improve, operate, or maintain Improvements,
15 or facilities that the Secretary determines are needed
16 to implement the Settlement, the Secretary shall—

17 “(A) identify the impacts associated with
18 such actions;

19 “(B) identify the actions that the Sec-
20 retary must implement to mitigate any impacts
21 on water users and landowners in the Restora-
22 tion Area; and

23 “(C) shall implement all of the mitigation
24 actions so as to eliminate or reduce to an im-

1 material effect any adverse impacts on water
2 users and landowners.”.

3 **TITLE II—CALFED STORAGE**
4 **FEASIBILITY STUDIES**

5 **SEC. 201. STUDIES.**

6 The Secretary of the Interior, through the Commis-
7 sioner of Reclamation, shall—

8 (1) complete the feasibility studies described in
9 clauses (i)(I) and (ii)(II) of section 103(d)(1)(A) of
10 Public Law 108–361 (118 Stat. 1684) and submit
11 such studies to the appropriate committees of the
12 House of Representatives and the Senate not later
13 than November 30, 2018;

14 (2) complete the feasibility study described in
15 clause (i)(II) of section 103(d)(1)(A) of Public Law
16 108–361 and submit such study to the appropriate
17 committees of the House of Representatives and the
18 Senate not later than November 30, 2018;

19 (3) complete a publicly available draft of the
20 feasibility study described in clause (ii)(I) of section
21 103(d)(1)(A) of Public Law 108–361 and submit
22 such study to the appropriate committees of the
23 House of Representatives and the Senate not later
24 than November 30, 2018;

1 (4) complete the feasibility study described in
2 clause (ii)(I) of section 103(d)(1)(A) of Public Law
3 108–361 and submit such study to the appropriate
4 committees of the House of Representatives and the
5 Senate not later than November 30, 2019;

6 (5) complete the feasibility study described in
7 section 103(f)(1)(A) of Public Law 108–361 (118
8 Stat. 1694) and submit such study to the appro-
9 priate committees of the House of Representatives
10 and the Senate not later than December 31, 2019;

11 (6) in conducting any feasibility study under
12 this Act, the reclamation laws, the Central Valley
13 Project Improvement Act (title XXXIV of Public
14 Law 102–575; 106 Stat. 4706), the Fish and Wild-
15 life Coordination Act (16 U.S.C. 661 et seq.), the
16 Endangered Species Act of 1973 (16 U.S.C. 1531 et
17 seq.), and other applicable law, for the purposes of
18 determining feasibility the Secretary shall document,
19 delineate, and publish costs directly relating to the
20 engineering and construction of a water storage
21 project separately from the costs resulting from reg-
22 ulatory compliance or the construction of auxiliary
23 facilities necessary to achieve regulatory compliance;
24 and

1 (7) communicate, coordinate and cooperate with
2 public water agencies that contract with the United
3 States for Central Valley Project water and that are
4 expected to participate in the cost pools that will be
5 created for the projects proposed in the feasibility
6 studies under this section.

7 **SEC. 202. TEMPERANCE FLAT.**

8 (a) DEFINITIONS.—For the purposes of this section:

9 (1) PROJECT.—The term “Project” means the
10 Temperance Flat Reservoir Project on the Upper
11 San Joaquin River.

12 (2) RMP.—The term “RMP” means the docu-
13 ment titled “Bakersfield Field Office, Record of De-
14 cision and Approved Resource Management Plan”,
15 dated December 2014.

16 (3) SECRETARY.—The term “Secretary” means
17 the Secretary of the Interior.

18 (b) APPLICABILITY OF RMP.—The RMP and find-
19 ings related thereto shall have no effect on or applicability
20 to the Secretary’s determination of feasibility of, or on any
21 findings or environmental review documents related to—

22 (1) the Project; or

23 (2) actions taken by the Secretary pursuant to
24 section 103(d)(1)(A)(ii)(II) of the Bay-Delta Au-
25 thorization Act (title I of Public Law 108–361).

1 (c) DUTIES OF SECRETARY UPON DETERMINATION
2 OF FEASIBILITY.—If the Secretary finds the Project to
3 be feasible, the Secretary shall manage the land rec-
4 ommended in the RMP for designation under the Wild and
5 Scenic Rivers Act (16 U.S.C. 1271 et seq.) in a manner
6 that does not impede any environmental reviews,
7 preconstruction, construction, or other activities of the
8 Project, regardless of whether or not the Secretary sub-
9 mits any official recommendation to Congress under the
10 Wild and Scenic Rivers Act.

11 (d) RESERVED WATER RIGHTS.—Effective Decem-
12 ber 22, 2017, there shall be no Federal reserved water
13 rights to any segment of the San Joaquin River related
14 to the Project as a result of any designation made under
15 the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.).

16 **SEC. 203. WATER STORAGE PROJECT CONSTRUCTION.**

17 The Secretary of the Interior, acting through the
18 Commissioner of the Bureau of Reclamation, may partner
19 or enter into an agreement on the water storage projects
20 identified in section 103(d)(1) of the Water Supply Reli-
21 ability and Environmental Improvement Act (Public Law
22 108–361) (and Acts supplemental and amendatory to the
23 Act) with local joint powers authorities formed pursuant
24 to State law by irrigation districts and other local water

1 districts and local governments within the applicable hydrologic region, to advance those projects.

3 **SEC. 204. GEOPHYSICAL SURVEY.**

4 The Bureau of Reclamation, in cooperation with the
5 United States Geological Survey, the State of California,
6 and local and State water agencies, may conduct detailed
7 geophysical characterization activities of subsurface aquifer systems and groundwater vulnerability in California,
8 which has experienced a critical, multi-year drought that
9 resulted in severe groundwater overdraft in some areas,
10 followed by less than optimal recharge from the heavy
11 rainstorms and flooding during the 2016–2017 winter season. This geophysical survey should include data pertaining to the following:

15 (1) Subsurface system framework: occurrence
16 and geometry of aquifer and non-aquifer zones.

17 (2) Aquifer storage and transmission characteristics.
18

19 (3) Areas of greatest recharge potential.

20 **SEC. 205. HEADWATER-RESTORATION SCOPING STUDY.**

21 The Bureau of Reclamation may partner with academia, specifically the University of California, and State
22 and local water agencies, to develop a study to enhance
23 mountain runoff to Central Valley Project reservoirs from
24 headwater restoration with the following aims:
25

1 (1) Estimate forest biomass density and annual
2 evapotranspiration (ET) across the Shasta Lake wa-
3 tershed for the past decade using satellite and other
4 available spatial data.

5 (2) Identify areas on public and private land
6 that have high biomass densities and ET, and assess
7 potential changes in ET that would ensue from for-
8 est restoration.

9 (3) Assess role of subsurface storage in pro-
10 viding drought resilience of forests, based on long-
11 term historical estimates of precipitation, drought
12 severity and stream discharge.

13 (4) Assess role of snowpack in annual water
14 balance across the watersheds.

15 **TITLE III—WATER RIGHTS** 16 **PROTECTIONS**

17 **SEC. 301. OFFSET FOR STATE WATER PROJECT.**

18 (a) IMPLEMENTATION IMPACTS.—The Secretary of
19 the Interior shall confer with the California Department
20 of Fish and Wildlife in connection with the implementa-
21 tion of this title on potential impacts to any consistency
22 determination for operations of the State Water Project
23 issued pursuant to California Fish and Game Code section
24 2080.1.

1 (b) ADDITIONAL YIELD.—If, as a result of the appli-
2 cation of this title, the California Department of Fish and
3 Wildlife—

4 (1) revokes the consistency determinations pur-
5 suant to California Fish and Game Code section
6 2080.1 that are applicable to the State Water
7 Project;

8 (2) amends or issues one or more new consist-
9 ency determinations pursuant to California Fish and
10 Game Code section 2080.1 in a manner that directly
11 or indirectly results in reduced water supply to the
12 State Water Project as compared with the water
13 supply available under the smelt biological opinion
14 and the salmonid biological opinion; or

15 (3) requires take authorization under California
16 Fish and Game Code section 2081 for operation of
17 the State Water Project in a manner that directly or
18 indirectly results in reduced water supply to the
19 State Water Project as compared with the water
20 supply available under the smelt biological opinion
21 and the salmonid biological opinion, and as a con-
22 sequence of the Department's action, Central Valley
23 Project yield is greater than it would have been ab-
24 sent the Department's actions, then that additional
25 yield shall be made available to the State Water

1 Project for delivery to State Water Project contrac-
2 tors to offset losses resulting from the Department's
3 action.

4 (c) NOTIFICATION RELATED TO ENVIRONMENTAL
5 PROTECTIONS.—The Secretary of the Interior shall imme-
6 diately notify the Director of the California Department
7 of Fish and Wildlife in writing if the Secretary of the Inte-
8 rior determines that implementation of the smelt biological
9 opinion and the salmonid biological opinion consistent with
10 this title reduces environmental protections for any species
11 covered by the opinions.

12 **SEC. 302. AREA OF ORIGIN PROTECTIONS.**

13 (a) IN GENERAL.—The Secretary of the Interior is
14 directed, in the operation of the Central Valley Project,
15 to adhere to California's water rights laws governing water
16 rights priorities and to honor water rights senior to those
17 held by the United States for operation of the Central Val-
18 ley Project, regardless of the source of priority, including
19 any appropriative water rights initiated prior to December
20 19, 1914, as well as water rights and other priorities per-
21 fected or to be perfected pursuant to California Water
22 Code Part 2 of Division 2. Article 1.7 (commencing with
23 section 1215 of chapter 1 of part 2 of division 2, sections
24 10505, 10505.5, 11128, 11460, 11461, 11462, and
25 11463, and sections 12200 through 12220, inclusive).

1 (b) DIVERSIONS.—Any action undertaken by the Sec-
2 retary of the Interior and the Secretary of Commerce pur-
3 suant to both this title and section 7 of the Endangered
4 Species Act of 1973 (16 U.S.C. 1531 et seq.) that requires
5 that diversions from the Sacramento River or the San Joa-
6 quin River watersheds upstream of the Delta be bypassed
7 shall not be undertaken in a manner that alters the water
8 rights priorities established by California law.

9 **SEC. 303. NO REDIRECTED ADVERSE IMPACTS.**

10 (a) IN GENERAL.—The Secretary of the Interior shall
11 ensure that, except as otherwise provided for in a water
12 service or repayment contract, actions taken in compliance
13 with legal obligations imposed pursuant to or as a result
14 of this title, including such actions under section 7 of the
15 Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
16 and other applicable Federal and State laws, shall not di-
17 rectly or indirectly—

18 (1) result in the involuntary reduction of water
19 supply or fiscal impacts to individuals or districts
20 who receive water from either the State Water
21 Project or the United States under water rights set-
22 tlement contracts, exchange contracts, water service
23 contracts, repayment contracts, or water supply con-
24 tracts; or

1 (1) IN GENERAL.—Subject to paragraph (2)
2 and subsection (b), the Secretary of the Interior is
3 directed, in the operation of the Central Valley
4 Project, to allocate water provided for irrigation pur-
5 poses to existing Central Valley Project agricultural
6 water service contractors within the Sacramento
7 River Watershed in compliance with the following:

8 (A) Not less than 100 percent of their con-
9 tract quantities in a “Wet” year.

10 (B) Not less than 100 percent of their con-
11 tract quantities in an “Above Normal” year.

12 (C) Not less than 100 percent of their con-
13 tract quantities in a “Below Normal” year that
14 is preceded by an “Above Normal” or a “Wet”
15 year.

16 (D) Not less than 50 percent of their con-
17 tract quantities in a “Dry” year that is pre-
18 ceded by a “Below Normal”, an “Above Nor-
19 mal”, or a “Wet” year.

20 (E) In all other years not identified herein,
21 the allocation percentage for existing Central
22 Valley Project agricultural water service con-
23 tractors within the Sacramento River Water-
24 shed shall not be less than twice the allocation
25 percentage to south-of-Delta Central Valley

1 Project agricultural water service contractors,
2 up to 100 percent; provided, that nothing here-
3 in shall preclude an allocation to existing Cen-
4 tral Valley Project agricultural water service
5 contractors within the Sacramento River Water-
6 shed that is greater than twice the allocation
7 percentage to south-of-Delta Central Valley
8 Project agricultural water service contractors.

9 (2) CONDITIONS.—The Secretary’s actions
10 under paragraph (1) shall be subject to—

11 (A) the priority of individuals or entities
12 with Sacramento River water rights, including
13 those with Sacramento River Settlement Con-
14 tracts, that have priority to the diversion and
15 use of Sacramento River water over water
16 rights held by the United States for operations
17 of the Central Valley Project;

18 (B) the United States obligation to make
19 a substitute supply of water available to the
20 San Joaquin River Exchange Contractors; and

21 (C) the Secretary’s obligation to make
22 water available to managed wetlands pursuant
23 to section 3406(d) of the Central Valley Project
24 Improvement Act (Public Law 102–575).

1 (b) PROTECTION OF MUNICIPAL AND INDUSTRIAL
2 SUPPLIES.—Nothing in subsection (a) shall be deemed
3 to—

4 (1) modify any provision of a water service con-
5 tract that addresses municipal and industrial water
6 shortage policies of the Secretary;

7 (2) affect or limit the authority of the Secretary
8 to adopt or modify municipal and industrial water
9 shortage policies;

10 (3) affect or limit the authority of the Secretary
11 to implement municipal and industrial water short-
12 age policies; or

13 (4) affect allocations to Central Valley Project
14 municipal and industrial contractors pursuant to
15 such policies.

16 Neither subsection (a) nor the Secretary's implementation
17 of subsection (a) shall constrain, govern, or affect, di-
18 rectly, the operations of the Central Valley Project's
19 American River Division or any deliveries from that Divi-
20 sion, its units or facilities.

21 (c) NO EFFECT ON ALLOCATIONS.—This section
22 shall not—

23 (1) affect the allocation of water to Friant Divi-
24 sion contractors; or

1 (2) result in the involuntary reduction in con-
2 tract water allocations to individuals or entities with
3 contracts to receive water from the Friant Division.

4 (d) PROGRAM FOR WATER RESCHEDULING.—The
5 Secretary of the Interior shall develop and implement a
6 program, not later than 1 year after the date of the enact-
7 ment of this Act, to provide the opportunity for individuals
8 or districts that receive Central Valley Project Water
9 under water service or repayment contracts or water
10 rights settlement contracts within the American River,
11 Sacramento River, Shasta and Trinity River Divisions to
12 reschedule water, provided for under their Central Valley
13 Project water service, repayment or settlement contracts,
14 within the same year or from one year to the next.

15 (e) DEFINITION.—In this section, the year type terms
16 used in subsection (a) have the meaning given those year
17 types in the Sacramento Valley Water Year Type (40–30–
18 30) Index.

19 **SEC. 305. EFFECT ON EXISTING OBLIGATIONS.**

20 Nothing in this title preempts or modifies any exist-
21 ing obligation of the United States under Federal reclama-
22 tion law to operate the Central Valley Project in con-
23 formity with State law, including established water rights
24 priorities.

1 **TITLE IV—MISCELLANEOUS**

2 **SEC. 401. WATER SUPPLY ACCOUNTING.**

3 (a) IN GENERAL.—All Central Valley Project water,
4 except Central Valley Project water released pursuant to
5 U.S. Department of the Interior Record of Decision, Trin-
6 ity River Mainstem Fishery Restoration Final Environ-
7 mental Impact Statement/Environmental Impact Report
8 dated December 2000 used to implement an action under-
9 taken for a fishery beneficial purpose that was not im-
10 posed by terms and conditions existing in licenses, per-
11 mits, and other agreements pertaining to the Central Val-
12 ley Project under applicable State or Federal law existing
13 on October 30, 1992, shall be credited to the quantity of
14 Central Valley Project yield dedicated and managed under
15 this section; provided, that nothing herein shall affect the
16 Secretary of the Interior’s duty to comply with any other-
17 wise lawful requirement imposed on operations of the Cen-
18 tral Valley Project under any provision of Federal or State
19 law.

20 (b) RECLAMATION POLICIES AND ALLOCATIONS.—
21 Reclamation policies and allocations shall not be based
22 upon any premise or assumption that Central Valley
23 Project contract supplies are supplemental or secondary
24 to any other contractor source of supply.

1 **SEC. 402. OPERATIONS OF THE TRINITY RIVER DIVISION.**

2 The Secretary of the Interior, in the operation of the
3 Trinity River Division of the Central Valley Project, shall
4 not make releases from Lewiston Dam in excess of the
5 volume for each water-year type required by the U.S. De-
6 partment of the Interior Record of Decision, Trinity River
7 Mainstem Fishery Restoration Final Environmental Im-
8 pact Statement/Environmental Impact Report dated De-
9 cember 2000.

10 (1) A maximum of 369,000 acre-feet in a
11 “Critically Dry” year.

12 (2) A maximum of 453,000 acre-feet in a
13 “Dry” year.

14 (3) A maximum of 647,000 acre-feet in a “Nor-
15 mal” year.

16 (4) A maximum of 701,000 acre-feet in a
17 “Wet” year.

18 (5) A maximum of 815,000 acre-feet in an
19 “Extremely Wet” year.

20 **SEC. 403. REPORT ON RESULTS OF WATER USAGE.**

21 The Secretary of the Interior, in consultation with the
22 Secretary of Commerce and the Secretary of Natural Re-
23 sources of the State of California, shall publish an annual
24 report detailing instream flow releases from the Central
25 Valley Project and California State Water Project, their

1 explicit purpose and authority, and all measured environ-
2 mental benefit as a result of the releases.

3 **SEC. 404. KLAMATH PROJECT CONSULTATION APPLICANTS.**

4 If the Bureau of Reclamation initiates or reinitiates
5 consultation with the U.S. Fish and Wildlife Service or
6 the National Marine Fisheries Service under section
7 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C.
8 1536(a)(2)), with respect to construction or operation of
9 the Klamath Project (or any part thereof), Klamath
10 Project contractors shall be accorded all the rights and
11 responsibilities extended to applicants in the consultation
12 process. Upon request of the Klamath Project contractors,
13 they may be represented through an association or organi-
14 zation.

15 **SEC. 405. CA STATE WATER RESOURCES CONTROL BOARD.**

16 (a) IN GENERAL.—In carrying out this Act, the Sec-
17 retaries shall—

18 (1) recognize Congressional opposition to the
19 violation of private property rights by the California
20 State Water Resources Control Board in their pro-
21 posal to require a minimum percentage of
22 unimpaired flows in the main tributaries of the San
23 Joaquin River; and

1 **TITLE V—WATER SUPPLY**
2 **PERMITTING ACT**

3 **SEC. 501. SHORT TITLE.**

4 This title may be cited as the “Water Supply Permit-
5 ting Coordination Act”.

6 **SEC. 502. DEFINITIONS.**

7 In this title:

8 (1) **SECRETARY.**—The term “Secretary” means
9 the Secretary of the Interior.

10 (2) **BUREAU.**—The term “Bureau” means the
11 Bureau of Reclamation.

12 (3) **QUALIFYING PROJECTS.**—The term “quali-
13 fying projects”—

14 (A) means new surface water storage
15 projects in the States covered under the Act of
16 June 17, 1902 (32 Stat. 388, chapter 1093),
17 and Acts supplemental to and amendatory of
18 that Act (43 U.S.C. 371 et seq.) constructed on
19 lands administered by the Department of the
20 Interior or the Department of Agriculture, ex-
21 clusive of any easement, right-of-way, lease, or
22 any private holding, unless the project applicant
23 elects not to participate in the process author-
24 ized by this Act; and

1 (B) includes State-led storage projects (as
2 defined in section 4007(a)(2) of the WIIN Act)
3 for new surface water storage projects in the
4 States covered under the Act of June 17, 1902
5 (32 Stat. 388, chapter 1093), and Acts supple-
6 mental to and amendatory of that Act (43
7 U.S.C. 371 et seq.) constructed on lands ad-
8 ministered by the Department of the Interior or
9 the Department of Agriculture, exclusive of any
10 easement, right-of-way, lease, or any private
11 holding, unless the project applicant elects not
12 to participate in the process authorized by this
13 Act.

14 (4) COOPERATING AGENCIES.—The term “co-
15 operating agency” means a Federal agency with ju-
16 risdiction over a review, analysis, opinion, statement,
17 permit, license, or other approval or decision re-
18 quired for a qualifying project under applicable Fed-
19 eral laws and regulations, or a State agency subject
20 to section 503(c).

21 **SEC. 503. ESTABLISHMENT OF LEAD AGENCY AND COOPER-**
22 **ATING AGENCIES.**

23 (a) ESTABLISHMENT OF LEAD AGENCY.—The Bu-
24 reau of Reclamation is established as the lead agency for
25 purposes of coordinating all reviews, analyses, opinions,

1 statements, permits, licenses, or other approvals or deci-
2 sions required under Federal law to construct qualifying
3 projects.

4 (b) IDENTIFICATION AND ESTABLISHMENT OF CO-
5 OPERATING AGENCIES.—The Commissioner of the Bureau
6 shall—

7 (1) identify, as early as practicable upon receipt
8 of an application for a qualifying project, any Fed-
9 eral agency that may have jurisdiction over a review,
10 analysis, opinion, statement, permit, license, ap-
11 proval, or decision required for a qualifying project
12 under applicable Federal laws and regulations; and

13 (2) notify any such agency, within a reasonable
14 timeframe, that the agency has been designated as
15 a cooperating agency in regards to the qualifying
16 project unless that agency responds to the Bureau in
17 writing, within a timeframe set forth by the Bureau,
18 notifying the Bureau that the agency—

19 (A) has no jurisdiction or authority with
20 respect to the qualifying project;

21 (B) has no expertise or information rel-
22 evant to the qualifying project or any review,
23 analysis, opinion, statement, permit, license, or
24 other approval or decision associated therewith;

25 or

1 (C) does not intend to submit comments
2 on the qualifying project or conduct any review
3 of such a project or make any decision with re-
4 spect to such project in a manner other than in
5 cooperation with the Bureau.

6 (c) STATE AUTHORITY.—A State in which a quali-
7 fying project is being considered may choose, consistent
8 with State law—

9 (1) to participate as a cooperating agency; and

10 (2) to make subject to the processes of this title

11 all State agencies that—

12 (A) have jurisdiction over the qualifying
13 project;

14 (B) are required to conduct or issue a re-
15 view, analysis, or opinion for the qualifying
16 project; or

17 (C) are required to make a determination
18 on issuing a permit, license, or approval for the
19 qualifying project.

20 **SEC. 504. BUREAU RESPONSIBILITIES.**

21 (a) IN GENERAL.—The principal responsibilities of
22 the Bureau under this title are to—

23 (1) serve as the point of contact for applicants,
24 State agencies, Indian tribes, and others regarding
25 proposed qualifying projects;

1 (2) coordinate preparation of unified environ-
2 mental documentation that will serve as the basis for
3 all Federal decisions necessary to authorize the use
4 of Federal lands for qualifying projects; and

5 (3) coordinate all Federal agency reviews nec-
6 essary for project development and construction of
7 qualifying projects.

8 (b) COORDINATION PROCESS.—The Bureau shall
9 have the following coordination responsibilities:

10 (1) PRE-APPLICATION COORDINATION.—Notify
11 cooperating agencies of proposed qualifying projects
12 not later than 30 days after receipt of a proposal
13 and facilitate a preapplication meeting for prospec-
14 tive applicants, relevant Federal and State agencies,
15 and Indian tribes to—

16 (A) explain applicable processes, data re-
17 quirements, and applicant submissions nec-
18 essary to complete the required Federal agency
19 reviews within the timeframe established; and

20 (B) establish the schedule for the quali-
21 fying project.

22 (2) CONSULTATION WITH COOPERATING AGEN-
23 CIES.—Consult with the cooperating agencies
24 throughout the Federal agency review process, iden-

1 tify and obtain relevant data in a timely manner,
2 and set necessary deadlines for cooperating agencies.

3 (3) SCHEDULE.—Work with the qualifying
4 project applicant and cooperating agencies to estab-
5 lish a project schedule. In establishing the schedule,
6 the Bureau shall consider, among other factors—

7 (A) the responsibilities of cooperating
8 agencies under applicable laws and regulations;

9 (B) the resources available to the cooper-
10 ating agencies and the non-Federal qualifying
11 project sponsor, as applicable;

12 (C) the overall size and complexity of the
13 qualifying project;

14 (D) the overall schedule for and cost of the
15 qualifying project; and

16 (E) the sensitivity of the natural and his-
17 toric resources that may be affected by the
18 qualifying project.

19 (4) ENVIRONMENTAL COMPLIANCE.—Prepare a
20 unified environmental review document for each
21 qualifying project application, incorporating a single
22 environmental record on which all cooperating agen-
23 cies with authority to issue approvals for a given
24 qualifying project shall base project approval deci-
25 sions. Help ensure that cooperating agencies make

1 necessary decisions, within their respective authori-
2 ties, regarding Federal approvals in accordance with
3 the following timelines:

4 (A) Not later than one year after accept-
5 ance of a completed project application when an
6 environmental assessment and finding of no sig-
7 nificant impact is determined to be the appro-
8 priate level of review under the National Envi-
9 ronmental Policy Act of 1969 (42 U.S.C. 4321
10 et seq.).

11 (B) Not later than one year and 30 days
12 after the close of the public comment period for
13 a draft environmental impact statement under
14 the National Environmental Policy Act of 1969
15 (42 U.S.C. 4321 et seq.), when an environ-
16 mental impact statement is required under the
17 same.

18 (5) CONSOLIDATED ADMINISTRATIVE
19 RECORD.—Maintain a consolidated administrative
20 record of the information assembled and used by the
21 cooperating agencies as the basis for agency deci-
22 sions.

23 (6) PROJECT DATA RECORDS.—To the extent
24 practicable and consistent with Federal law, ensure
25 that all project data is submitted and maintained in

1 generally accessible electronic format, compile, and
2 where authorized under existing law, make available
3 such project data to cooperating agencies, the quali-
4 fying project applicant, and to the public.

5 (7) PROJECT MANAGER.—Appoint a project
6 manager for each qualifying project. The project
7 manager shall have authority to oversee the project
8 and to facilitate the issuance of the relevant final
9 authorizing documents, and shall be responsible for
10 ensuring fulfillment of all Bureau responsibilities set
11 forth in this section and all cooperating agency re-
12 sponsibilities under section 505.

13 **SEC. 505. COOPERATING AGENCY RESPONSIBILITIES.**

14 (a) ADHERENCE TO BUREAU SCHEDULE.—Upon no-
15 tification of an application for a qualifying project, all co-
16 operating agencies shall submit to the Bureau a timeframe
17 under which the cooperating agency reasonably considers
18 it will be able to complete its authorizing responsibilities.
19 The Bureau shall use the timeframe submitted under this
20 subsection to establish the project schedule under section
21 504, and the cooperating agencies shall adhere to the
22 project schedule established by the Bureau.

23 (b) ENVIRONMENTAL RECORD.—Cooperating agen-
24 cies shall submit to the Bureau all environmental review
25 material produced or compiled in the course of carrying

1 out activities required under Federal law consistent with
2 the project schedule established by the Bureau.

3 (c) DATA SUBMISSION.—To the extent practicable
4 and consistent with Federal law, the cooperating agencies
5 shall submit all relevant project data to the Bureau in a
6 generally accessible electronic format subject to the project
7 schedule set forth by the Bureau.

8 **SEC. 506. FUNDING TO PROCESS PERMITS.**

9 (a) IN GENERAL.—The Secretary, after public notice
10 in accordance with subchapter II of chapter 5, and chapter
11 7, of title 5, United States Code (commonly known as the
12 “Administrative Procedure Act”), may accept and expend
13 funds contributed by a non-Federal public entity to expe-
14 dite the evaluation of a permit of that entity related to
15 a qualifying project.

16 (b) EFFECT ON PERMITTING.—

17 (1) IN GENERAL.—In carrying out this section,
18 the Secretary shall ensure that the use of funds ac-
19 cepted under subsection (a) will not impact impartial
20 decisionmaking with respect to permits, either sub-
21 stantively or procedurally.

22 (2) EVALUATION OF PERMITS.—In carrying out
23 this section, the Secretary shall ensure that the eval-
24 uation of permits carried out using funds accepted
25 under this section shall—

1 (A) be reviewed by the Regional Director
2 of the Bureau, or the Regional Director's des-
3 ignee, of the region in which the qualifying
4 project or activity is located; and

5 (B) use the same procedures for decisions
6 that would otherwise be required for the evalua-
7 tion of permits for similar projects or activities
8 not carried out using funds authorized under
9 this section.

10 (3) IMPARTIAL DECISIONMAKING.—In carrying
11 out this section, the Secretary and the cooperating
12 agencies receiving funds under this section for quali-
13 fying projects shall ensure that the use of the funds
14 accepted under this section for such projects shall
15 not—

16 (A) impact impartial decisionmaking with
17 respect to the issuance of permits, either sub-
18 stantively or procedurally; or

19 (B) diminish, modify, or otherwise affect
20 the statutory or regulatory authorities of such
21 agencies.

22 (c) LIMITATION ON USE OF FUNDS.—None of the
23 funds accepted under this section shall be used to carry
24 out a review of the evaluation of permits required under
25 subsection (a)(2)(A).

1 (d) PUBLIC AVAILABILITY.—The Secretary shall en-
2 sure that all final permit decisions carried out using funds
3 authorized under this section are made available to the
4 public, including on the Internet.

5 **TITLE VI—BUREAU OF REC-**
6 **LAMATION PROJECT STREAM-**
7 **LINING**

8 **SEC. 601. SHORT TITLE.**

9 This title may be cited as the “Bureau of Reclama-
10 tion Project Streamlining Act”.

11 **SEC. 602. DEFINITIONS.**

12 In this title:

13 (1) ENVIRONMENTAL IMPACT STATEMENT.—

14 The term “environmental impact statement” means
15 the detailed statement of environmental impacts of
16 a project required to be prepared pursuant to the
17 National Environmental Policy Act of 1969 (42
18 U.S.C. 4321 et seq.).

19 (2) ENVIRONMENTAL REVIEW PROCESS.—

20 (A) IN GENERAL.—The term “environ-
21 mental review process” means the process of
22 preparing an environmental impact statement,
23 environmental assessment, categorical exclusion,
24 or other document under the National Environ-

1 mental Policy Act of 1969 (42 U.S.C. 4321 et
2 seq.) for a project study.

3 (B) INCLUSIONS.—The term “environ-
4 mental review process” includes the process for
5 and completion of any environmental permit,
6 approval, review, or study required for a project
7 study under any Federal law other than the
8 National Environmental Policy Act of 1969 (42
9 U.S.C. 4321 et seq.).

10 (3) FEDERAL JURISDICTIONAL AGENCY.—The
11 term “Federal jurisdictional agency” means a Fed-
12 eral agency with jurisdiction delegated by law, regu-
13 lation, order, or otherwise over a review, analysis,
14 opinion, statement, permit, license, or other approval
15 or decision required for a project study under appli-
16 cable Federal laws (including regulations).

17 (4) FEDERAL LEAD AGENCY.—The term “Fed-
18 eral lead agency” means the Bureau of Reclamation.

19 (5) PROJECT.—The term “project” means a
20 surface water project, a project under the purview of
21 title XVI of Public Law 102–575, or a rural water
22 supply project investigated under Public Law 109–
23 451 to be carried out, funded or operated in whole
24 or in part by the Secretary pursuant to the Act of
25 June 17, 1902 (32 Stat. 388, chapter 1093), and

1 Acts supplemental to and amendatory of that Act
2 (43 U.S.C. 371 et seq.).

3 (6) PROJECT SPONSOR.—The term “project
4 sponsor” means a State, regional, or local authority
5 or instrumentality or other qualifying entity, such as
6 a water conservation district, irrigation district,
7 water conservancy district, joint powers authority,
8 mutual water company, canal company, rural water
9 district or association, or any other entity that has
10 the capacity to contract with the United States
11 under Federal reclamation law.

12 (7) PROJECT STUDY.—The term “project
13 study” means a feasibility study for a project carried
14 out pursuant to the Act of June 17, 1902 (32 Stat.
15 388, chapter 1093), and Acts supplemental to and
16 amendatory of that Act (43 U.S.C. 371 et seq.).

17 (8) SECRETARY.—The term “Secretary” means
18 the Secretary of the Interior.

19 (9) SURFACE WATER STORAGE.—The term
20 “surface water storage” means any surface water
21 reservoir or impoundment that would be owned,
22 funded or operated in whole or in part by the Bu-
23 reau of Reclamation or that would be integrated into
24 a larger system owned, operated or administered in
25 whole or in part by the Bureau of Reclamation.

1 **SEC. 603. ACCELERATION OF STUDIES.**

2 (a) IN GENERAL.—To the extent practicable, a
3 project study initiated by the Secretary, after the date of
4 enactment of this Act, under the Reclamation Act of 1902
5 (32 Stat. 388), and all Acts amendatory thereof or supple-
6 mentary thereto, shall—

7 (1) result in the completion of a final feasibility
8 report not later than 3 years after the date of initi-
9 ation;

10 (2) have a maximum Federal cost of
11 \$3,000,000; and

12 (3) ensure that personnel from the local project
13 area, region, and headquarters levels of the Bureau
14 of Reclamation concurrently conduct the review re-
15 quired under this section.

16 (b) EXTENSION.—If the Secretary determines that a
17 project study described in subsection (a) will not be con-
18 ducted in accordance with subsection (a), the Secretary,
19 not later than 30 days after the date of making the deter-
20 mination, shall—

21 (1) prepare an updated project study schedule
22 and cost estimate;

23 (2) notify the non-Federal project cost-sharing
24 partner that the project study has been delayed; and

25 (3) provide written notice to the Committee on
26 Natural Resources of the House of Representatives

1 and the Committee on Energy and Natural Re-
2 sources of the Senate as to the reasons the require-
3 ments of subsection (a) are not attainable.

4 (c) EXCEPTION.—

5 (1) IN GENERAL.—Notwithstanding the re-
6 quirements of subsection (a), the Secretary may ex-
7 tend the timeline of a project study by a period not
8 to exceed 3 years, if the Secretary determines that
9 the project study is too complex to comply with the
10 requirements of subsection (a).

11 (2) FACTORS.—In making a determination that
12 a study is too complex to comply with the require-
13 ments of subsection (a), the Secretary shall con-
14 sider—

15 (A) the type, size, location, scope, and
16 overall cost of the project;

17 (B) whether the project will use any inno-
18 vative design or construction techniques;

19 (C) whether the project will require signifi-
20 cant action by other Federal, State, or local
21 agencies;

22 (D) whether there is significant public dis-
23 pute as to the nature or effects of the project;
24 and

1 (E) whether there is significant public dis-
2 pute as to the economic or environmental costs
3 or benefits of the project.

4 (3) NOTIFICATION.—Each time the Secretary
5 makes a determination under this subsection, the
6 Secretary shall provide written notice to the Com-
7 mittee on Natural Resources of the House of Rep-
8 resentatives and the Committee on Energy and Nat-
9 ural Resources of the Senate as to the results of
10 that determination, including an identification of the
11 specific one or more factors used in making the de-
12 termination that the project is complex.

13 (4) LIMITATION.—The Secretary shall not ex-
14 tend the timeline for a project study for a period of
15 more than 7 years, and any project study that is not
16 completed before that date shall no longer be au-
17 thorized.

18 (d) REVIEWS.—Not later than 90 days after the date
19 of the initiation of a project study described in subsection
20 (a), the Secretary shall—

21 (1) take all steps necessary to initiate the proc-
22 ess for completing federally mandated reviews that
23 the Secretary is required to complete as part of the
24 study, including the environmental review process
25 under section 805;

1 (2) convene a meeting of all Federal, tribal, and
2 State agencies identified under section 605(d) that
3 may—

4 (A) have jurisdiction over the project;

5 (B) be required by law to conduct or issue
6 a review, analysis, opinion, or statement for the
7 project study; or

8 (C) be required to make a determination
9 on issuing a permit, license, or other approval
10 or decision for the project study; and

11 (3) take all steps necessary to provide informa-
12 tion that will enable required reviews and analyses
13 related to the project to be conducted by other agen-
14 cies in a thorough and timely manner.

15 (e) INTERIM REPORT.—Not later than 18 months
16 after the date of enactment of this Act, the Secretary shall
17 submit to the Committee on Natural Resources of the
18 House of Representatives and the Committee on Energy
19 and Natural Resources of the Senate and make publicly
20 available a report that describes—

21 (1) the status of the implementation of the
22 planning process under this section, including the
23 number of participating projects;

24 (2) a review of project delivery schedules, in-
25 cluding a description of any delays on those studies

1 initiated prior to the date of the enactment of this
2 Act; and

3 (3) any recommendations for additional author-
4 ity necessary to support efforts to expedite the
5 project.

6 (f) FINAL REPORT.—Not later than 4 years after the
7 date of enactment of this Act, the Secretary shall submit
8 to the Committee on Natural Resources of the House of
9 Representatives and the Committee on Energy and Nat-
10 ural Resources of the Senate and make publicly available
11 a report that describes—

12 (1) the status of the implementation of this sec-
13 tion, including a description of each project study
14 subject to the requirements of this section;

15 (2) the amount of time taken to complete each
16 project study; and

17 (3) any recommendations for additional author-
18 ity necessary to support efforts to expedite the
19 project study process, including an analysis of
20 whether the limitation established by subsection
21 (a)(2) needs to be adjusted to address the impacts
22 of inflation.

23 **SEC. 604. EXPEDITED COMPLETION OF REPORTS.**

24 The Secretary shall—

1 (1) expedite the completion of any ongoing
2 project study initiated before the date of enactment
3 of this Act; and

4 (2) if the Secretary determines that the project
5 is justified in a completed report, proceed directly to
6 preconstruction planning, engineering, and design of
7 the project in accordance with the Reclamation Act
8 of 1902 (32 Stat. 388), and all Acts amendatory
9 thereof or supplementary thereto.

10 **SEC. 605. PROJECT ACCELERATION.**

11 (a) APPLICABILITY.—

12 (1) IN GENERAL.—This section shall apply to—

13 (A) each project study that is initiated
14 after the date of enactment of this Act and for
15 which an environmental impact statement is
16 prepared under the National Environmental
17 Policy Act of 1969 (42 U.S.C. 4321 et seq.);

18 (B) the extent determined appropriate by
19 the Secretary, to other project studies initiated
20 before the date of enactment of this Act and for
21 which an environmental review process docu-
22 ment is prepared under the National Environ-
23 mental Policy Act of 1969 (42 U.S.C. 4321 et
24 seq.); and

1 (C) any project study for the development
2 of a nonfederally owned and operated surface
3 water storage project for which the Secretary
4 determines there is a demonstrable Federal in-
5 terest and the project—

6 (i) is located in a river basin where
7 other Bureau of Reclamation water
8 projects are located;

9 (ii) will create additional water sup-
10 plies that support Bureau of Reclamation
11 water projects; or

12 (iii) will become integrated into the
13 operation of Bureau of Reclamation water
14 projects.

15 (2) FLEXIBILITY.—Any authority granted
16 under this section may be exercised, and any re-
17 quirement established under this section may be sat-
18 isfied, for the conduct of an environmental review
19 process for a project study, a class of project stud-
20 ies, or a program of project studies.

21 (3) LIST OF PROJECT STUDIES.—

22 (A) IN GENERAL.—The Secretary shall an-
23 nually prepare, and make publicly available, a
24 list of all project studies that the Secretary has
25 determined—

91

1 (i) meets the standards described in
2 paragraph (1); and

3 (ii) does not have adequate funding to
4 make substantial progress toward the com-
5 pletion of the project study.

6 (B) INCLUSIONS.—The Secretary shall in-
7 clude for each project study on the list under
8 subparagraph (A) a description of the estimated
9 amounts necessary to make substantial progress
10 on the project study.

11 (b) PROJECT REVIEW PROCESS.—

12 (1) IN GENERAL.—The Secretary shall develop
13 and implement a coordinated environmental review
14 process for the development of project studies.

15 (2) COORDINATED REVIEW.—The coordinated
16 environmental review process described in paragraph
17 (1) shall require that any review, analysis, opinion,
18 statement, permit, license, or other approval or deci-
19 sion issued or made by a Federal, State, or local
20 governmental agency or an Indian tribe for a project
21 study described in subsection (b) be conducted, to
22 the maximum extent practicable, concurrently with
23 any other applicable governmental agency or Indian
24 tribe.

1 (3) TIMING.—The coordinated environmental
2 review process under this subsection shall be com-
3 pleted not later than the date on which the Sec-
4 retary, in consultation and concurrence with the
5 agencies identified under section 705(d), establishes
6 with respect to the project study.

7 (c) LEAD AGENCIES.—

8 (1) JOINT LEAD AGENCIES.—

9 (A) IN GENERAL.—Subject to the require-
10 ments of the National Environmental Policy
11 Act of 1969 (42 U.S.C. 4321 et seq.) and the
12 requirements of section 1506.8 of title 40, Code
13 of Federal Regulations (or successor regula-
14 tions), including the concurrence of the pro-
15 posed joint lead agency, a project sponsor may
16 serve as the joint lead agency.

17 (B) PROJECT SPONSOR AS JOINT LEAD
18 AGENCY.—A project sponsor that is a State or
19 local governmental entity may—

20 (i) with the concurrence of the Sec-
21 retary, serve as a joint lead agency with
22 the Federal lead agency for purposes of
23 preparing any environmental document
24 under the National Environmental Policy
25 Act of 1969 (42 U.S.C. 4321 et seq.); and

1 (ii) prepare any environmental review
2 process document under the National En-
3 vironmental Policy Act of 1969 (42 U.S.C.
4 4321 et seq.) required in support of any
5 action or approval by the Secretary if—

6 (I) the Secretary provides guid-
7 ance in the preparation process and
8 independently evaluates that docu-
9 ment;

10 (II) the project sponsor complies
11 with all requirements applicable to the
12 Secretary under—

13 (aa) the National Environ-
14 mental Policy Act of 1969 (42
15 U.S.C. 4321 et seq.);

16 (bb) any regulation imple-
17 menting that Act; and

18 (cc) any other applicable
19 Federal law; and

20 (III) the Secretary approves and
21 adopts the document before the Sec-
22 retary takes any subsequent action or
23 makes any approval based on that
24 document, regardless of whether the

1 action or approval of the Secretary re-
2 sults in Federal funding.

3 (2) DUTIES.—The Secretary shall ensure
4 that—

5 (A) the project sponsor complies with all
6 design and mitigation commitments made joint-
7 ly by the Secretary and the project sponsor in
8 any environmental document prepared by the
9 project sponsor in accordance with this sub-
10 section; and

11 (B) any environmental document prepared
12 by the project sponsor is appropriately supple-
13 mented to address any changes to the project
14 the Secretary determines are necessary.

15 (3) ADOPTION AND USE OF DOCUMENTS.—Any
16 environmental document prepared in accordance
17 with this subsection shall be adopted and used by
18 any Federal agency making any determination re-
19 lated to the project study to the same extent that
20 the Federal agency could adopt or use a document
21 prepared by another Federal agency under—

22 (A) the National Environmental Policy Act
23 of 1969 (42 U.S.C. 4321 et seq.); and

1 (B) parts 1500 through 1508 of title 40,
2 Code of Federal Regulations (or successor regu-
3 lations).

4 (4) ROLES AND RESPONSIBILITY OF LEAD
5 AGENCY.—With respect to the environmental review
6 process for any project study, the Federal lead agen-
7 cy shall have authority and responsibility—

8 (A) to take such actions as are necessary
9 and proper and within the authority of the Fed-
10 eral lead agency to facilitate the expeditious
11 resolution of the environmental review process
12 for the project study; and

13 (B) to prepare or ensure that any required
14 environmental impact statement or other envi-
15 ronmental review document for a project study
16 required to be completed under the National
17 Environmental Policy Act of 1969 (42 U.S.C.
18 4321 et seq.) is completed in accordance with
19 this section and applicable Federal law.

20 (d) PARTICIPATING AND COOPERATING AGENCIES.—

21 (1) IDENTIFICATION OF JURISDICTIONAL AGEN-
22 CIES.—With respect to carrying out the environ-
23 mental review process for a project study, the Sec-
24 retary shall identify, as early as practicable in the
25 environmental review process, all Federal, State, and

1 local government agencies and Indian tribes that
2 may—

3 (A) have jurisdiction over the project;

4 (B) be required by law to conduct or issue
5 a review, analysis, opinion, or statement for the
6 project study; or

7 (C) be required to make a determination
8 on issuing a permit, license, or other approval
9 or decision for the project study.

10 (2) STATE AUTHORITY.—If the environmental
11 review process is being implemented by the Sec-
12 retary for a project study within the boundaries of
13 a State, the State, consistent with State law, may
14 choose to participate in the process and to make
15 subject to the process all State agencies that—

16 (A) have jurisdiction over the project;

17 (B) are required to conduct or issue a re-
18 view, analysis, opinion, or statement for the
19 project study; or

20 (C) are required to make a determination
21 on issuing a permit, license, or other approval
22 or decision for the project study.

23 (3) INVITATION.—

24 (A) IN GENERAL.—The Federal lead agen-
25 cy shall invite, as early as practicable in the en-

1 vironmental review process, any agency identi-
2 fied under paragraph (1) to become a partici-
3 pating or cooperating agency, as applicable, in
4 the environmental review process for the project
5 study.

6 (B) DEADLINE.—An invitation to partici-
7 pate issued under subparagraph (A) shall set a
8 deadline by which a response to the invitation
9 shall be submitted, which may be extended by
10 the Federal lead agency for good cause.

11 (4) PROCEDURES.—Section 1501.6 of title 40,
12 Code of Federal Regulations (as in effect on the
13 date of enactment of the Bureau of Reclamation
14 Project Streamlining Act), shall govern the identi-
15 fication and the participation of a cooperat-
16 ing agency.

17 (5) FEDERAL COOPERATING AGENCIES.—Any
18 Federal agency that is invited by the Federal lead
19 agency to participate in the environmental review
20 process for a project study shall be designated as a
21 cooperating agency by the Federal lead agency un-
22 less the invited agency informs the Federal lead
23 agency, in writing, by the deadline specified in the
24 invitation that the invited agency—

1 (A)(i) has no jurisdiction or authority with
2 respect to the project;

3 (ii) has no expertise or information rel-
4 evant to the project; or

5 (iii) does not have adequate funds to par-
6 ticipate in the project; and

7 (B) does not intend to submit comments
8 on the project.

9 (6) ADMINISTRATION.—A participating or co-
10 operating agency shall comply with this section and
11 any schedule established under this section.

12 (7) EFFECT OF DESIGNATION.—Designation as
13 a participating or cooperating agency under this
14 subsection shall not imply that the participating or
15 cooperating agency—

16 (A) supports a proposed project; or

17 (B) has any jurisdiction over, or special ex-
18 pertise with respect to evaluation of, the
19 project.

20 (8) CONCURRENT REVIEWS.—Each partici-
21 pating or cooperating agency shall—

22 (A) carry out the obligations of that agen-
23 cy under other applicable law concurrently and
24 in conjunction with the required environmental
25 review process, unless doing so would prevent

1 the participating or cooperating agency from
2 conducting needed analysis or otherwise car-
3 rying out those obligations; and

4 (B) formulate and implement administra-
5 tive, policy, and procedural mechanisms to en-
6 able the agency to ensure completion of the en-
7 vironmental review process in a timely, coordi-
8 nated, and environmentally responsible manner.

9 (e) NON-FEDERAL PROJECTS INTEGRATED INTO
10 RECLAMATION SYSTEMS.—The Federal lead agency shall
11 serve in that capacity for the entirety of all non-Federal
12 projects that will be integrated into a larger system owned,
13 operated or administered in whole or in part by the Bu-
14 reau of Reclamation.

15 (f) NON-FEDERAL PROJECT.—If the Secretary deter-
16 mines that a project can be expedited by a non-Federal
17 sponsor and that there is a demonstrable Federal interest
18 in expediting that project, the Secretary shall take such
19 actions as are necessary to advance such a project as a
20 non-Federal project, including, but not limited to, entering
21 into agreements with the non-Federal sponsor of such
22 project to support the planning, design and permitting of
23 such project as a non-Federal project.

24 (g) PROGRAMMATIC COMPLIANCE.—

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1 (1) IN GENERAL.—The Secretary shall issue
2 guidance regarding the use of programmatic ap-
3 proaches to carry out the environmental review proc-
4 ess that—

5 (A) eliminates repetitive discussions of the
6 same issues;

7 (B) focuses on the actual issues ripe for
8 analyses at each level of review;

9 (C) establishes a formal process for coordi-
10 nating with participating and cooperating agen-
11 cies, including the creation of a list of all data
12 that are needed to carry out an environmental
13 review process; and

14 (D) complies with—

15 (i) the National Environmental Policy
16 Act of 1969 (42 U.S.C. 4321 et seq.); and

17 (ii) all other applicable laws.

18 (2) REQUIREMENTS.—In carrying out para-
19 graph (1), the Secretary shall—

20 (A) as the first step in drafting guidance
21 under that paragraph, consult with relevant
22 Federal, State, and local governmental agen-
23 cies, Indian tribes, and the public on the appro-
24 priate use and scope of the programmatic ap-
25 proaches;

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1 (B) emphasize the importance of collabora-
2 tion among relevant Federal, State, and local
3 governmental agencies, and Indian tribes in un-
4 dertaking programmatic reviews, especially with
5 respect to including reviews with a broad geo-
6 graphical scope;

7 (C) ensure that the programmatic re-
8 views—

9 (i) promote transparency, including of
10 the analyses and data used in the environ-
11 mental review process, the treatment of
12 any deferred issues raised by Federal,
13 State, and local governmental agencies, In-
14 dian tribes, or the public, and the temporal
15 and special scales to be used to analyze
16 those issues;

17 (ii) use accurate and timely informa-
18 tion in the environmental review process,
19 including—

20 (I) criteria for determining the
21 general duration of the usefulness of
22 the review; and

23 (II) the timeline for updating any
24 out-of-date review;

25 (iii) describe—

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1 (I) the relationship between pro-
2 grammatic analysis and future tiered
3 analysis; and

4 (II) the role of the public in the
5 creation of future tiered analysis; and

6 (iv) are available to other relevant
7 Federal, State, and local governmental
8 agencies, Indian tribes, and the public;

9 (D) allow not fewer than 60 days of public
10 notice and comment on any proposed guidance;
11 and

12 (E) address any comments received under
13 subparagraph (D).

14 (h) COORDINATED REVIEWS.—

15 (1) COORDINATION PLAN.—

16 (A) ESTABLISHMENT.—The Federal lead
17 agency shall, after consultation with and with
18 the concurrence of each participating and co-
19 operating agency and the project sponsor or
20 joint lead agency, as applicable, establish a plan
21 for coordinating public and agency participation
22 in, and comment on, the environmental review
23 process for a project study or a category of
24 project studies.

25 (B) SCHEDULE.—

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1 (i) IN GENERAL.—As soon as prac-
2 ticable but not later than 45 days after the
3 close of the public comment period on a
4 draft environmental impact statement, the
5 Federal lead agency, after consultation
6 with and the concurrence of each partici-
7 pating and cooperating agency and the
8 project sponsor or joint lead agency, as ap-
9 plicable, shall establish, as part of the co-
10 ordination plan established in subpara-
11 graph (A), a schedule for completion of the
12 environmental review process for the
13 project study.

14 (ii) FACTORS FOR CONSIDERATION.—
15 In establishing a schedule, the Secretary
16 shall consider factors such as—

17 (I) the responsibilities of partici-
18 pating and cooperating agencies under
19 applicable laws;

20 (II) the resources available to the
21 project sponsor, joint lead agency, and
22 other relevant Federal and State
23 agencies, as applicable;

24 (III) the overall size and com-
25 plexity of the project;

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1 (IV) the overall schedule for and
2 cost of the project; and

3 (V) the sensitivity of the natural
4 and historical resources that could be
5 affected by the project.

6 (iii) MODIFICATIONS.—The Secretary
7 may—

8 (I) lengthen a schedule estab-
9 lished under clause (i) for good cause;
10 and

11 (II) shorten a schedule only with
12 concurrence of the affected partici-
13 pating and cooperating agencies and
14 the project sponsor or joint lead agen-
15 cy, as applicable.

16 (iv) DISSEMINATION.—A copy of a
17 schedule established under clause (i) shall
18 be—

19 (I) provided to each participating
20 and cooperating agency and the
21 project sponsor or joint lead agency,
22 as applicable; and

23 (II) made available to the public.

24 (2) COMMENT DEADLINES.—The Federal lead
25 agency shall establish the following deadlines for

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1 comment during the environmental review process
2 for a project study:

3 (A) DRAFT ENVIRONMENTAL IMPACT
4 STATEMENTS.—For comments by Federal and
5 State agencies and the public on a draft envi-
6 ronmental impact statement, a period of not
7 more than 60 days after publication in the Fed-
8 eral Register of notice of the date of public
9 availability of the draft environmental impact
10 statement, unless—

11 (i) a different deadline is established
12 by agreement of the Federal lead agency,
13 the project sponsor or joint lead agency, as
14 applicable, and all participating and co-
15 operating agencies; or

16 (ii) the deadline is extended by the
17 Federal lead agency for good cause.

18 (B) OTHER ENVIRONMENTAL REVIEW
19 PROCESSES.—For all other comment periods es-
20 tablished by the Federal lead agency for agency
21 or public comments in the environmental review
22 process, a period of not more than 30 days
23 after the date on which the materials on which
24 comment is requested are made available, un-
25 less—

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1 (i) a different deadline is established
2 by agreement of the Federal lead agency,
3 the project sponsor, or joint lead agency,
4 as applicable, and all participating and co-
5 operating agencies; or

6 (ii) the deadline is extended by the
7 Federal lead agency for good cause.

8 (3) DEADLINES FOR DECISIONS UNDER OTHER
9 LAWS.—In any case in which a decision under any
10 Federal law relating to a project study, including the
11 issuance or denial of a permit or license, is required
12 to be made by the date described in subsection
13 (i)(5)(B), the Secretary shall submit to the Com-
14 mittee on Natural Resources of the House of Rep-
15 resentatives and the Committee on Energy and Nat-
16 ural Resources of the Senate—

17 (A) as soon as practicable after the 180-
18 day period described in subsection (i)(5)(B), an
19 initial notice of the failure of the Federal agen-
20 cy to make the decision; and

21 (B) every 60 days thereafter until such
22 date as all decisions of the Federal agency re-
23 lating to the project study have been made by
24 the Federal agency, an additional notice that
25 describes the number of decisions of the Fed-

1 eral agency that remain outstanding as of the
2 date of the additional notice.

3 (4) INVOLVEMENT OF THE PUBLIC.—Nothing
4 in this subsection reduces any time period provided
5 for public comment in the environmental review
6 process under applicable Federal law (including reg-
7 ulations).

8 (5) TRANSPARENCY REPORTING.—

9 (A) REPORTING REQUIREMENTS.—Not
10 later than 1 year after the date of enactment of
11 this Act, the Secretary shall establish and main-
12 tain an electronic database and, in coordination
13 with other Federal and State agencies, issue re-
14 porting requirements to make publicly available
15 the status and progress with respect to compli-
16 ance with applicable requirements of the Na-
17 tional Environmental Policy Act of 1969 (42
18 U.S.C. 4321 et seq.) and any other Federal,
19 State, or local approval or action required for a
20 project study for which this section is applica-
21 ble.

22 (B) PROJECT STUDY TRANSPARENCY.—
23 Consistent with the requirements established
24 under subparagraph (A), the Secretary shall
25 make publicly available the status and progress

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1 of any Federal, State, or local decision, action,
2 or approval required under applicable laws for
3 each project study for which this section is ap-
4 plicable.

5 (i) ISSUE IDENTIFICATION AND RESOLUTION.—

6 (1) COOPERATION.—The Federal lead agency,
7 the cooperating agencies, and any participating
8 agencies shall work cooperatively in accordance with
9 this section to identify and resolve issues that could
10 delay completion of the environmental review process
11 or result in the denial of any approval required for
12 the project study under applicable laws.

13 (2) FEDERAL LEAD AGENCY RESPONSIBIL-
14 ITIES.—

15 (A) IN GENERAL.—The Federal lead agen-
16 cy shall make information available to the co-
17 operating agencies and participating agencies as
18 early as practicable in the environmental review
19 process regarding the environmental and socio-
20 economic resources located within the project
21 area and the general locations of the alter-
22 natives under consideration.

23 (B) DATA SOURCES.—The information
24 under subparagraph (A) may be based on exist-

1 ing data sources, including geographic informa-
2 tion systems mapping.

3 (3) COOPERATING AND PARTICIPATING AGENCY
4 RESPONSIBILITIES.—Based on information received
5 from the Federal lead agency, cooperating and par-
6 ticipating agencies shall identify, as early as prac-
7 ticable, any issues of concern regarding the potential
8 environmental or socioeconomic impacts of the
9 project, including any issues that could substantially
10 delay or prevent an agency from granting a permit
11 or other approval that is needed for the project
12 study.

13 (4) ACCELERATED ISSUE RESOLUTION AND
14 ELEVATION.—

15 (A) IN GENERAL.—On the request of a
16 participating or cooperating agency or project
17 sponsor, the Secretary shall convene an issue
18 resolution meeting with the relevant partici-
19 pating and cooperating agencies and the project
20 sponsor or joint lead agency, as applicable, to
21 resolve issues that may—

22 (i) delay completion of the environ-
23 mental review process; or

1 (ii) result in denial of any approval re-
2 quired for the project study under applica-
3 ble laws.

4 (B) MEETING DATE.—A meeting requested
5 under this paragraph shall be held not later
6 than 21 days after the date on which the Sec-
7 retary receives the request for the meeting, un-
8 less the Secretary determines that there is good
9 cause to extend that deadline.

10 (C) NOTIFICATION.—On receipt of a re-
11 quest for a meeting under this paragraph, the
12 Secretary shall notify all relevant participating
13 and cooperating agencies of the request, includ-
14 ing the issue to be resolved and the date for the
15 meeting.

16 (D) ELEVATION OF ISSUE RESOLUTION.—
17 If a resolution cannot be achieved within the
18 30-day period beginning on the date of a meet-
19 ing under this paragraph and a determination
20 is made by the Secretary that all information
21 necessary to resolve the issue has been ob-
22 tained, the Secretary shall forward the dispute
23 to the heads of the relevant agencies for resolu-
24 tion.

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1 (E) CONVENTION BY SECRETARY.—The
2 Secretary may convene an issue resolution
3 meeting under this paragraph at any time, at
4 the discretion of the Secretary, regardless of
5 whether a meeting is requested under subpara-
6 graph (A).

7 (5) FINANCIAL PENALTY PROVISIONS.—

8 (A) IN GENERAL.—A Federal jurisdictional
9 agency shall complete any required approval or
10 decision for the environmental review process
11 on an expeditious basis using the shortest exist-
12 ing applicable process.

13 (B) FAILURE TO DECIDE.—

14 (i) IN GENERAL.—

15 (I) TRANSFER OF FUNDS.—If a
16 Federal jurisdictional agency fails to
17 render a decision required under any
18 Federal law relating to a project study
19 that requires the preparation of an
20 environmental impact statement or
21 environmental assessment, including
22 the issuance or denial of a permit, li-
23 cense, statement, opinion, or other ap-
24 proval by the date described in clause
25 (ii), the amount of funds made avail-

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1 able to support the office of the head
2 of the Federal jurisdictional agency
3 shall be reduced by an amount of
4 funding equal to the amount specified
5 in item (aa) or (bb) of subclause (II),
6 and those funds shall be made avail-
7 able to the division of the Federal ju-
8 risdictional agency charged with ren-
9 dering the decision by not later than
10 1 day after the applicable date under
11 clause (ii), and once each week there-
12 after until a final decision is rendered,
13 subject to subparagraph (C).

14 (II) AMOUNT TO BE TRANS-
15 FERRED.—The amount referred to in
16 subclause (I) is—

17 (aa) \$20,000 for any project
18 study requiring the preparation
19 of an environmental assessment
20 or environmental impact state-
21 ment; or

22 (bb) \$10,000 for any project
23 study requiring any type of re-
24 view under the National Environ-
25 mental Policy Act of 1969 (42

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1 U.S.C. 4321 et seq.) other than
2 an environmental assessment or
3 environmental impact statement.

4 (ii) DESCRIPTION OF DATE.—The
5 date referred to in clause (i) is the later
6 of—

7 (I) the date that is 180 days
8 after the date on which an application
9 for the permit, license, or approval is
10 complete; and

11 (II) the date that is 180 days
12 after the date on which the Federal
13 lead agency issues a decision on the
14 project under the National Environ-
15 mental Policy Act of 1969 (42 U.S.C.
16 4321 et seq.).

17 (C) LIMITATIONS.—

18 (i) IN GENERAL.—No transfer of
19 funds under subparagraph (B) relating to
20 an individual project study shall exceed, in
21 any fiscal year, an amount equal to 1 per-
22 cent of the funds made available for the
23 applicable agency office.

24 (ii) FAILURE TO DECIDE.—The total
25 amount transferred in a fiscal year as a re-

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1 sult of a failure by an agency to make a
2 decision by an applicable deadline shall not
3 exceed an amount equal to 5 percent of the
4 funds made available for the applicable
5 agency office for that fiscal year.

6 (iii) AGGREGATE.—Notwithstanding
7 any other provision of law, for each fiscal
8 year, the aggregate amount of financial
9 penalties assessed against each applicable
10 agency office under this title and any other
11 Federal law as a result of a failure of the
12 agency to make a decision by an applicable
13 deadline for environmental review, includ-
14 ing the total amount transferred under this
15 paragraph, shall not exceed an amount
16 equal to 9.5 percent of the funds made
17 available for the agency office for that fis-
18 cal year.

19 (D) NOTIFICATION OF TRANSFERS.—Not
20 later than 10 days after the last date in a fiscal
21 year on which funds of the Federal jurisdic-
22 tional agency may be transferred under sub-
23 paragraph (B)(5) with respect to an individual
24 decision, the agency shall submit to the appro-
25 priate committees of the House of Representa-

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1 tives and the Senate written notification that
2 includes a description of—

3 (i) the decision;

4 (ii) the project study involved;

5 (iii) the amount of each transfer
6 under subparagraph (B) in that fiscal year
7 relating to the decision;

8 (iv) the total amount of all transfers
9 under subparagraph (B) in that fiscal year
10 relating to the decision; and

11 (v) the total amount of all transfers of
12 the agency under subparagraph (B) in that
13 fiscal year.

14 (E) NO FAULT OF AGENCY.—

15 (i) IN GENERAL.—A transfer of funds
16 under this paragraph shall not be made if
17 the applicable agency described in subpara-
18 graph (A) notifies, with a supporting ex-
19 planation, the Federal lead agency, cooper-
20 ating agencies, and project sponsor, as ap-
21 plicable, that—

22 (I) the agency has not received
23 necessary information or approvals
24 from another entity in a manner that
25 affects the ability of the agency to

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1 meet any requirements under Federal,
2 State, or local law;

3 (II) significant new information,
4 including from public comments, or
5 circumstances, including a major
6 modification to an aspect of the
7 project, requires additional analysis
8 for the agency to make a decision on
9 the project application; or

10 (III) the agency lacks the finan-
11 cial resources to complete the review
12 under the scheduled timeframe, in-
13 cluding a description of the number of
14 full-time employees required to com-
15 plete the review, the amount of fund-
16 ing required to complete the review,
17 and a justification as to why not
18 enough funding is available to com-
19 plete the review by the deadline.

20 (ii) LACK OF FINANCIAL RE-
21 SOURCES.—If the agency provides notice
22 under clause (i)(III), the Inspector General
23 of the agency shall—

24 (I) conduct a financial audit to
25 review the notice; and

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1 (II) not later than 90 days after
2 the date on which the review described
3 in subclause (I) is completed, submit
4 to the Committee on Natural Re-
5 sources of the House of Representa-
6 tives and the Committee on Energy
7 and Natural Resources of the Senate
8 the results of the audit conducted
9 under subclause (I).

10 (F) LIMITATION.—The Federal agency
11 from which funds are transferred pursuant to
12 this paragraph shall not reprogram funds to the
13 office of the head of the agency, or equivalent
14 office, to reimburse that office for the loss of
15 the funds.

16 (G) EFFECT OF PARAGRAPH.—Nothing in
17 this paragraph affects or limits the application
18 of, or obligation to comply with, any Federal,
19 State, local, or tribal law.

20 (j) MEMORANDUM OF AGREEMENTS FOR EARLY CO-
21 ORDINATION.—

22 (1) SENSE OF CONGRESS.—It is the sense of
23 Congress that—

24 (A) the Secretary and other Federal agen-
25 cies with relevant jurisdiction in the environ-

1 mental review process should cooperate with
2 each other, State and local agencies, and Indian
3 tribes on environmental review and Bureau of
4 Reclamation project delivery activities at the
5 earliest practicable time to avoid delays and du-
6 plication of effort later in the process, prevent
7 potential conflicts, and ensure that planning
8 and project development decisions reflect envi-
9 ronmental values; and

10 (B) the cooperation referred to in subpara-
11 graph (A) should include the development of
12 policies and the designation of staff that advise
13 planning agencies and project sponsors of stud-
14 ies or other information foreseeably required for
15 later Federal action and early consultation with
16 appropriate State and local agencies and Indian
17 tribes.

18 (2) TECHNICAL ASSISTANCE.—If requested at
19 any time by a State or project sponsor, the Sec-
20 retary and other Federal agencies with relevant ju-
21 risdiction in the environmental review process, shall,
22 to the maximum extent practicable and appropriate,
23 as determined by the agencies, provide technical as-
24 sistance to the State or project sponsor in carrying
25 out early coordination activities.

1 (3) MEMORANDUM OF AGENCY AGREEMENT.—

2 If requested at any time by a State or project spon-
3 sor, the Federal lead agency, in consultation with
4 other Federal agencies with relevant jurisdiction in
5 the environmental review process, may establish
6 memoranda of agreement with the project sponsor,
7 Indian tribes, State and local governments, and
8 other appropriate entities to carry out the early co-
9 ordination activities, including providing technical
10 assistance in identifying potential impacts and miti-
11 gation issues in an integrated fashion.

12 (k) LIMITATIONS.—Nothing in this section preempts
13 or interferes with—

14 (1) any obligation to comply with the provisions
15 of any Federal law, including—

16 (A) the National Environmental Policy Act
17 of 1969 (42 U.S.C. 4321 et seq.); and

18 (B) any other Federal environmental law;

19 (2) the reviewability of any final Federal agency
20 action in a court of the United States or in the court
21 of any State;

22 (3) any requirement for seeking, considering, or
23 responding to public comment; or

24 (4) any power, jurisdiction, responsibility, duty,
25 or authority that a Federal, State, or local govern-

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1 mental agency, Indian tribe, or project sponsor has
2 with respect to carrying out a project or any other
3 provision of law applicable to projects.

4 (l) TIMING OF CLAIMS.—

5 (1) TIMING.—

6 (A) IN GENERAL.—Notwithstanding any
7 other provision of law, a claim arising under
8 Federal law seeking judicial review of a permit,
9 license, or other approval issued by a Federal
10 agency for a project study shall be barred un-
11 less the claim is filed not later than 3 years
12 after publication of a notice in the Federal Reg-
13 ister announcing that the permit, license, or
14 other approval is final pursuant to the law
15 under which the agency action is taken, unless
16 a shorter time is specified in the Federal law
17 that allows judicial review.

18 (B) APPLICABILITY.—Nothing in this sub-
19 section creates a right to judicial review or
20 places any limit on filing a claim that a person
21 has violated the terms of a permit, license, or
22 other approval.

23 (2) NEW INFORMATION.—

24 (A) IN GENERAL.—The Secretary shall
25 consider new information received after the

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1 close of a comment period if the information
2 satisfies the requirements for a supplemental
3 environmental impact statement under title 40,
4 Code of Federal Regulations (including suc-
5 cessor regulations).

6 (B) SEPARATE ACTION.—The preparation
7 of a supplemental environmental impact state-
8 ment or other environmental document, if re-
9 quired under this section, shall be considered a
10 separate final agency action and the deadline
11 for filing a claim for judicial review of the ac-
12 tion shall be 3 years after the date of publica-
13 tion of a notice in the Federal Register an-
14 nouncing the action relating to such supple-
15 mental environmental impact statement or
16 other environmental document.

17 (m) CATEGORICAL EXCLUSIONS.—

18 (1) IN GENERAL.—Not later than 180 days
19 after the date of enactment of this Act, the Sec-
20 retary shall—

21 (A) survey the use by the Bureau of Rec-
22 lamation of categorical exclusions in projects
23 since 2005;

24 (B) publish a review of the survey that in-
25 cludes a description of—

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1 (i) the types of actions that were cat-
2 egorically excluded or could be the basis
3 for developing a new categorical exclusion;
4 and

5 (ii) any requests previously received
6 by the Secretary for new categorical exclu-
7 sions; and

8 (C) solicit requests from other Federal
9 agencies and project sponsors for new categor-
10 ical exclusions.

11 (2) NEW CATEGORICAL EXCLUSIONS.—Not
12 later than 1 year after the date of enactment of this
13 Act, if the Secretary has identified a category of ac-
14 tivities that merit establishing a categorical exclusion
15 that did not exist on the day before the date of en-
16 actment this Act based on the review under para-
17 graph (1), the Secretary shall publish a notice of
18 proposed rulemaking to propose that new categorical
19 exclusion, to the extent that the categorical exclusion
20 meets the criteria for a categorical exclusion under
21 section 1508.4 of title 40, Code of Federal Regula-
22 tions (or successor regulation).

23 (n) REVIEW OF PROJECT ACCELERATION RE-
24 FORMS.—

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1 (1) IN GENERAL.—The Comptroller General of
2 the United States shall—

3 (A) assess the reforms carried out under
4 this section; and

5 (B) not later than 5 years and not later
6 than 10 years after the date of enactment of
7 this Act, submit to the Committee on Natural
8 Resources of the House of Representatives and
9 the Committee on Energy and Natural Re-
10 sources of the Senate a report that describes
11 the results of the assessment.

12 (2) CONTENTS.—The reports under paragraph
13 (1) shall include an evaluation of impacts of the re-
14 forms carried out under this section on—

15 (A) project delivery;

16 (B) compliance with environmental laws;

17 and

18 (C) the environmental impact of projects.

19 (o) PERFORMANCE MEASUREMENT.—The Secretary
20 shall establish a program to measure and report on
21 progress made toward improving and expediting the plan-
22 ning and environmental review process.

23 (p) CATEGORICAL EXCLUSIONS IN EMERGENCIES.—
24 For the repair, reconstruction, or rehabilitation of a Bu-
25 reau of Reclamation surface water storage project that is

1 in operation or under construction when damaged by an
2 event or incident that results in a declaration by the Presi-
3 dent of a major disaster or emergency pursuant to the
4 Robert T. Stafford Disaster Relief and Emergency Assist-
5 ance Act (42 U.S.C. 5121 et seq.), the Secretary shall
6 treat such repair, reconstruction, or rehabilitation activity
7 as a class of action categorically excluded from the re-
8 quirements relating to environmental assessments or envi-
9 ronmental impact statements under section 1508.4 of title
10 40, Code of Federal Regulations (or successor regula-
11 tions), if the repair or reconstruction activity is—

12 (1) in the same location with the same capacity,
13 dimensions, and design as the original Bureau of
14 Reclamation surface water storage project as before
15 the declaration described in this section; and

16 (2) commenced within a 2-year period begin-
17 ning on the date of a declaration described in this
18 subsection.

19 **SEC. 606. ANNUAL REPORT TO CONGRESS.**

20 (a) IN GENERAL.—Not later than February 1 of each
21 year, the Secretary shall develop and submit to the Com-
22 mittee on Natural Resources of the House of Representa-
23 tives and the Committee on Energy and Natural Re-
24 sources of the Senate an annual report, to be entitled “Re-

1 port to Congress on Future Water Project Development”,
2 that identifies the following:

3 (1) PROJECT REPORTS.—Each project report
4 that meets the criteria established in subsection
5 (c)(1)(A).

6 (2) PROPOSED PROJECT STUDIES.—Any pro-
7 posed project study submitted to the Secretary by a
8 non-Federal interest pursuant to subsection (b) that
9 meets the criteria established in subsection
10 (c)(1)(A).

11 (3) PROPOSED MODIFICATIONS.—Any proposed
12 modification to an authorized water project or
13 project study that meets the criteria established in
14 subsection (c)(1)(A) that—

15 (A) is submitted to the Secretary by a non-
16 Federal interest pursuant to subsection (b); or

17 (B) is identified by the Secretary for au-
18 thorization.

19 (4) EXPEDITED COMPLETION OF REPORT AND
20 DETERMINATIONS.—Any project study that was ex-
21 pedited and any Secretarial determinations under
22 section 804.

23 (b) REQUESTS FOR PROPOSALS.—

24 (1) PUBLICATION.—Not later than May 1 of
25 each year, the Secretary shall publish in the Federal

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1 Register a notice requesting proposals from non-
2 Federal interests for proposed project studies and
3 proposed modifications to authorized projects and
4 project studies to be included in the annual report.

5 (2) DEADLINE FOR REQUESTS.—The Secretary
6 shall include in each notice required by this sub-
7 section a requirement that non-Federal interests
8 submit to the Secretary any proposals described in
9 paragraph (1) by not later than 120 days after the
10 date of publication of the notice in the Federal Reg-
11 ister in order for the proposals to be considered for
12 inclusion in the annual report.

13 (3) NOTIFICATION.—On the date of publication
14 of each notice required by this subsection, the Sec-
15 retary shall—

16 (A) make the notice publicly available, in-
17 cluding on the Internet; and

18 (B) provide written notification of the pub-
19 lication to the Committee on Natural Resources
20 of the House of Representatives and the Com-
21 mittee on Energy and Natural Resources of the
22 Senate.

23 (c) CONTENTS.—

24 (1) PROJECT REPORTS, PROPOSED PROJECT
25 STUDIES, AND PROPOSED MODIFICATIONS.—

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1 (A) CRITERIA FOR INCLUSION IN RE-
2 PORT.—The Secretary shall include in the an-
3 nual report only those project reports, proposed
4 project studies, and proposed modifications to
5 authorized projects and project studies that—

6 (i) are related to the missions and au-
7 thorities of the Bureau of Reclamation;

8 (ii) require specific congressional au-
9 thorization, including by an Act of Con-
10 gress;

11 (iii) have not been congressionally au-
12 thorized;

13 (iv) have not been included in any
14 previous annual report; and

15 (v) if authorized, could be carried out
16 by the Bureau of Reclamation.

17 (B) DESCRIPTION OF BENEFITS.—

18 (i) DESCRIPTION.—The Secretary
19 shall describe in the annual report, to the
20 extent applicable and practicable, for each
21 proposed project study and proposed modi-
22 fication to an authorized water resources
23 development project or project study in-
24 cluded in the annual report, the benefits,

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1 as described in clause (ii), of each such
2 study or proposed modification.

3 (ii) BENEFITS.—The benefits (or ex-
4 pected benefits, in the case of a proposed
5 project study) described in this clause are
6 benefits to—

7 (I) the protection of human life
8 and property;

9 (II) improvement to domestic ir-
10 rrigated water and power supplies;

11 (III) the national economy;

12 (IV) the environment; or

13 (V) the national security inter-
14 ests of the United States.

15 (C) IDENTIFICATION OF OTHER FAC-
16 TORS.—The Secretary shall identify in the an-
17 nual report, to the extent practicable—

18 (i) for each proposed project study in-
19 cluded in the annual report, the non-Fed-
20 eral interest that submitted the proposed
21 project study pursuant to subsection (b);
22 and

23 (ii) for each proposed project study
24 and proposed modification to a project or
25 project study included in the annual re-

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1 port, whether the non-Federal interest has
2 demonstrated—

3 (I) that local support exists for
4 the proposed project study or pro-
5 posed modification to an authorized
6 project or project study (including the
7 surface water storage development
8 project that is the subject of the pro-
9 posed feasibility study or the proposed
10 modification to an authorized project
11 study); and

12 (II) the financial ability to pro-
13 vide the required non-Federal cost
14 share.

15 (2) TRANSPARENCY.—The Secretary shall in-
16 clude in the annual report, for each project report,
17 proposed project study, and proposed modification to
18 a project or project study included under paragraph
19 (1)(A)—

20 (A) the name of the associated non-Fed-
21 eral interest, including the name of any non-
22 Federal interest that has contributed, or is ex-
23 pected to contribute, a non-Federal share of the
24 cost of—

25 (i) the project report;

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- 1 (ii) the proposed project study;
- 2 (iii) the authorized project study for
- 3 which the modification is proposed; or
- 4 (iv) construction of—
 - 5 (I) the project that is the subject
 - 6 of—
 - 7 (aa) the water report;
 - 8 (bb) the proposed project
 - 9 study; or
 - 10 (cc) the authorized project
 - 11 study for which a modification is
 - 12 proposed; or
 - 13 (II) the proposed modification to
 - 14 a project;
 - 15 (B) a letter or statement of support for the
 - 16 water report, proposed project study, or pro-
 - 17 posed modification to a project or project study
 - 18 from each associated non-Federal interest;
 - 19 (C) the purpose of the feasibility report,
 - 20 proposed feasibility study, or proposed modi-
 - 21 fication to a project or project study;
 - 22 (D) an estimate, to the extent practicable,
 - 23 of the Federal, non-Federal, and total costs
 - 24 of—

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1 (i) the proposed modification to an
2 authorized project study; and

3 (ii) construction of—

4 (I) the project that is the subject
5 of—

6 (aa) the project report; or

7 (bb) the authorized project
8 study for which a modification is
9 proposed, with respect to the
10 change in costs resulting from
11 such modification; or

12 (II) the proposed modification to
13 an authorized project; and

14 (E) an estimate, to the extent practicable,
15 of the monetary and nonmonetary benefits of—

16 (i) the project that is the subject of—

17 (I) the project report; or

18 (II) the authorized project study
19 for which a modification is proposed,
20 with respect to the benefits of such
21 modification; or

22 (ii) the proposed modification to an
23 authorized project.

24 (3) CERTIFICATION.—The Secretary shall in-
25 clude in the annual report a certification stating

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1 that each feasibility report, proposed feasibility
2 study, and proposed modification to a project or
3 project study included in the annual report meets
4 the criteria established in paragraph (1)(A).

5 (4) APPENDIX.—The Secretary shall include in
6 the annual report an appendix listing the proposals
7 submitted under subsection (b) that were not in-
8 cluded in the annual report under paragraph (1)(A)
9 and a description of why the Secretary determined
10 that those proposals did not meet the criteria for in-
11 clusion under such paragraph.

12 (d) SPECIAL RULE FOR INITIAL ANNUAL REPORT.—
13 Notwithstanding any other deadlines required by this sec-
14 tion, the Secretary shall—

15 (1) not later than 60 days after the date of en-
16 actment of this Act, publish in the Federal Register
17 a notice required by subsection (b)(1); and

18 (2) include in such notice a requirement that
19 non-Federal interests submit to the Secretary any
20 proposals described in subsection (b)(1) by not later
21 than 120 days after the date of publication of such
22 notice in the Federal Register in order for such pro-
23 posals to be considered for inclusion in the first an-
24 nual report developed by the Secretary under this
25 section.

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1 (e) PUBLICATION.—Upon submission of an annual
2 report to Congress, the Secretary shall make the annual
3 report publicly available, including through publication on
4 the Internet.

5 (f) DEFINITION.—In this section, the term “project
6 report” means a final feasibility report developed under
7 the Reclamation Act of 1902 (32 Stat. 388), and all Acts
8 amendatory thereof or supplementary thereto.

9 **SEC. 607. APPLICABILITY OF WIIN ACT.**

10 Sections 4007 and 4009 of the WIIN Act (Public
11 Law 114–322) shall not apply to any project (as defined
12 in section 602 of this Act).

13 **TITLE VII—WATER RIGHTS**
14 **PROTECTION**

15 **SEC. 701. SHORT TITLE.**

16 This title may be cited as the “Water Rights Protec-
17 tion Act of 2017”.

18 **SEC. 702. DEFINITIONS.**

19 In this title:

20 (1) SECRETARY.—The term “Secretary”
21 means, as applicable—

22 (A) the Secretary of Agriculture; or

23 (B) the Secretary of the Interior.

24 (2) WATER RIGHT.—The term “water right”
25 means any surface, groundwater, or storage use

1 filed, permitted, certificated, confirmed, decreed, ad-
2 judicated, or otherwise recognized by a judicial pro-
3 ceeding or by the State in which the user acquires
4 possession of the water or puts it to beneficial use.

5 **SEC. 703. TREATMENT OF WATER RIGHTS.**

6 The Secretary shall not—

7 (1) condition the issuance, renewal, amendment,
8 or extension of any permit, approval, license, lease,
9 allotment, easement, right-of-way, or other land use
10 or occupancy agreement on the transfer of any water
11 right (including joint and sole ownership) directly or
12 indirectly to the United States, or on any impair-
13 ment of title or interest, in whole or in part, granted
14 or otherwise recognized under State law, by Federal
15 or State adjudication, decree, or other judgment, or
16 pursuant to any interstate water compact; or

17 (2) require any water user to apply for or ac-
18 quire a water right in the name of the United States
19 under State law as a condition of the issuance, re-
20 newal, amendment, or extension of any permit, ap-
21 proval, license, lease, allotment, easement, right-of-
22 way, or other land use or occupancy agreement.

23 **SEC. 704. POLICY DEVELOPMENT.**

24 In developing any rule, policy, directive, management
25 plan, or similar Federal action relating to the issuance,

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1 renewal, amendment, or extension of any permit, approval,
2 license, lease, allotment, easement, right-of-way, or other
3 land use or occupancy agreement, the Secretary—

4 (1) shall—

5 (A) recognize the longstanding authority of
6 the States relating to evaluating, protecting, al-
7 locating, regulating, permitting, and adjudi-
8 cating water use; and

9 (B) coordinate with the States to ensure
10 that any rule, policy, directive, management
11 plan, or similar Federal action is consistent
12 with, and imposes no greater restriction or reg-
13 ulatory requirement, than applicable State
14 water law; and

15 (2) shall not—

16 (A) adversely affect—

17 (i) the authority of a State in—

18 (I) permitting the beneficial use
19 of water; or

20 (II) adjudicating water rights;

21 (ii) any definition established by a
22 State with respect to the term “beneficial
23 use”, “priority of water rights”, or “terms
24 of use”; or

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1 (iii) any other right or obligation of a
2 State established under State law; or
3 (B) assert any connection between surface
4 and groundwater that is inconsistent with such
5 a connection recognized by State water laws.

6 **SEC. 705. EFFECT.**

7 (a) **EXISTING AUTHORITY.**—Nothing in this title lim-
8 its or expands any existing legally recognized authority of
9 the Secretary to issue, grant, or condition any permit, ap-
10 proval, license, lease, allotment, easement, right-of-way, or
11 other land use or occupancy agreement on Federal land
12 that is subject to the jurisdiction of the Secretary.

13 (b) **RECLAMATION CONTRACTS.**—Nothing in this title
14 in any way interferes with any existing or future Bureau
15 of Reclamation contract entered into pursuant to Federal
16 reclamation law (the Act of June 17, 1902 (32 Stat. 388,
17 chapter 1093), and Acts supplemental to and amendatory
18 of that Act).

19 (c) **ENDANGERED SPECIES ACT.**—Nothing in this
20 title affects the implementation of the Endangered Species
21 Act of 1973 (16 U.S.C. 1531 et seq.).

22 (d) **FEDERAL RESERVED WATER RIGHTS.**—Nothing
23 in this title limits or expands any existing reserved water
24 rights of the Federal Government on land administered
25 by the Secretary.

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1 (e) FEDERAL POWER ACT.—Nothing in this title lim-
2 its or expands authorities pursuant to sections 4(e), 10(j),
3 or 18 of the Federal Power Act (16 U.S.C. 797(e), 803(j),
4 811).

5 (f) INDIAN WATER RIGHTS.—Nothing in this title
6 shall have any effect on tribal water rights or their adju-
7 dication, or the protection, settlement, or enforcement
8 and/or administration of such rights by either Indian
9 tribes or the United States as trustee for Indian tribes.

10 (g) FEDERALLY HELD STATE WATER RIGHTS.—
11 Nothing in this title limits the ability of the Secretary,
12 through applicable State procedures, to acquire, use, en-
13 force, or protect a State water right owned by the United
14 States.

Passed the House of Representatives July 12, 2017.

Attest:

KAREN L. HAAS,

Clerk.