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108TH CONGRESS
2D SESSION

H. R. 2828

[Report No. 108–573, Part I]

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 2003

Mr. CALVERT (for himself, Mr. DOOLEY of California, Mr. RADANOVICH, Mr. ORTIZ, Mr. NUNES, Mr. CARDOZA, Mr. OSBORNE, Mr. BACA, Mr. RENZI, Mr. GALLEGLY, Mr. LEWIS of California, Mr. THOMAS, Mr. DREIER, Mr. HUNTER, Mrs. BONO, Mr. COX, Mr. DOOLITTLE, Mr. GARY G. MILLER of California, Mr. MCKEON, Mr. ROYCE, Mr. CUNNINGHAM, Mr. ROHRABACHER, Mr. ISSA, Mr. OSE, and Mr. POMBO) introduced the following bill; which was referred to the Committee on Resources, and in addition to the Committee on Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

JUNE 25, 2004

Additional sponsors: Mrs. NAPOLITANO, Mr. REYES, Mr. RODRIGUEZ, Mr. FILNER, Mr. PEARCE, Ms. LORETTA SANCHEZ of California, and Ms. GINNY BROWN-WAITE of Florida

JUNE 25, 2004

Reported from the Committtee on Resources with an amendment

[Strike out all after the enacting clause and insert the part printed in italic]

JUNE 25, 2004

Referral to the Committee on Transportation and Infrastructure extended for a period ending not later than June 25, 2004

JUNE 25, 2004

The Committee on Transportation and Infrastructure discharged; committed

to the Committee of the Whole House on the State of the Union, and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on July 23, 2003]

A BILL

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. SHORT TITLE.

This Act may be cited as the "Water Supply, Reliability, and Environmental Improvement Act".

TITLE I—CALIFORNIA WATER SECURITY AND ENVIRONMENTAL ENHANCEMENT

SEC. 101. SHORT TITLE.

This title may be cited as the "California Water Security and Environmental Enhancement Act".

SEC. 102. DEFINITIONS.

In this title:

(1) CALFED BAY-DELTA PROGRAM.—The terms "Calfed Bay-Delta Program" and "Program" mean the programs, projects, complementary actions, and activities undertaken through coordinated planning,

implementation, and assessment activities of the State and Federal Agencies in a manner consistent with the Record of Decision.

(2) ENVIRONMENTAL WATER ACCOUNT.—The term "Environmental Water Account" means the cooperative management program established pursuant to the Record of Decision to reduce incidental take and provide a mechanism for recovery of species.

(3) FEDERAL AGENCIES.—The term "Federal agencies" means the Federal agencies that are signatories to Attachment 3 of the Record of Decision.

(4) GOVERNOR.—The term "Governor" means the Governor of the State of California.

(5) RECLAMATION STATES.—The term "Reclamation States" means the States of Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming, and Texas.

(6) RECORD OF DECISION.—The term "Record of Decision" means the Calfed Bay-Delta Program Record of Decision, dated August 28, 2000.

(7) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(8) STATE.—The term "State" means the State of California.

(9) STATE AGENCIES.—The term "State agencies" means the California State agencies that are signatories to Attachment 3 of the Record of Decision.

(10) WATER YIELD.—The term "water yield" means a new quantity of water in storage that is reliably available in critically dry years for beneficial uses.

SEC. 103. BAY DELTA PROGRAM.

(a) IN GENERAL.—

(1) RECORD OF DECISION AS GENERAL FRAMEWORK.—The Record of Decision is approved as a general framework for addressing the Calfed Bay-Delta Program, including its components relating to water storage and water yield, ecosystem restoration, water supply reliability, conveyance, water use efficiency, water quality, water transfers, watersheds, the Environmental Water Account, levee stability, governance, and science.

(2) SPECIFIC ACTIVITIES.—The Secretary and the heads of the Federal agencies are authorized to undertake, fund, participate in, and otherwise carry out the activities described in the Record of Decision, subject to the provisions of this title, so that the ac-

tivities of the Calfed Bay-Delta Program consisting of protecting drinking water quality, restoring ecological health, improving water supply reliability (including additional water storage and water yield and conveyance), and protecting Delta levees will progress in a balanced manner.

(b) AUTHORIZED ACTIVITIES.—

(1) IN GENERAL.—The Secretary and the heads of the Federal agencies are authorized to carry out the activities described in paragraphs (2) through (5) in furtherance of the Calfed Bay-Delta Program as set forth in the Record of Decision, subject to the cost-share and other provisions of this title.

(2) MULTIPLE BENEFIT PROJECTS FAVORED.—In selecting projects and programs for increasing water yield and water supply, improving water quality, and enhancing environmental benefits, projects and programs with multiple benefits shall be emphasized.

(3) BALANCE.—The Secretary shall ensure that all elements of the Calfed Bay-Delta Program need to be completed and operated cooperatively to maintain the balanced progress in all Calfed Bay-Delta Program areas.

(4) EXISTING AUTHORIZATIONS FOR FEDERAL AGENCIES.—The Secretary of the Interior and the heads of the Federal agencies are authorized to carry out the activities described in subparagraphs (A) through (J) of paragraph (5), to the extent authorized under existing law.

(5) DESCRIPTION OF ACTIVITIES UNDER EXISTING AUTHORIZATIONS.—

(A) WATER STORAGE AND WATER YIELD.—Activities under this subparagraph consist of—

(i) FEASIBILITY STUDIES AND RESOLUTION.—

(I) For purposes of implementing the Calfed Bay-Delta Program, the Secretary is authorized to undertake all necessary planning activities and feasibility studies required for the development of recommendations by the Secretary to Congress on the construction and implementation of specific water supply and water yield, ground water management, and ground water storage projects and implementation of comprehensive water management planning.

(II) FEASIBILITY STUDIES REQUIREMENTS.—All feasibility studies completed for storage projects as a result of this section shall include identification of project benefits and beneficiaries and a cost allocation plan consistent with the benefits to be received, for both governmental and non-governmental entities.

(III) DISAPPROVAL RESOLUTION.—If the Secretary determines a project to be feasible, and meets the requirements under subparagraph (B), the report shall be submitted to Congress. If Congress does not pass a disapproval resolution of the feasibility study during the first 120 days before Congress (not including days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) the project shall be authorized, subject to appropriations.

(ii) WATER SUPPLY AND WATER YIELD STUDY.—The Secretary, acting through the Bureau of Reclamation and in consultation with the State, shall conduct a study of available water supplies and water yield and existing demand and future needs for water—

(I) within the units of the Central Valley Project;

(II) within the area served by Central Valley Project agricultural water service contractors and municipal and industrial water service contractors; and

(III) within the Bay-Delta solution area.

(iii) RELATIONSHIP TO PRIOR STUDY.—The study under clause (ii) shall incorporate and revise as necessary the study required by section 3408(j) of the Central Valley Project Improvement Act of 1992 (Public Law 102–575).

(iv) MANAGEMENT.—The Secretary shall conduct activities related to developing

and implementing groundwater management and groundwater storage projects.

(v) COMPREHENSIVE WATER PLANNING.—The Secretary shall conduct activities related to comprehensive water management planning.

(vi) REPORT.—The Secretary shall submit a report to the congressional authorizing committees by not later than 180 days after the date of the enactment of this title describing the following:

(I) Water yield and water supply improvements, if any, for Central Valley Project agricultural water service contractors and municipal and industrial water service contractors.

(II) All water management actions or projects that would improve water yield or water supply and that, if taken or constructed, would balance available water supplies and existing demand for those contractors and other water users of the Bay-Delta watershed with due recognition of water right priorities and environmental needs.

(III) The financial costs of the actions and projects described under clause (II).

(IV) The beneficiaries of those actions and projects and an assessment of their willingness to pay the capital costs and operation and maintenance costs thereof.

(B) CONVEYANCE.—

(i) SOUTH DELTA ACTIONS.—In the case of the South Delta, activities under this clause consist of the following:

(I) The South Delta Improvement Program through actions to accomplish the following:

(aa) Increase the State Water Project export limit to 8,500 cfs.

(bb) Install permanent, operable barriers in the south Delta. The Federal Agencies shall cooperate with the State to accelerate installation of the permanent, operable barriers in the south Delta, with the intent to complete that

installation not later than the end of fiscal year 2006.

(cc) Increase the State Water Project export to the maximum capability of 10,300 cfs.

(II) Reduction of agricultural drainage in south Delta channels, and other actions necessary to minimize the impact of drainage on drinking water quality.

(III) Design and construction of lower San Joaquin River floodway improvements.

(IV) Installation and operation of temporary barriers in the south Delta until fully operable barriers are constructed.

(V) Actions to protect navigation and local diversions not adequately protected by temporary barriers.

(VI) Actions to increase pumping shall be accomplished in a manner consistent with California law protecting—

(aa) deliveries to, costs of, and water suppliers and water users, including but not limited to, agricultural users, that have historically relied on water diverted for use in the Delta; and

(bb) the quality of water for existing municipal, industrial, and agricultural uses.

(ii) NORTH DELTA ACTIONS.—In the case of the North Delta, activities under this clause consist of—

(I) evaluation and implementation of improved operational procedures for the Delta Cross Channel to address fishery and water quality concerns;

(II) evaluation of a screened through-Delta facility on the Sacramento River; and

(III) evaluation of lower Mokelumne River floodway improvements.

(iii) INTERTIES.—Activities under this clause consist of—

(I) evaluation and construction of an intertie between the State Water Project California Aqueduct and the Central Valley Project Delta Mendota Canal, near the City of Tracy; and

(II) assessment of a connection of the Central Valley Project to the Clifton Court Forebay of the State Water Project, with a corresponding increase in the screened intake of the Forebay.

(iv) PROGRAM TO MEET STANDARDS.—Prior to increasing export limits from the Delta for the purposes of conveying water to south-of-Delta Central Valley Project contractors or increasing deliveries through an intertie, the Secretary shall, within one year of the date of enactment of this title, in consultation with the Governor, develop and implement a program to meet all existing water quality standards and objectives for which the CVP has responsibility. In developing and implementing the program the the Secretary shall include, to the maximum extent feasible, the following:

(I) A recirculation program to provide flow, reduce salinity concentrations in the San Joaquin River, and reduce the reliance on New Melones Reservoir for meeting water quality and fishery flow objectives through the use of excess capacity in export pumping and conveyance facilities.

(II) The implementation of mandatory source control programs and best drainage management practices to reduce discharges into the San Joaquin River of salt or other constituents from wildlife refuges that receive Central Valley Project water.

(III) The acquisition from willing sellers of water from streams tributary to the San Joaquin River or other sources to provide flow, dilute discharges from wildlife refuges, and to improve water quality in the San Joaquin River below the confluence of the Merced and San Joaquin rivers and to reduce the reliance on New Melones

Reservoir for meeting water quality and fishery flow objectives.

(v) USE OF EXISTING FUNDING MECHANISMS.—In implementing the Program, the Secretary shall use money collected pursuant to section 3406(c)(1) of the Central Valley Project Improvement Act of 1992 (Public Law 102–575) to acquire from voluntary sellers water from streams tributary to the San Joaquin River or other sources for the purposes set forth in subclauses (I) through (III) of clause (iv).

(vi) PURPOSE.—The purpose of the authority and direction provided to the Secretary in clause (iv) is to provide greater flexibility in meeting the existing water quality standards and objectives for which the Central Valley Project has responsibility so as to reduce the demand on water from New Melones Reservoir used for that purpose and to allow the Secretary to meet with greater frequency the Secretary's obligations to Central Valley Project contractors from the New Melones Project.

(C) WATER USE EFFICIENCY.—Activities under this subparagraph consist of—

(i) water conservation projects that provide water supply reliability, water quality, and ecosystem benefits to the Bay-Delta system;

(ii) technical assistance for urban and agricultural water conservation projects;

(iii) water recycling and desalination projects, including groundwater remediation projects and projects identified in the Bay Area Water Plan and the Southern California Comprehensive Water Reclamation and Reuse Study and other projects, giving priority to projects that include regional solutions to benefit regional water supply and reliability needs;

(I) The Secretary shall review any feasibility level studies for seawater desalination and regional brine line projects that have been completed, whether or not those studies were prepared with financial assistance from the Secretary.

(II) The Secretary shall report to the Congress not later than 90 days after the completion of a feasibility study or the review of a feasibility study. For the purposes of this Act, the Secretary is authorized to provide assistance for projects as set forth and pursuant to the existing requirements of the Reclamation Wastewater and Groundwater Study and Facilities Act (Public Law 102–575; title 16) as amended, and Reclamation Recycling and Water Conservation Act of 1996 (Public Law 104–266).

(iv) water measurement and transfer actions;

(v) certification of implementation of best management practices for urban water conservation; and

(vi) projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study, dated April 2001 and authorized by section 1606 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–

4); and the San Francisco Bay Area Regional Water Recycling Program described in the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan, dated December 1999 and authorized by section 1611 of the Reclamation Wastewater and Groundwater Study and Facilities Act (43 U.S.C. 390h–9) are determined to be feasible.

(D) WATER TRANSFERS.—Activities under this subparagraph consist of—

(i) increasing the availability of existing facilities for water transfers;

(ii) lowering transaction costs through regulatory coordination as provided in sections 301 through 302; and

(iii) maintaining a water transfer information clearinghouse.

(E) INTEGRATED REGIONAL WATER MANAGEMENT PLANS.—Activities under this subparagraph consist of assisting local and regional communities in the State in developing and implementing integrated regional water management plans to carry out projects and programs that improve water supply reliability, water

quality, ecosystem restoration, and flood protection, or meet other local and regional needs, in a manner that is consistent with, and makes a significant contribution to, the Calfed Bay-Delta Program.

(F) ECOSYSTEM RESTORATION.—

(i) Activities under this subparagraph consist of—

(I) implementation of large-scale restoration projects in San Francisco Bay and the Delta and its tributaries;

(II) restoration of habitat in the Delta, San Pablo Bay, and Suisun Bay and Marsh, including tidal wetland and riparian habitat;

(III) fish screen and fish passage improvement projects; including the Sacramento River Small Diversion Fish Screen Program;

(IV) implementation of an invasive species program, including prevention, control, and eradication;

(V) development and integration of Federal and State agricultural pro-

grams that benefit wildlife into the Ecosystem Restoration Program;

(VI) financial and technical support for locally-based collaborative programs to restore habitat while addressing the concerns of local communities;

(VII) water quality improvement projects to manage and reduce concentrations of salinity, selenium, mercury, pesticides, trace metals, dissolved oxygen, turbidity, sediment, and other pollutants;

(VIII) land and water acquisitions to improve habitat and fish spawning and survival in the Delta and its tributaries;

(IX) integrated flood management, ecosystem restoration, and levee protection projects;

(X) scientific evaluations and targeted research on Program activities;

(XI) strategic planning and tracking of Program performance; and

(XII) preparation of management plans for all properties acquired, and

update current management plans, prior to the purchase or any contribution to the purchase of any interest in land for ecosystem.

(ii) A RESTORATION MANAGEMENT PLAN REPORT.—The Secretary shall submit a restoration management plan report to Congress, 30 days (not including days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) prior to implementing ecosystem restoration actions as described under this paragraph. Such plan reports shall be required for all ecosystem projects, (including comprehensive projects that are composed of several components and are to be completed by staged implementation) exceeding $20,000 in Federal funds. The Restoration Management Plan required to be submitted under this paragraph, shall, at a minimum—

(I) be consistent with the goal of fish, wildlife, and habitat improvement;

(II) be consistent with all applicable Federal and State laws;

(III) describe the specific goals, objectives, and opportunities and implementation timeline of the proposed project. Describe to what extent the proposed project is a part of a larger, more comprehensive project in the Bay-Delta watershed;

(IV) describe the administration responsibilities of land and water areas and associated environmental resources, in the affected project area including an accounting of all habitat types. Cost-share arrangements with cooperating agencies should be included in the report;

(V) describe the resource data and ecological monitoring data to be collected for the restoration projects and how the data are to be integrated, streamlined, and designed to measure the effectiveness and overall trend of ecosystem health in the Bay-Delta watershed;

(VI) identify various combinations of land and water uses and resource management practices that are scientifically-based and meet the purposes of the project. Include a description of expected benefits of the restoration project relative to the cost of the project;

(VII) analyze and describe cumulative impacts of project implementation, including land acquisition, and the mitigation requirements, subject to conditions described in clause (iii)(I). Complete appropriate actions to satisfy requirements of NEPA, CEQA, and other environmental permitting clearance; and

(VIII) describe an integrated monitoring plan and measurable criteria, or bio-indicators, to be used for evaluating cost-effective performance of the project.

(iii) CONDITIONS.—Conditions, if applicable, for projects and activities under this paragraph, and which are to be de-

scribed in the restoration management plan report, are as follows:

(I) a requirement that before obligating or expending Federal funds to acquire land, the Secretary shall first determine that existing Federal land, State land, or other land acquired for ecosystem restoration with amounts provided by the United States or the State, to the extent such lands are available within the Calfed solution area, is not available for that purpose. If no public land is available the Secretary, prior to any federal expenditure for private land acquisitions, shall—

(aa) not convert prime farm land and unique farm land, to the maximum extent as practicable, as identified by local, State, or Federal land use inventories, including the Natural Resources Conservation Service;

(bb) not conflict with existing zoning for agriculture use; and

(cc) not involve other changes in existing environment due to location and nature of converting farmland to non-farmland use.

(II) a requirement that in determining whether to acquire private land for ecosystem restoration, the Secretary shall—

(aa) conduct appropriate analysis, including cost valuation to assure that private land acquisitions prioritize easements and leases over acquisitions by fee title unless easements and leases are unavailable or unsuitable for the stated purposes;

(bb) consider and partner with landowners and local agencies to develop cooperating landowner commitments that are likely to meet coequal objectives of achieving local economic and social goals and implementing the ecosystem restoration goals; and

(cc) consider the potential cumulative impacts of fee title, easement, or lease acquisition on the local and regional economies and adjacent land and landowners, of transferring the property into government ownership, and—

(AA) describe the actions that will be taken, to the maximum extent practicable, to mitigate any induced damages; and

(BB) determine and describe the degree to which land acquired will add value to fish, wildlife, and habitat purposes.

(iv) ANNUAL ECOSYSTEM RESTORATION PROJECT SUMMARY REPORT.—The Secretary shall, by no later than December 31 of each year, submit to Congress an annual report on the use of financial assistance received under this title. The report shall highlight progress of project implementa-

tion, effectiveness, monitoring, and accomplishment. The report will identify and outline the need for amendments or revisions to the plan to improve the cost-effectiveness of project implementation.

(G) WATERSHEDS.—Activities under this subparagraph consist of—

(i) building local capacity to assess and manage watersheds affecting the Calfed Bay-Delta system;

(ii) technical assistance for watershed assessments and management plans; and

(iii) developing and implementing locally-based watershed conservation, maintenance, and restoration actions.

(H) WATER QUALITY.—Activities under this subparagraph consist of—

(i) addressing drainage problems in the San Joaquin Valley to improve downstream water quality (including habitat restoration projects that reduce drainage and improve water quality) if—

(I) a plan is in place for monitoring downstream water quality improvements;

(II) State and local agencies are consulted on the activities to be funded; and

(III) except that no right, benefit, or privilege is created as a result of this clause;

(ii) implementation of source control programs in the Delta and its tributaries;

(iii) developing recommendations through scientific panels and advisory council processes to meet the Calfed Bay-Delta Program goal of continuous improvement in Delta water quality for all uses;

(iv) investing in treatment technology demonstration projects;

(v) controlling runoff into the California aqueduct, the Delta-Mendota Canal, and other similar conveyances;

(vi) addressing water quality problems at the North Bay Aqueduct;

(vii) supporting and participating in the development of projects to enable San Francisco Area water districts and water entities in San Joaquin and Sacramento counties to work cooperatively to address

their water quality and supply reliability issues, including—

(I) connections between aqueducts, water transfers, water conservation measures, institutional arrangements, and infrastructure improvements that encourage regional approaches; and

(II) investigations and studies of available capacity in a project to deliver water to the East Bay Municipal Utility District under its contract with the Bureau of Reclamation, dated July 20, 2001, in order to determine if such capacity can be used to meet the objectives of this clause;

(viii) development of water quality exchanges and other programs to make high quality water available for urban and other users;

(ix) development and implementation of a plan to meet all water quality standards for which the Federal and State water projects have responsibility;

(x) development of recommendations through technical panels and advisory coun-

cil processes to meet the Calfed Bay-Delta Program goal of continuous improvement in water quality for all uses; and

(xi) projects that may meet the framework of the water quality component of the Calfed Bay-Delta Program.

(I) SCIENCE.—Activities under this subparagraph consist of—

(i) establishing and maintaining an independent science board, technical panels, and standing boards to provide oversight and peer review of the Program;

(ii) conducting expert evaluations and scientific assessments of all Program elements;

(iii) coordinating existing monitoring and scientific research programs;

(iv) developing and implementing adaptive management experiments to test, refine, and improve scientific understandings;

(v) establishing performance measures, and monitoring and evaluating the performance of all Program elements; and

(vi) preparing an annual science report.

(J) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this subparagraph consist of actions to diversify sources of level 2 refuge supplies and modes of delivery to refuges.

(6) NEW AND EXPANDED AUTHORIZATIONS FOR FEDERAL AGENCIES.—The Secretary and the heads of the Federal agencies described in the Record of Decision are authorized to carry out the activities described in paragraph (7) during each of fiscal years 2005 through 2008, in coordination with the Bay-Delta Authority.

(7) DESCRIPTION OF ACTIVITIES UNDER NEW AND EXPANDED AUTHORIZATIONS.—

(A) CONVEYANCE.—Of the amounts authorized to be appropriated under section 110, not more than $184,000,000 may be expended for the following:

(i) Feasibility studies, evaluation, and implementation of the San Luis Reservoir lowpoint improvement project.

(ii) Feasibility studies and actions at Franks Tract to improve water quality in the Delta.

(iii) Feasibility studies and design of fish screen and intake facilities at Clifton Court Forebay and the Tracy Pumping Plant facilities.

(iv) Design and construction of the relocation of drinking water intake facilities to Delta water users. The Secretary shall coordinate actions for relocating intake facilities on a time schedule consistent with subparagraph (5)(B)(i)(I)(bb) or other actions necessary to offset the degradation of drinking water quality in the Delta due to the South Delta Improvement Program.

(v) In addition to the other authorizations granted to the Secretary by this title, the Secretary shall acquire water from willing sellers and undertake other actions designed to decrease releases from New Melones Reservoir for meeting water quality standards and flow objectives for which the Central Valley Project has responsibility in order to meet allocations to Central Valley Project contractors from the New Melones Project. Of the amounts authorized to be appropriated under paragraph (7)(A), not

more than $5,260,000 may be expended for this purpose.

(B) ENVIRONMENTAL WATER ACCOUNT.—Of the amounts authorized to be appropriated under section 110, not more than $90,000,000 may be expended for implementation of the Environmental Water Account provided that such expenditures shall be considered a nonreimbursable Federal expenditure. In order to reduce the use of New Melones reservoir as a source of water to meet water quality standards, the Secretary may use the Environmental Water Account to purchase water to provide flow for fisheries, to improve water quality in the San Joaquin river and Delta.

(C) LEVEE STABILITY.—Of the amounts authorized to be appropriated under section 110, not more than $90,000,000 may be expended for—

(i) reconstructing Delta levees to a base level of protection;

(ii) enhancing the stability of levees that have particular importance in the system through the Delta Levee Special Improvement Projects program;

(iii) developing best management practices to control and reverse land subsidence on Delta islands;

(iv) refining the Delta Emergency Plan;

(v) developing a Delta Risk Management Strategy after assessing the consequences of Delta levee failure from floods, seepage, subsidence, and earthquakes;

(vi) developing a strategy for reuse of dredged materials on Delta islands;

(vii) evaluating, and where appropriate, rehabilitating the Suisun Marsh levees; and

(viii) not more than $2,000,000 may be expended for integrated flood management, ecosystem restoration, and levee protection projects, including design and construction of lower San Joaquin River and lower Mokelumne River floodway improvements and other projects under the Sacramento-San Joaquin Comprehensive Study.

(D) PROGRAM MANAGEMENT, OVERSIGHT, AND COORDINATION.—Of the amounts authorized

to be appropriated under section 110, not more than $25,000,000 may be expended by the Secretary or the other heads of Federal agencies, either directly or through grants, contracts, or cooperative agreements with agencies of the State, for—

(i) program support;

(ii) program-wide tracking of schedules, finances, and performance;

(iii) multiagency oversight and coordination of Program activities to ensure Program balance and integration;

(iv) development of interagency crosscut budgets and a comprehensive finance plan to allocate costs in accordance with the beneficiary pays provisions of the Record of Decision;

(v) coordination of public outreach and involvement, including tribal, environmental justice, and public advisory activities in accordance with the Federal Advisory Committee Act (5 U.S.C. App.); and

(vi) development of Annual Reports.

SEC. 104. MANAGEMENT.

(a) COORDINATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall coordinate their activities with the State agencies.

(b) PUBLIC PARTICIPATION.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall cooperate with local and tribal governments and the public through an advisory committee established in accordance with the Federal Advisory Committee Act (5 U.S.C. App.) and other appropriate means, to seek input on Program elements such as planning, design, technical assistance, and development of peer review science programs.

(c) SCIENCE.—In carrying out the Calfed Bay-Delta Program, the Federal agencies shall seek to ensure, to the maximum extent practicable, that—

(1) all major aspects of implementing the Program are subjected to credible and objective scientific review; and

(2) major decisions are based upon the best available scientific information.

(d) ENVIRONMENTAL JUSTICE.—The Federal agencies and State agencies, consistent with Executive Order 12898 (59 FR Fed. Reg. 7629), should continue to collaborate to—

(1) develop a comprehensive environmental justice workplan for the Calfed Bay-Delta Program; and

(2) fulfill the commitment to addressing environmental justice challenges referred to in the Calfed Bay-Delta Program Environmental Justice Workplan, dated December 13, 2000.

(e) LAND ACQUISITION.—Federal funds appropriated by Congress specifically for implementation of the Calfed Bay-Delta Program may be used to acquire fee title to land only where consistent with the Record of Decision and section 103(b)(5)(F)(iii).

(f) AGENCIES' DISCRETION.—This title shall not affect the discretion of any of the Federal agencies or the State agencies or the authority granted to any of the Federal agencies or State agencies by any other Federal or State law.

(g) STATUS REPORTS.—The Secretary shall report, quarterly to Congress, on the progress in achieving the water supply targets as described in Section 2.2.4 of the Record of Decision, the environmental water account requirements as described in Section 2.2.7, and the water quality targets as described in Section 2.2.9, and any pending actions that may affect the ability of the Calfed Bay-Delta Program to achieve those targets and requirements.

SEC. 105. REPORTING REQUIREMENTS.

(a) REPORT.—

(1) IN GENERAL.—Not later than February 15 of each year, the Secretary, in cooperation with the Governor, shall submit to the appropriate authorizing and appropriating Committees of the Senate and the House of Representatives a report that—

(A) describes the status of implementation of all components of the Calfed Bay-Delta Program;

(B) sets forth any written determination resulting from the review required under subsection (b); and

(C) includes any revised schedule prepared under subsection (b).

(2) CONTENTS.—The report required under paragraph (1) shall describe—

(A) the progress of the Calfed Bay-Delta Program in meeting the implementation schedule for the Program in a manner consistent with the Record of Decision;

(B) the status of implementation of all components of the Program;

(C) expenditures in the past fiscal year for implementing the Program;

(D) accomplishments during the past fiscal year in achieving the objectives of additional and improved—

(i) water storage, including water yield;

(ii) water quality;

(iii) water use efficiency;

(iv) ecosystem restoration;

(v) watershed management;

(vi) levee system integrity;

(vii) water transfers;

(viii) water conveyance; and

(ix) water supply reliability;

(E) program goals, current schedules, and relevant financing agreements;

(F) progress on—

(i) storage projects;

(ii) conveyance improvements;

(iii) levee improvements;

(iv) water quality projects; and

(v) water use efficiency programs;

(G) completion of key projects and milestones identified in the Ecosystem Restoration Program;

(H) development and implementation of local programs for watershed conservation and restoration;

(I) progress in improving water supply reliability and implementing the Environmental Water Account;

(J) achievement of commitments under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) and endangered species law of the State;

(K) implementation of a comprehensive science program;

(L) progress toward acquisition of the Federal and State permits (including permits under section 404(a) of the Federal Water Pollution Control Act (33 U.S.C. 1344(a))) for implementation of projects in all identified Program areas;

(M) progress in achieving benefits in all geographic regions covered by the Program;

(N) legislative action on—

(i) water transfer;

(ii) groundwater management;

(iii) water use efficiency; and

(iv) governance issues;

(O) the status of complementary actions;

(P) the status of mitigation measures; and

(Q) revisions to funding commitments and Program responsibilities.

(b) ANNUAL REVIEW OF PROGRESS AND BALANCE.—

(1) IN GENERAL.—Not later than November 15 of each year, the Secretary, in cooperation with the Governor, shall review progress in implementing the Calfed Bay-Delta Program based on—

(A) consistency with the Record of Decision; and

(B) balance in achieving the goals and objectives of the Calfed Bay-Delta Program.

(2) REVISED SCHEDULE.—If, at the conclusion of each such annual review or if a timely annual review is not undertaken, the Secretary, or the Governor, determine in writing that either the Program implementation schedule has not been substantially adhered to, or that balanced progress in achieving the goals and objectives of the Program is not occurring, the Secretary, in coordination with the Governor and the Bay-Delta Public Advisory Committee, shall prepare a revised schedule to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the the Record of Decision.

(c) FEASIBILITY STUDIES.—Any feasibility studies completed as a result of this title shall include identification of project benefits and a cost allocation plan consistent with the beneficiaries pay provisions of the Record of Decision.

SEC. 106. CROSSCUT BUDGET.

(a) IN GENERAL.—The budget of the President shall include requests for the appropriate level of funding for each of the Federal agencies to carry out the responsibilities of the Federal agency under the Calfed Bay-Delta Program.

(b) REQUESTS BY FEDERAL AGENCIES.—The funds shall be requested for the Federal agency with authority and programmatic responsibility for the obligation of the funds, in accordance with paragraphs (2) through (5) of section 103(b).

(c) REPORT.—At the time of submission of the budget of the President to Congress, the Director of the Office of Management and Budget, in coordination with the Governor, shall submit to the appropriate authorizing and appropriating committees of the Senate and the House of Representatives a financial report certified by the Secretary containing—

(1) an interagency budget crosscut report that—

(A) displays the budget proposed, including any interagency or intra-agency transfer, for each of the Federal agencies to carry out the

Calfed Bay-Delta Program for the upcoming fiscal year, separately showing funding requested under both pre-existing authorities and under the new authorities granted by this title; and

(B) identifies all expenditures since 2000 by the Federal and State governments to achieve the objectives of the Calfed Bay-Delta Program;

(2) a detailed accounting of all funds received and obligated by all Federal agencies and State agencies responsible for implementing the Calfed Bay-Delta Program during the previous fiscal year;

(3) a budget for the proposed projects (including a description of the project, authorization level, and project status) to be carried out in the upcoming fiscal year with the Federal portion of funds for activities under section 103(b); and

(4) a listing of all projects to be undertaken in the upcoming fiscal year with the Federal portion of funds for activities under section 103(b).

SEC. 107. FEDERAL SHARE OF COSTS.

(a) IN GENERAL.—The Federal share of the cost of implementing the Calfed Bay-Delta Program for fiscal years 2005 through 2008 in the aggregate, as set forth in the Record of Decision, shall not exceed 33.3 percent.

(b) CALFED BAY-DELTA PROGRAM BENEFICIARIES.—

(1) IN GENERAL.—The Secretary shall ensure that all beneficiaries, including the environment, shall pay for benefits received from all projects or activities carried out under the Calfed Bay-Delta Program. This requirement shall not be limited to storage and conveyance projects and shall be implemented so as to encourage integrated resource planning.

SEC. 108. USE OF EXISTING AUTHORITIES AND FUNDS.

(a) GENERALLY.—The heads of the Federal agencies shall use the authority under existing authorities identified by the Secretary to carry out the purposes of this title.

(b) REPORT.—Not later than 60 days after the date of the enactment of this Act and annual thereafter, the Secretary, in consultation with the heads of the Federal agencies, shall transmit to Congress a report that describes the following:

(1) A list of all existing authorities, including the authorities listed in subsection (a), under which the Secretary or the heads of the Federal agencies may carry out the purposes of this title.

(2) A list of funds authorized in the previous fiscal year for the authorities listed under paragraph (1).

(3) A list of the projects carried out with the funds listed in paragraph (2) and the amount of funds obligated and expended for each project.

SEC. 109. COMPLIANCE WITH STATE AND FEDERAL LAW.

Nothing in this title—

(1) invalidates or preempts State water law or an interstate compact governing water;

(2) alters the rights of any State to any appropriated share of the waters of any body of surface or ground water, whether determined by past or future interstate compacts or final judicial allocations;

(3) preempts or modifies any State or Federal law or interstate compact governing water quality or disposal; or

(4) confers on any non-federal entity the ability to exercise any Federal right to the waters of any stream or to any ground water resource.

SEC. 110. AUTHORIZATION OF APPROPRIATION.

There are authorized to be appropriated to the Secretary and the heads of the Federal agencies to pay the Federal share of the cost of carrying out the new and expanded authorities described in paragraphs (6) and (7) of section 103(b), $389,000,000 for the period of fiscal years 2005 through 2008, to remain available until expended.

TITLE II—ESTABLISHMENT OF CENTRALIZED REGULATORY COORDINATION OFFICES

SEC. 201. ESTABLISHMENT OF OFFICES.

For projects authorized by this Act and located within the State of California, the Secretary shall establish a centralized office in Sacramento, California, for the use of all Federal agencies and State agencies that are or will be involved in issuing permits and preparing environmental documentation for such projects. The Secretary may, at the request of the Governor of any Reclamation State, establish additional centralized offices for the use of all Federal agencies and State agencies that are or will be involved in issuing permits and preparing environmental documentation for projects authorized by this Act, or under any other authorized Act, and located within such States.

SEC. 202. ACCEPTANCE AND EXPENDITURE OF CONTRIBUTIONS.

(a) IN GENERAL.—The Secretary may accept and expend funds contributed by non-Federal public entities to coordinate the preparation and review of permit applications and the preparation of environmental documentation for all projects authorized by this Act, or any other authorized Act, and to offset the Federal costs of processing such permit applications and environmental documentation. The Sec-

retary shall allocate funds received under this section among Federal agencies with responsibility for the project under consideration and shall reimburse those agencies in accordance with the costs such agencies incur in processing permit applications and preparing environmental documentation.

(b) PROTECTION OF IMPARTIAL DECISIONMAKING.—In carrying out this section, the Secretary and the heads of Federal agencies receiving funds under this section shall ensure that the use of the funds accepted under this section will not impact impartial decisionmaking with respect to the issuance of permits or preparation of environmental documentation, either substantively or procedurally, or diminish, modify, or otherwise affect the statutory or regulatory authorities of such agencies.

TITLE III—RURAL WATER SUPPLY PROGRAM

SEC. 301. RURAL WATER SUPPLY PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a study to determine the feasibility of constructing rural water systems in coordination with other Federal agencies with rural water programs, and in cooperation with non-Federal project entities.

(b) REQUIREMENTS.—The study referred to in subsection (a) shall consider each of the following:

(1) Appraisal investigations.

(2) Feasibility studies.

(3) Environmental reports.

(4) Cost sharing responsibilities.

(5) Responsibility for operation and maintenance.

(c) CRITERIA.—As part of the study referred to in subsection (a), the Secretary shall develop criteria for determining which projects are eligible for participation in the study referred to under this section.

(d) REPORTS TO CONGRESS.—The Secretary shall submit to Congress the study developed under this section.

(e) RECLAMATION STATES.—The program established by this section shall be limited to Reclamation States.

TITLE IV—SALTON SEA STUDY PROGRAM

SEC. 401. SALTON SEA STUDY PROGRAM.

(a) IN GENERAL.—The Secretary shall conduct a study to determine the feasibility of reclaiming the Salton Sea.

(b) REQUIREMENTS.—The study referred to in subsection (a) shall consider each of the following:

(1) Appraisal investigations.

(2) Feasibility studies.

(3) Environmental Reports.

(4) Cost sharing responsibilities.

(5) Responsibility for operation and maintenance.

(c) REPORT TO CONGRESS.—The Secretary shall submit to Congress the study developed under this section no later than 1 year after the date of enactment.

Union Calendar No. 335

108TH CONGRESS
2D SESSION

H. R. 2828

[Report No. 108–573, Part I]

A BILL

To authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources.

JUNE 25, 2004

Reported from the Committee on Resources with an amendment

JUNE 25, 2004

Referral to the Committee on Transportation and Infrastructure extended for a period ending not later than June 25, 2004

JUNE 25, 2004

The Committee on Transportation and Infrastructure discharged; committed to the Committee of the Whole House on the State of the Union, and ordered to be printed