

WATER SUPPLY, RELIABILITY, AND ENVIRONMENTAL  
IMPROVEMENT ACT

—————  
JUNE 25, 2004.—Ordered to be printed  
—————

Mr. POMBO, from the Committee on Resources,  
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2828]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 2828) to authorize the Secretary of the Interior to implement water supply technology and infrastructure programs aimed at increasing and diversifying domestic water resources, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**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 ac-

tivities 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 activities 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 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 programs 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; and

(XI) strategic planning and tracking of Program performance.

(XII) Preparation of management plans for all properties acquired, and update current management plans, prior to the pur-

chase 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.

(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 described 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.

(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 implementation, 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 council 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, in-

cluding 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 cross-cut 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 Secretary 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 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.

#### PURPOSE OF THE BILL

The purpose of H.R. 2828 is to enhance and improve water supply, water yield, and water reliability while improving water quality and protecting the environment.

#### BACKGROUND AND NEED FOR LEGISLATION

##### *In general*

An evolving legal framework, interstate cooperation, tribal and bi-national water issues, environmental compliance, growth and an extended critical dry period that rivals the 1930s drought all present serious challenges for water users and governments throughout the Nation. With fully-appropriated river basins, overdrafting of ground water systems, and increasing requirements for clean and safe water, addressing these issues will not be easy.

The 1900s saw a proliferation of “watershed initiatives” in which stakeholders from a variety of governmental levels and jurisdictions joined with non-governmental stakeholders to seek innovative and pragmatic solutions to the problems associated with resource degradation and overuse. Although these initiatives share many common qualities, they are notable for their variety of structures and functions, a predictable feature that each watershed initiative is an ad hoc effort tailored to the unique institutional and physical qualities of the particular region. Despite their positive qualities, watershed initiatives have limited effectiveness because they cannot operate at the scale necessary to solve some broad problems or mobilize the necessary resources to do so. H.R. 2828 attempts to build on existing efforts to better use the limited water supplies in California.

H.R. 2828 recognizes the importance of improving management and coordination of existing water supply projects for meeting present and future demands for water in the State of California. Preserving and enhancing the ecosystem, while developing new sources of water for growing consumptive needs, and apportioning existing supplies to meet changing demands is a great challenge. Making opportunities and investing in water management options that can be integrated with more traditional water supply infrastructure is a necessary means to future water security. H.R. 2828 stresses the need for water users and water user types to better cooperate and integrate their actions to improve water management to solve broad, multi-dimensional issues. The bill would also bring a focus to developing integrated, regionally-based water management plans as a necessary means to help resolve growing conflicts and foster cooperation between agencies, utilities, and public interests.

The retention of existing water supplies and the development of critically needed new supplies are of the utmost importance throughout the West. Supplies are already inadequate for the growing demands, but very few plans exist to develop supplies to meet increasing needs. The fact that additional storage and other water development projects are necessary to meet anticipated needs is a simple reality, mandated by population and demographic information, which cannot be ignored.

The federal government should adopt a policy of supporting new projects to enhance water supplies and encouraging state and local interests to take the lead in the formulation of those projects. Local interests have shown enormous creativity in designing creative water development projects. Underground water banking programs have been successfully developed in some parts of the West which store flood waters at abundant times and draw water out when needed, all without large negative environmental effects. New and expanded surface water storage, both on-stream and off-stream, groundwater banking, and countless other forms of water development should be encouraged. The Calfed Bay-Delta Program recognizes the importance of water storage and conveyance for improving water supply reliability, water quality, and fish, wildlife and habitat restoration, and flood management. H.R. 2828 builds on this existing program to provide greater water security for all interests in California.

#### *The Calfed Bay-Delta Program*

The Bay-Delta is the region east of San Francisco Bay, where the Sacramento and San Joaquin Rivers converge. It supplies drinking water to over two-thirds of the people of California and irrigation water for over seven million acres of highly productive agricultural land. The Bay-Delta is the largest estuary on the west coast of the United States, and supports over 750 plant and animal species. It is also the hub of two massive water projects, the Central Valley Project (operated by the Bureau of Reclamation of the Department of the Interior) and the State Water Project (operated by the State of California Department of Water Resources). These two projects divert between 20 to 70 percent of natural water flows in the region depending on water conditions. The Bay-Delta also marks the boundary between northern California where most of the State's water supply originates and southern California where most of the population and demand for water exists. On average, in normal water years, over 5 million acre-feet<sup>1</sup> of water is exported south of the Bay-Delta by the two projects.

The Bay-Delta is in decline due to decades of competing demands for its limited water resources. The area has experienced serious problems relating to water quality and fish and wildlife, raising compliance issues with the Endangered Species Act (ESA). Generally because of these issues relating to ESA, State and federal officials and representatives of agricultural, urban and environmental stakeholders signed an agreement that is known as the Bay-Delta Accord. This December 1994 document provided interim measures for ecosystem restoration and regulatory stability. The Calfed program, a cooperative interagency effort, began in 1995 with agencies relying on existing statutory authority to undertake Calfed Program activities. The federal agency participants in the Program are: the Department of the Interior (including the Bureau of Reclamation, the U.S. Fish and Wildlife Service, the Bureau of Land Management, and the U.S. Geological Survey); the Environmental Protection Agency; the U.S. Army Corps of Engineers; the Department of Commerce (including the National Marine Fisheries

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<sup>1</sup>An acre-foot is the traditional measurement of water quantity and is the amount of water which will cover one acre to a depth of one foot.

Service); the Department of Agriculture (including the Natural Resources Conservation Service and the U.S. Forest Service); and the Western Area Power Administration. The State agencies involved are the Resources Agency of California (including the Department of Water Resources; the Department of Fish and Game; the Reclamation Board; the Delta Protection Commission; the Department of Conservation; the San Francisco Bay Conservation and Development Commission; the Department of Parks and Recreation; and the California Bay-Delta Authority); the California Environmental Protection Agency (including the State Water Resources Control Board); the California Department of Food and Agriculture; and the Department of Health Services.

Stakeholders, including representatives of agricultural, urban, environmental, fishery, and business interests, and Indian tribes and rural counties, all participate in the collaborative effort. Input is provided through the California Bay-Delta Public Advisory Committee established pursuant to the Federal Advisory Committee Act.

To develop a long-term program, the Calfed Program undertook an extensive planning effort. This resulted in a June 1999 Draft Programmatic Environmental Impact Statement/Environmental Impact Report (EIS/EIR) and a July 2000 Final Programmatic EIS/EIR. On June 9, 2000, an agreement entitled "California's Water Future: A Framework for Action," was released. On August 28, 2000, the federal and State agencies released a Record of Decision (ROD) setting forth a programmatic 30-year long-term plan for the Bay-Delta.

The ROD selects a preferred alternative for the Calfed Bay-Delta Program, setting forth the long-term, overall direction of the Program. The ROD provides that the Calfed Bay-Delta Program continue as a federal-State partnership to build a framework for managing water in California. Under the ROD, the Calfed Program has the following components: water storage, ecosystem restoration; water supply reliability; water conveyance; water use efficiency; water quality; water transfers; watersheds; an Environmental Water Account; levee stability; governance; and science. The ROD describes the Calfed Bay-Delta Program as one of the most intensive water conservation efforts ever proposed, the most far-reaching effort to improve drinking water quality for most Californians, and the most significant investment in water storage and conveyance in California in decades.

*The goals of H.R. 2828*

The intent of Title I of the reported bill is to improve water supply reliability and water quality while enhancing the environment in the State of California. By reauthorizing federal participation in Calfed, the bill helps California reduce its demand on imported northern California and Colorado River water and to treat impaired groundwater. The Title recognizes the need to develop both traditional and non traditional water projects throughout the State. The Title also emphasizes the need for new and expanded surface and groundwater storage facilities. The Title also encourages improved water conveyance to restore water project reliability and operational flexibility, provide for more opportunities to transfer and store water, and mechanisms to protect and enhance water

quality. The Title would also establish the Department of the Interior as the lead federal agency to coordinate the activities of participating federal agencies to: (1) utilize existing authorities and federal monies to accomplish the implementation of Calfed-related projects by respective agencies (as outlined in previous Subcommittee on Water hearings on Calfed cross-cut budgets); and (2) identify what new authorities are necessary for committing agencies to accomplishing projects, and determine appropriate funding needs under the Calfed Program.

Title II of the reported bill directs the Secretary of the Interior to establish a centralized office in Sacramento, California, for the use of all federal and State agencies involved in issuing permits and preparing environmental documentation for projects authorized under H.R. 2828. In addition, the Title authorizes the creation of other such offices in each of the 17 Reclamation States<sup>2</sup> to provide coordinated regulatory approaches to federal permitting activities, including environmental reviews, if so requested to do so by the Governor of each State. Many believe the principle barrier to resolving present and future water conflicts is the multiple and sometimes overlapping regulatory and agency coverage of critical issues. The adverse consequences of uncoordinated activities adds unnecessary cost and time to water management projects. Title II is modeled after recently authorized language that provides the City of San Francisco the option to create a federal regulatory coordination office in which all permits, licenses or other agency approvals necessary for project implementation would occur.

The Department of the Interior is in the process of developing a rural water program. Title III will authorize a study to determine the feasibility of planning, designing, and constructing rural water systems in the Reclamation States. A report shall be submitted to Congress describing the feasibility of such a program.

Title IV authorizes the Department of the Interior to study the feasibility of reclaiming the Salton Sea, a land-locked saline body of water initially created by the flooding of the Colorado River in the early 20th century and now primarily sustained by agricultural irrigation flows. The Sea continues to grow more saline, prompting calls from various groups to protect the Sea from permanent and potentially wildlife-harming levels of hyper-salinity. Since the Title recognizes the realities and complexities of current studies to resolve this situation, the general language does not direct funding toward a specific solution. The State of California is currently conducting a feasibility study, including investigations of possible reclamation options and an action plan, for reclaiming the Salton Sea. The projected completion date of the feasibility study is 2006.

#### COMMITTEE ACTION

H.R. 2828 was introduced by Congressman Ken Calvert (R-CA) on July 23, 2003. The bill was primarily referred to the Committee on Resources and additionally to the Committee on Transportation and Infrastructure. Within the Committee on Resources, the bill was referred to the Subcommittee on Water and Power. That Sub-

<sup>2</sup>These are the 17 western States in which the Bureau of Reclamation is authorized to operate, namely Arizona, California, Colorado, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington, Wyoming, and Texas.

committee held a hearing on H.R. 2828 on July 24, 2003. On September 25, 2003, the Subcommittee met to consider the bill. No amendments were offered and the bill was forwarded to the Full Resources Committee by voice vote. On May 5, 2004, the Full Resources Committee met to consider the bill. Congressman Ken Calvert, Chairman of the Water and Power Subcommittee, offered an amendment in the nature of a substitute which reflected modified language from S. 1097, a Senate companion bill authored by Senator Dianne Feinstein. In addition to this language, the amendment recognized the general framework of the 2000 Calfed Bay-Delta Program's ROD; included provisions which address necessary and specific policy issues for providing water quality and water level protections for users of Bay-Delta water supplies as a prerequisite to increasing export pumping from the Bay-Delta; provided that Calfed storage projects are subject to a feasibility study requirement and if Congress does not act to disapprove the study in 120 legislative days, then construction is authorized subject to appropriation of the necessary funds; and included management plan and accountability reporting requirements relating to the implementation of ecosystem restoration projects.

The Calvert amendment also reorganized the introduced bill. The amendment eliminated Title I (Department of the Interior, Competitive Grants Program). In addition, Title III of the introduced bill (Salton Sea) was amended to remove the \$300 million general authorization for the reclamation of the Salton Sea and to include a provision to conduct a feasibility study to identify a restoration plan. Title V of the introduced bill (Rural Water Supply Program) was amended to reduce the requirement that the Secretary of the Interior develop a program for the planning, design, and construction of rural water supply programs, but rather required the Secretary to conduct a study to determine the feasibility of constructing rural water systems.

An en bloc amendment to the Calvert amendment in the nature of a substitute was offered by Congresswoman Grace Napolitano (D-CA). The en bloc amendment deems all projects included in the two water reclamation and reuse reports referenced in Title I of the amendment to be feasible. The en bloc amendment was agreed to by voice vote.

Congressman George Miller (D-CA) offered a substitute amendment to the Calvert amendment in the nature of a substitute. This amendment included the text of S. 1097 as ordered reported from the Senate Committee on Energy and Natural Resources on April 28, 2004. The Miller amendment was not adopted by a rollcall vote of 11-28, as follows:



The Calvert amendment in the nature of a substitute, as amended, was approved by voice vote. The bill as amended was then ordered favorably reported to the House of Representatives by voice vote.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 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

##### *Section 101. Short title*

This title may be cited as the “California Water Security and Water Enhancement Act”.

##### *Section 102. Definitions*

This section includes the definitions of terms used in the legislation.

##### *Section 103. Bay-Delta Program*

*Section 103(a)(1). Record of Decision as General Framework.* The intent of this paragraph is to recognize the 2000 Calfed Bay-Delta Program Record of Decision (ROD) as a general framework for completing activities in the bill. A major milestone was accomplished when the Calfed Program released the ROD under the National Environmental Policy Act in 2000. The ROD provides the framework to address these issues through a sustained, long-term effort by the Calfed agencies and stakeholder groups. The ROD provides set out actions to be included in Stage 1 of the Calfed Program, which is to cover the first seven years of a 30-year program, and builds the foundation for long-term actions. However, the Congressional authorization for federal participation in the Calfed Program has expired, and the House Committee on Appropriations is not committed to appropriate additional funding for the Program until it is reauthorized.

*Section 103(a)(2). Specific Activities.* The purpose of this paragraph is to require that activities conducted and authorized by this legislation improve water supply reliability and water quality while improving the environment in the State of California. The Committee expects that all Calfed Program objectives (i.e., water supply and water yield, water quality, habitat improvements, and levee work) will be met continuously.

*Section 103(b)(1). In General.* This paragraph authorizes the Secretary of the Interior and heads of the Calfed agencies to carry the activities described in this legislation and that are components of the Calfed Bay-Delta Program.

*Section 103(b)(2). Multiple Benefit Projects Favored.* Projects and programs that meet multiple Calfed Program components and benefits are emphasized.

*Section 103(b)(3). Balance.* The intent of this paragraph is to ensure that all Calfed Bay-Delta Program components progress in a balanced manner. The Committee believes that water storage and basic infrastructure needs were not adequately addressed in the

initial years of the Calfed Program. It is the intent of the Committee that future funding shall be allocated such that there is balance in increasing water supply and water yield, while improving water quality and restoring the environment. As the ROD indicates, solutions shall focus on solving problems in all areas of Calfed, and no Program components will be left behind.

*Section 103(b)(4). Existing Authorizations for Federal Agencies.* This paragraph authorizes the Secretary of the Interior and the heads of the federal agencies identified in the ROD to fund and undertake specific activities described in the ROD, subject to the provisions of this Title, to the fullest extent under existing authorities. The provisions of this section and in Section 103(b)(5)(A) specifically authorizes the Secretary to conduct all necessary feasibility studies to implement the Calfed storage program as set forth and described in the ROD. No further Congressional authorization for the conduct of feasibility studies on each of the storage projects identified in the Calfed ROD is necessary.

*Section 103(b)(5)(A). Water Storage and Water Yield.* The purpose of this subparagraph is to authorize the Secretary of the Interior to undertake all necessary planning activities and feasibility studies for Congressional approval of the construction of specific surface water storage features, surface water and ground water conjunctive management projects, and ground water storage projects related to the Calfed Bay-Delta Program.

The expansion of water storage features related to the federal and State water projects last occurred in the 1960s; however, the State of California population has more than doubled since then. The intent of this paragraph is to emphasize the importance of increased water supply reliability and improved water yield for agricultural, domestic, and environmental needs. New and expanded storage facilities increase control and regulation of water for enhancing the ability of transferring and conveying water to other users. Storage improves system flexibility for managing water supply and demand to reduce conflict between competing users.

The Committee believes the existing procedures for developing additional supplies should be revised to streamline project approval. By the time project applicants approach federal agencies for authorization to construct multi-million dollar projects, they have already invested extensive resources toward analyzing project alternatives to determine which project is best suited to their budgetary constraints. The appraisal and feasibility planning processes, the federal and state environmental impact analysis and environmental reporting procedures, regulatory permitting requirements, and Administration review and approval can take a long time.

The Committee heard in testimony that the length of time required to complete the appraisal and feasibility studies can take as long as 12 years for large projects. It is not the intent of this legislation to expedite or abbreviate the detailed study, environmental compliance, and approval process requirements. However, the Committee believes the lengthy approval period can be streamlined. As such, the Committee will require a Congressional disapproval process to authorize construction of storage features under this Title. This process would require the Secretary of the Interior to submit to Congress, if feasible, any project that meets the conditions outlined in the legislation. If Congress does not pass a disapproval res-

olution within a 120-day legislative period, the project would then be authorized, subject to appropriation of necessary funds. The intent is not to over-simplify the feasibility study process for storage and conveyance projects. All studies will continue to be subject to review and approval by the Administration, and to National Environmental Policy Act, California Environmental Quality Act, and other environmental review and permitting prior to being submitted for Congressional approval.

The 120-day disapproval resolution provision is not a precedent-setting measure. The Bureau of Reclamation currently has Congressional authority to continue with structural remediation measures related to the Department of the Interior's Safety of Dams Program. The 1978 Safety of Dams Act, as amended, includes a 30-day Congressional approval period. If Congress does not approve a Secretary of the Interior Feasibility Report within this time frame, the Secretary has the discretion to move ahead on implementing the measure.

In addition, a provision in the 1939 Reclamation Act (43 U.S.C. 485h) gives the Secretary of the Interior the authority to conduct feasibility studies on Reclamation projects and the authority to proceed with construction if deemed feasible. An Act of Congress is only required if the feasibility study does not deem the project feasible or allocable costs do not equal total estimated costs.

In another example, the U.S. Army Corps of Engineers has discretion to implement specifically defined projects under a Continuing Authorities Projects program. Under the program the Corps can plan, design, and construct small water resource and ecosystem restoration projects. These projects do not require project-specific authorization or funding levels; however each authority has federal funding limits. In the 1999 Water Resources Development Act Congress authorized the Corps' discretionary authority for the implementation of projects not costing more than \$30 million. Under this authority, the Secretary of the Army is required to submit a report to Congressional Committees describing the project and whether the project meets certain conditions prior to implementation. The Secretary can then take appropriate action to implement the project after a 21-day period.

*Section 103 (b)(5)(B). Conveyance.* The intent of this subparagraph is to recognize the requirement of improving water quality conditions of Bay-Delta supplies prior to increasing export pumping and additional diversions from the Bay-Delta. The Secretary and heads of the federal agencies are to undertake specific activities of the South Delta Improvement Program, including the installation of temporary and permanent flow control barriers, agricultural drainage reduction, San Joaquin floodway improvement, protection of local diversions and water supplies, and water quality to all users, including agricultural water diverters in the South Delta.

Actions are also required to improve conveyance in the North Delta, including improved operations of Cross Delta Channel, evaluation of improved fish screening and the evaluation of floodway improvements. Requirements for constructing appropriate conveyance features, or interties, which connect existing water conveyance features of the federal and State water projects are also included.

The intent of these provisions is to provide greater operational flexibility to meet existing water quality standards and to meet

with greater frequency water delivery obligations for water contractors. Improved water conveyance increases the capability of the water system to convey water at times when it is available both in improved quantity and quality. Improved water conveyance reduces water losses by improving the ability of the delivery system to conserve and better manage existing supplies. Improved conveyance provides an assurance to willing sellers and buyers in water transfer proceedings that water will move to its new use, legal requirements of the transaction will be fulfilled, and the private property right to the water is protected.

Another purpose of this paragraph is to include Secretarial requirements for implementing a Bay-Delta water quality program to meet all existing water quality standards and objectives for which the federal water project has responsibility. The legislation outlines a set of tools or options which the Secretary can implement, including a recirculation program, mandatory source control programs and improved drainage practice from wildlife refuges, and purchasing water from willing sellers for dilution purposes and meeting water quality and fish flow objectives. Section 103(b)(5)(B)(iv) places a restriction on the Secretary's ability to participate in activities that would increase export limits at the State of California's Harvey O. Banks Pumping Plant for the limited purpose of conveying water to south-of-Delta Central Valley Project contractors. Nothing in this section prohibits the Secretary, the State of California, or the U.S. Army Corps of Engineers from participating in activities that will increase export limits at the Banks Pumping Plant for State Water Project contractors, the State Water Project, or any other purpose other than conveying water to south-of-Delta Central Valley Project contractors.

*Section 103(b)(5)(C). Water Use Efficiency.* The implementation of water conservation projects which improve the efficiency of water delivery and use is important to the success of the Calfed Program. Conservation practices and improved water operations as well as infrastructure improvements will continue to be important for enhancing water supply reliability, improving water quality, and increasing ecosystem benefits to Bay-Delta system.

This subparagraph also has the purpose of recognizing the importance of implementation of projects that involve non-traditional water supply development. The legislation requires the Secretary to review feasibility studies and report to Congress within 90 days after the review of such studies and pursuant to Public Law 102-575, Title 16, as amended, and Public Law 104-266. Projects identified in the Southern California Comprehensive Water Reclamation and Reuse Study and the San Francisco Bay Area Regional Water Recycling Program Recycled Water Master Plan include projects that may be added to those regional planning documents when they are updated by local authorities. In addition to projects identified in the aforementioned reports, the Secretary may carry out other projects which may be currently under study or in development that provide regional solutions to benefit regional water supply and reliability needs.

*Section 103(b)(5)(D). Water Transfers.* The extent to which voluntary and market-based water transfers can be implemented to meet growing and changing water needs without causing damage to other legal water users is an issue to water users throughout the

State of California. Market-based water transfers and transfer of water between willing parties are an integral part of the non-structural solution for resolving water deficiency problems. California has had much success in transferring water from one user to another to meet long-term water demands, for water banking purposes, and for short-term critical water shortage and high period demand. Being able to transfer water between users and exchange existing water supplies to meet the increasing competition for clean and dependable water is important to the future of California water. There is increased agreement by most water agencies, water users, and fishing interests in the desirability of water transfers and water banking.

*Section 103(b)(5)(E). Integrated Regional Water Management Plans.* There is a greater need for water users and other interested parties to better cooperate and integrate their actions to improve water management responsibilities. The Calfed Bay-Delta Program emphasizes the implementation of projects that include regional water supply reliability, water quality improvements, ecosystem restorations, and flood protection.

The intent of this subparagraph is to authorize the Secretary of the Interior and heads of federal agencies to assist local and regional communities to develop and implement integrated water management plans which provide a significant contribution to the Calfed Bay Delta Program.

*Section 103(b)(5)(F). Ecosystem Restoration.* The purpose of this subparagraph is to authorize the development and implementation of large-scale ecosystem restoration projects in the San Francisco Bay, Delta, and its tributaries to rehabilitate natural processes related to hydrology, stream channels, sediment, floodplains and ecosystem water quality. These projects include fish passage and fish screen improvements; invasive species control; integrating federal, state, and local habitat improvement programs into the Ecosystem Restoration Program; improving and maintaining water and sediment quality; and land and water acquisitions to improve wildlife habitat and fish spawning and survival in the Delta and its tributaries. This subparagraph requires the Secretary of the Interior to conduct strategic planning and tracking of Program performance.

It has been reported to the Committee in testimony that much federal and state money has been expended on ecosystem restoration projects in the last few years. To many Committee members, the implementation of ecosystem restoration projects appears to be haphazard without clearly defined goals and unintended consequences. The measurable outcome has focused on dollars spent rather than increased numbers of fish and wildlife and improved habitat.

The intent of this provision is to provide a method of reporting to Congress the purpose and accomplishments of ecosystem restoration project implementation. The intent is to require Program accountability with an assurance that federal expenditures are being used appropriately to protect and restore functional habitats, including aquatic, upland and riparian, to allow species to thrive. This is a "right-to-know" provision that provides reporting of accountability, progress, and accomplishments.

This subparagraph requires the submission to Congress of a resource management plan, or action plan, for all ecosystem restora-

tion projects to be implemented with an estimated cost greater than \$20,000. This is a one-time report that assures careful analysis of alternatives including cost effectiveness, disclosure of impacts, identification of mitigation measures, if necessary, and the development of a monitoring plan prior to implementation. The report will also include a description of the degree to which and for what purpose a particular project is a part of a larger ecosystem restoration project. Such a report would assure a thorough and consistent process is completed which describes and recommends an ecosystem project based on a plan that meets the purposes of the Calfed Bay-Delta Program. This is not intended to be a report that requires Congressional approval prior to project implementation, but a report which discloses what the project is about and what actions will be taken to accomplish goals of the Calfed Bay-Delta Program. Most, if not all, other federal projects, both structural and non-structural, implemented by federal agencies require feasibility approval and Congressional authorization. Ecosystem restoration projects in the Program, however, have not been required to submit an implementation report of any kind in the past.

Additionally, an annual report will be required which tracks expenditures and documents accomplishments for the year. The intent of an annual report is to provide to Congress the progress of project implementation and describe successes of the project in terms of quantitative measures, or indicators, which were described in the initial resource management plan. The annual report will allow Congress and project sponsors to review progress and make revisions to project implementation, if necessary, to better serve project purposes. This report is in support of the adaptive management purposes of ecosystem restoration project implementation.

The intent of the legislation is to disclose land management actions associated with ecosystem restoration implementation. Land acquisition actions associated with implementing ecosystem restoration projects is a concern to landowners and agricultural communities. The degree to which the agricultural community is affected and how land management actions affect regional and local farming industry and socioeconomics is important to landowners. The legislation promotes the best use of land for protection of local interests.

The ROD contains very clear language on the topic of land acquisition: "An important feature of the State's environment and economy, agricultural lands will be preserved during implementation of the Program in a manner consistent with meeting program goals, minimizing impacts to agriculture." If public land does not fulfill the project's purpose, land should be sought from "willing participants," and easements, or working landscapes, are preferred over fee acquisitions for ecosystem restoration projects. The legislation requires the use of appropriate valuation processes to evaluate the cost effectiveness of proposed land actions and to assist in determining which land action is best suited for the restoration project. The provision also emphasizes willing participation and local involvement in land actions to accomplish mutual benefits.

*Section 103(b)(5)(G). Watersheds.* The efforts of community-based activities are contributing to successful implementation of small-scale projects at the local level to improve the management of land and water resources in California. Local efforts to maintain ripar-

ian zones along watercourses, provide outreach and education on water conservation opportunities, and land conservation practices are some of the activities that are occurring at the local level.

The intent of this subparagraph is to promote locally-led watershed management activities that can contribute to the successful implementation of Calfed Program components, such as water quality improvement, water use efficiency, and habitat restoration. Agencies would provide technical assistance, as necessary, and build local capacity to assess and manage watersheds affecting the Bay-Delta system. Assisting locally-based programs in the development of watershed management plans and actions could provide for coordinated implementation of activities that resolve regional issues as well.

*Section 103(b)(5)(H). Water Quality.* The intent of this subparagraph is to develop and implement various elements of the Water Quality Program described in the ROD. The legislation provides for means to continuously improve Delta water quality for all uses, including in-Delta environmental and agricultural uses. The intent of the legislation is also to provide for good water quality for users who rely on the Delta for all or part of their drinking water. The differing situations for the many different water agencies which draw on the Delta require diverse approaches to drinking water quality that involve combinations of source water improvement, innovative and collaborative water management, and treatment options.

The legislation includes several program actions that allow users to capture high quality water for drinking water purposes, reduce contaminants and salinity that impair Delta water quality, evaluate alternative approaches to drinking water treatment to address growing concerns over disinfection byproducts and salinity, and enable voluntary exchanges or purchases of high quality source waters for drinking water uses.

None of the actions identified in the legislation, by itself, can assure adequate supplies of good drinking water. They must be pursued in conjunction with actions described in other sections and subsections, such as storage, conveyance, and ecosystem restoration actions to generate significant improvements in drinking water. The intent of the legislation is also for the federal agencies to continue to coordinate water quality improvement and protection efforts with local communities and stakeholders who are actively seeking to address water quality issues through pollution prevention and monitoring to improve water quality conditions from a regional perspective.

It is also intended that federal agencies will seek to maintain the quality of existing and potential sources of drinking water supply, both ground water and surface water. For water projects that involve development of ground water and the conjunctive management of surface and ground water supplies, including ground water banking programs, agencies will work with local water management agencies and communities to assure that locations with the lowest level of pollutants and best quality sources economically available are identified.

A number of existing water conveyance features are impacted by intercepted surface water runoff from adjacent agricultural and grazing lands, agricultural drainage systems, and storm water. Ap-

propriate improvements, measures, and watershed programs are needed to correct these problems. Preventing and controlling runoff of these impaired waters into conveyance systems will ultimately improve water quality conditions of water deliveries.

A number of water districts and water entities, including the San Francisco Bay Area and San Joaquin and Sacramento Counties, have commenced discussions to explore ways to improve water supply reliability for agricultural districts and for providing high quality water supplies at times when water quality conditions in the Delta are not favorable for diverters. The federal agencies can provide support to these local entities by participating in studies and investigations of utilizing available facilities and capacities to provide high quality water through operational agreements and system improvements. Such agreements will improve the flexibility of operating the system during critical periods of water supply deficits and low water quality. Infrastructure improvements and water conservation measures will improve the efficiency of water use and reduce water losses.

*Section 103(b)(5)(I). Science.* Science is a cross-cutting element that is emphasized in all components of the Calfed Program. Sound science ensures the best investments are being made and results are being achieved, as well as to form strategies to reduce scientific uncertainties.

The intent of this subparagraph is to establish a broad science program and develop new information and scientific interpretations necessary to implement, monitor, and evaluate the success of the Program. Independent science boards and panels would provide oversight and peer review of Program implementation and progress. It is intended that the Secretary of the Interior and the Governor of California would appoint members to the independent board, and specific science panels would be convened as needed.

An important part of the science component of the Calfed Program is the development of performance measures and indicators for all Program components that will be used to track accomplishment and evaluate progress. New information will become available as implementation occurs and programs progress, and assessments and interpretations will be required and used to confirm or modify actions. Findings will be communicated to resource managers, agencies, and the public on the program achievements.

Federal, state, and local agencies have been involved in implementing Program components within existing programs and funding mechanisms. However, little or no information on the progress and accomplishments to date on implementation of Program components has been made available. Baseline descriptions of conditions, cost-effectiveness of implementation measures, and progress in achieving desired results has not been forthcoming from project sponsors.

The science program would have the role of coordinating ongoing research and monitoring efforts. Sharing information and making others aware of on-going efforts is necessary from a "lessons-learned" perspective. Prioritizing science needs and assuring monitoring efforts that are not redundant and are conducted using peer reviewed methods and procedures are roles of the science program. The program would serve as a science clearinghouse for the agen-

cies and would communicate findings on key issues on all components.

*Section 103(b)(6). New and Expanded Authorizations for Federal Agencies.* The intent of this subsection is to grant new and expanded authorizations to carry out activities and programs that are components of Calfed Bay-Delta Program and are described in Section 103(b)(7).

*Section 103(b)(7)(A). Conveyance.* Specific actions are required to optimize the use of the Delta as the means of conveyance of State and federal projects water supply to export pumping facilities located in the south Delta. Implementation of conveyance modifications are required to improve water supply reliability for in-Delta, south-of-Delta, and export water users, to support continuous improvement in drinking water quality, and to complement ecosystem restoration and protect fisheries.

Increased flexibility and improved water supply reliability can be realized by revising the operating criteria of the San Luis Reservoir. By better utilizing the present capacity of reservoir and modifying operating criteria, the Reservoir would be able to provide additional water supplies at times when water of high quality in the Delta is not available for export. Additional studies are necessary to examine to what extent San Luis Reservoir can be utilized.

Frank's Tract, a parcel of land within the Delta, is known to contribute to the low water quality conditions in the Delta. The levees which protected the island from high tides and Delta channel flows have not been maintained, resulting in back flows from the Tract which are high in organics and residual seawater. The proximity of the Tract to water intakes for municipal water districts causes water quality issues for domestic water supplies. Studies are necessary to describe a corrective action to reduce or eliminate the influence of the impaired water flowing from Frank's Tract on the Delta water supplies.

Studies and designs of fish screens and export pumping intake facilities are needed for export purposes to withdraw waters of higher quality, and to provide better fish protection. Current facilities do not provide sufficient capacity and protection for projected increased Delta flow quantities and improved flow circulation for water quality purposes.

Purchases of water from willing sellers could provide additional improvements in water quality by providing dilution flows to help meet water quality standards and flow objectives related to Delta inflows to south Delta channels. Use of voluntary water acquisitions could provide greater flexibility in system operations for improved water quality conditions and reduce the need on New Melones Reservoir to solely provide flows for dilution purposes. Not more than \$5,260,000 of the amounts authorized under this provision may be expended for the purposes of acquiring water from willing sellers and to undertake actions to decrease releases from New Melones Reservoir for meeting water quality standards and flow objectives that are required of the Central Valley Project.

The legislation authorizes \$184,000,000 to complete activities described under this subparagraph.

*Section 103 (b)(7)(B). Environmental Water Account.* Nothing in this subparagraph changes, alters, or modifies the purposes for

which water purchased by the Environmental Water Account (EWA) may be used as defined by ROD. All expenditures made under the authority granted by this subparagraph must provide water for the protection and recovery of fish consistent with the EWA purposes as defined in the ROD. In implementing the authority provided by this subparagraph, the Secretary of the Interior is encouraged to consider actions in areas upstream of the Delta that protect and recover fish by improving flow conditions in the Sacramento and San Joaquin rivers.

There is to be authorized \$90,000,000 to conduct activities related to the Environmental Water Account and identified in this subsection.

*Section 103 (b)(7)(C). Levee Stability.* The Delta covers a vast expanse of productive farmland and wildlife habitat interlaced with hundreds of miles of waterways. Much of this land is below sea level. Eleven hundred miles of levees are needed to protect Delta land uses including 520,000 acres of farmland, a water conveyance pipeline that crosses the Delta to deliver water to East Bay, highways and roads, a railroad, natural gas and electric transmission facilities, and thousands of acres of habitat. Levees also protect water quality for Delta and export users.

The purpose of providing authorizations for levee stability is to provide long-term protection for multiple Delta resources by maintaining and improving the integrity of the extensive Delta levees system. The Calfed ROD proposes investing a total of approximately \$450 million in the Stage I implementation phase.

It is intended the efforts of the levee stability program will be consistent with concurrent activities of ecosystem restoration, conveyance, and water quality. Certain levees will be built in ways that encourage habitat for aquatic and terrestrial species.

The authorization provides assistance to federal agencies to help local reclamation districts reconstruct all Delta levees to a base level of protection. Nearly half of the 1,100 miles of Delta levees do not meet this standard. More than 400,000 people live in Delta towns and cities and giving protection to life and personal property, water quality, farming industries, and wildlife habitat are priorities for levee stability actions. The activities undertaken by the agencies will be closely coordinated with the Delta Levee Special Improvement Projects program so that the levee systems that are most unstable receive priority attention. The federal agencies will partner with local and State agencies to develop an Emergency Response Plan as well as a Delta Risk Management Strategy.

*Section 103(b)(7)(D). Program Management, Oversight, and Coordination.* This subparagraph authorizes that no more than \$25,000,000 may be expended by the federal agencies for program support and administrative responsibilities associated with implementing actions related to the Calfed Bay-Delta Program. Monitoring and accountability reporting of program progress, expenditures, and performance are required. To ensure Program balance and integration of Calfed Program components, multiagency oversight and coordination of all Program activities is required in this subparagraph. Agencies will have the responsibility to develop and provide meaningful annual budget crosscuts. The Committee believes that expenditures to date have not been balanced between Program components and have possibly threatened the integrity of

the Calfed process of balanced implementation. The Committee expects federal funds to be appropriated in the most cost-effective manner. A comprehensive finance plan, including cost allocation, is to be developed which adheres to the beneficiary pays provisions of the ROD. Coordination of public involvement and outreach activities is a required activity.

#### *Section 104. Management*

This section is designed to recognize that there is yet to be developed a long-term solution to California's water problems, particularly a plan to address the Bay-Delta, and the other areas of California that are affected by water management through the Bay-Delta. This section directs the federal agencies to coordinate with the State agencies on the development and implementation of Calfed Program components. The Committee wants to be very clear that the future management of the Calfed Program needs to be a multiparty structure originating in California with broad public, tribal, and local government involvement. The Committee expects that opportunities to partner with local interests, and undertaking joint activities with local public agencies, tribes, private water users and landowners will be pursued appropriately. The Committee expects that decisions made will be based on credible and objective scientific review and economic analysis. Use of the best available, independent peer-reviewed information is required.

The authorities and discretionary powers of federal and state agencies granted to them by other laws will not be affected by this Act. This section emphasizes the need to coordinate multiple agency responsibilities, without reducing agency statutory authority and individual regulatory review. Title I of H.R. 2828 will build on our past experiences of water management planning to develop a multi-agency program that improves coordination of agency activities and emphasizes fiscal responsibility. The bill will bring focus to developing integrated, regionally-based water management plans as a necessary means to help resolve growing conflicts and foster cooperation between agencies, utilities, and public interests. This bill will put complete inter-agency coordination to the test and put to better use the financial resources agencies have available to them.

This section focuses on the need for the Secretary of the Interior to provide quarterly status reports on progress and achievements in meeting the requirements and targets identified in the ROD. In particular, achieving the requirements and targets for water supply, water quality, and the environmental water account are specified.

#### *Section 105. Reporting requirements*

This section provides for annual reporting. The report to Congress will describe the status of implementation of all Program components. The report will address the prior year's expenditures, accomplishments in achieving the objectives of improved water supply and water supply reliability, water quality, fish and wildlife habitat, and rehabilitation and betterment of levee stability. Program goals, current schedules, and relevant financing agreements will be included. The Secretary of the Interior and the Governor of California are to conduct an annual review of progress and bal-

anced implementation of Program components, and report revisions to schedules, funding commitments, and Program responsibilities as well as recommendations to achieve balanced progress in all Calfed Bay-Delta Program elements consistent with the ROD.

A fundamental philosophy of the Calfed Program is that costs, to the extent possible, be paid by the beneficiaries of the Program actions. The Committee expects that all feasibility studies include identification of all project benefits consistent with the beneficiaries-pay provisions of the ROD. With respect to identification of project benefits and development of the cost allocation plan provided for in this section, the Committee intends that project beneficiaries be distinguished from project proponents or participants, and that costs be allocated in a way that relates to benefits. The Committee believes that every Calfed purpose is a potential "beneficiary" of every Calfed Program storage or water supply improvement and these investments should be evaluated in this light.

#### *Section 106. Crosscut budget*

This section focuses on the need for the Calfed Program to improve coordination with the participating State and federal agencies. The Director of the Office of Management and Budget will include in the Administration's annual budget request a meaningful annual interagency budget crosscut that displays the expenditures since year 2000, details accounting of all funds received and obligated by federal and State agencies, and proposes funding levels for carrying out the upcoming year's activities for implementing components of the Calfed Program. The budget will clearly indicate interagency and intra-agency funding transfers for the upcoming year under both existing authorities and under new authorities granted by this legislation.

The Committee believes that there needs to be an adjustment to return the federal funding mechanism to Congress. Calfed agencies shall ensure that all relevant federal programs authorized under this Act and other pre-existing authorities coordinate goal setting, funding, and implementation so as to ensure the most efficient and effective expenditures of federal funds and resources for Calfed-related activities. The Committee expects the adoption of performance measures that provide a real basis for adaptive management rather than continual policy drifting with no goals or financial accountability. The Committee believes that expenditures to date have not been balanced and have possibly threatened the integrity of the Calfed process of balanced implementation of all Program components.

#### *Section 107. Federal share of costs*

The federal share of the cost for implementing the Calfed Program for fiscal years 2005 through 2008 shall not exceed 33.3 percent.

Under the integrated water management objectives on which the Calfed Program is based, new and expanded storage features and water supply improvements must be evaluated for their ability to improve water supply and management for all Calfed purposes, including flows for fishery migration and environmental water quality. Calfed is intended to provide a multi-dimensional approach and solution to water issues. The activities suggested as part of the so-

lution are meant to be enacted together, with each supporting the others. There are significant public and environmental benefits associated with Calfed operational and infrastructure oriented actions and programs.

By strictly applying a “traditional water yield evaluation,” a proposed action’s costs and benefits are allocated among a pre-identified group of clearly defined consumptive users. Since the Calfed Program is a combination of multi-purpose projects meant to provide broad solutions, the Committee believes the application of the “traditional approach” is not appropriate and does not meet the intent of the “beneficiary-pays” provisions in the ROD. The Committee believes that the premise of identification of project beneficiaries is to be based on consistent application of criteria, including cost allocation that has been arrived at through the Programmatic EIS/EIR and as described in the ROD. The Committee expects the Secretary of the Interior to direct the cost allocation analysis beyond the mere physical location of any action or program, and to instead focus on the intended or resulting operational or water resource allocation benefits of that action. In the end a comprehensive and integrated list of actions and projects will be undertaken together in order for any of the expected results and improvements to occur.

*Section 108. Use of existing authorities and funds*

Federal agencies shall utilize to the maximum extent possible authorities granted to them under existing law for the purpose of carrying out the purposes of this Act. The Committee has heard in testimony that federal agencies have and are continuing to implement actions and projects that meet the purposes of the Calfed Program. Not later than 60 days after enactment of this Act and each year thereafter, the Secretary of the Interior is required to submit a Congressional report which identifies existing authorities and list funds which were authorized in the previous year for the authorities listed, and in conjunction with identification of projects carried out with the funding obligated and expended for each of the projects implemented.

*Section 109. Compliance with State and Federal law*

This section ensures that the authorization does not inadvertently adversely affect the existing California legal structure, pre-empts or modifies interstate compacts governing water quality or disposal, or confers any right to a non-federal entity the ability to exercise federal rights to waters.

*Section 110. Authorization of appropriation*

This section authorizes a total \$389 million in appropriations to the Secretary of the Interior and the heads of the federal agencies for fiscal years 2005 through 2008 to carry out the activities in Section 103, Activities to be Undertaken under New and Expanded Authorizations.

## TITLE II—ESTABLISHMENT OF CENTRALIZED REGULATORY COORDINATION OFFICES

### *Section 201. Establishment of offices*

A fundamental challenge to implementing a solution to current and future water conflicts is the multiple regulatory and agency coverage of critical issues. The unintended adverse consequences of uncoordinated activities adds costs and time to implementing water management projects. The intent of this section is to implement a process and concept similar to the recently passed legislation that established a permitting coordination office within the U.S. Army Corps of Engineers for the purposes of streamlining the permitting procedures for rehabilitation and betterment of the Hetch Hetchy system.

The Committee has included Title II to ensure that overall project benefits are a factor in considering the project during the permitting review process. The ability to provide a central point of contact that can facilitate a project's regulatory permitting needs will enable efficient and effective permitting to occur in a timely manner. This section directs the development of a streamlining process for the issuance of permits and approvals required under State and federal law and regulatory programs to minimize the burden of submission requirements. The Secretary of the Interior is authorized to establish within the State of California a regulatory streamlining and interagency coordination office for the purposes of implementing such projects. The Committee believes this is a way redundant and inconsistent regulatory requirements could be dealt with and informed decisions could be made on how to proceed or not proceed. This shall not affect the integrity of the review process.

The authorities and discretionary powers of federal and state agencies granted to them by other laws will not be affected by this Act. This section recognizes the need to coordinate multiple agency responsibilities, without reducing agency statutory authority and individual regulatory review. The Committee believes that a regulatory coordination office can also benefit Bureau of Reclamation projects that have been authorized by other Congressional legislation, such as rural water projects. As such, the legislation expands the scope and purpose of regulatory streamlining and coordination to include all Reclamation projects. The Secretary of the Interior may at the request of the Governor of any Reclamation State establish such offices for the use of State and federal agencies, and located within such States. It is not the intent of this legislation to establish such offices for the purposes of coordinating permitting processes of other authorized federal projects under the jurisdiction of other federal agencies.

### *Section 202. Acceptance and expenditure of contributions*

The Secretary of the Interior may accept and expend funds contributed by non-federal public entities to offset the federal costs of processing such permit applications and preparation of environmental documentation. The Secretary shall allocate funds received for the purposes outlined in this section among the federal agencies with responsibility for processing permit applications and preparing environmental documentation. The Secretary and the heads

of the federal agencies shall ensure that acceptance of funds will not affect impartial decision making with respect to approving and issuing permits of preparing environmental documents, or affect the regulatory and statutory authorities of the agencies involved.

The Committee expects that those entities using the centralized regulatory office will pay for the services rendered. Therefore, there is no request for authorization of federal funds for this Title.

### TITLE III—RURAL WATER SUPPLY PROGRAM

#### *Section 301. Rural Water Supply Program*

The Committee is very much aware that providing safe and dependable drinking water supplies is a concern in water-short rural areas and in rural areas where water quality is impaired. The Department of the Interior has shown there is a need for providing drinking water supplies in the Reclamation States. This program does not already exist in Interior. The Bureau of Reclamation has received Congressional authorization for the construction of rural water projects, but the authorizations have essentially gone unfunded.

This Title requires the Secretary of the Interior to conduct a study to determine the feasibility of constructing rural water systems. The development of study and implementation of rural water domestic systems is to be completed in coordination and cooperation with other federal agencies with rural water programs.

The Committee expects that selection criteria will be developed as part of this study for consistently determining the eligibility of proposed projects for participation in a rural water program. For the projects which are currently being implemented by the Bureau of Reclamation, the Administration's Program Assessment Rating Tool criticized the agency for a lack of consistent criteria. It is the intent of this section that criteria will be developed that satisfies the recommendations of the program assessment.

No federal funding level is authorized in this section.

### TITLE IV—SALTON SEA STUDY PROGRAM

#### *Section 401. Salton Sea Study Program*

The Secretary of the Interior is authorized to conduct a study to determine the feasibility of reclaiming the Salton Sea in accordance to the Salton Sea Reclamation Act of 1998.

The intent of this section is to identify actions which the Secretary could feasibly undertake and implement. Such actions will be in coordination with and in conjunction with the State of California. The State of California is currently conducting a feasibility study to investigate alternatives to rehabilitate the Salton Sea ecosystem.

Findings and recommendations from the State-led study will not be available until 2006. However, it is the purpose of this section to cooperate with the State of California and identify components of the reclamation plan which have a federal interest and could be cost-effectively completed by the Secretary. The Secretary shall consider, among other things, appraisal investigations, project-specific feasibility studies, and environmental reporting. A report is

due to Congress within one year from the date of enactment of this Title.

No federal funding level is authorized for the purposes identified in this section.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to enhance and improve water supply, water yield, and water reliability while improving water quality and protecting the environment.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, June 1, 2004.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN, The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2828, the California Water Security and Environmental Enhancement Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Julie Middleton.

Sincerely,

ELIZABETH ROBINSON  
(For Douglas Holtz-Eakin, Director).

Enclosure.

*H.R. 2828—Water Supply, Reliability, and Environmental Improvement Act*

Summary: Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 2828 would cost \$427 million over the 2005–2009 period and \$65 million after 2009. Those amounts do not include the cost of constructing four new water storage projects that would be authorized by this bill because construction would begin after 2009. CBO estimates that the federal share of those additional construction costs would range from \$200 million to \$400 million over the 2010–2020 period.

Enacting this bill would not affect direct spending or revenues. H.R. 2828 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments. The funds authorized by this bill would benefit the state of California and local governments in that state. Any spending by those governments to participate in the water projects would be voluntary.

H.R. 2828 would authorize multiple federal agencies to participate in the implementation of the Calfed Bay-Delta Program as outlined in the August 28, 2000, Record of Decision for the Calfed Bay-Delta Program Programmatic Environmental Impact Statement and Report. This bill would authorize the appropriation of \$389 million over the 2005–2008 period specifically for the proposed environmental water account, stabilizing levees, evaluating and constructing water conveyance structures, and coordinating the federal portion of the Calfed program. In addition, H.R. 2828 would authorize federal agencies to participate in the design and construction of four water storage projects if the Congress does not disapprove the feasibility studies for those projects.

In addition, H.R. 2828 would authorize the Secretary of the Interior to establish offices to coordinate compliance with federal regulations in the 17 western states where the Bureau of Reclamation operates. The bill also would authorize the Secretary to conduct two feasibility studies on constructing rural water systems and reclaiming the Salton Sea in California.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 2828 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
SPENDING SUBJECT TO APPROPRIATION						
Calfed Bay-Delta Spending Under Current Law:						
Budget Authority .....	0	0	0	0	0	0
Estimated Outlays .....	17	23	20	2	0	0
Proposed Changes:						
New Calfed Projects:						
Authorization Level .....	0	98	98	98	95	0
Estimated Outlays .....	0	44	69	84	101	53
Water Storage Projects:						
Estimated Authorization Level .....	0	0	0	5	35	35
Estimated Outlays .....	0	0	0	3	24	30

	By fiscal year, in millions of dollars—					
	2004	2005	2006	2007	2008	2009
Regulatory Coordination Offices:						
Estimated Authorization Level .....	0	1	1	1	1	1
Estimated Outlays .....	0	1	1	1	1	1
Feasibility Studies:						
Estimated Authorization Level .....	0	15	0	0	0	0
Estimated Outlays .....	0	9	4	2	0	0
Total Changes:						
Estimated Authorization Level .....	0	114	99	104	131	36
Estimated Outlays .....	0	54	74	89	126	84
Calfed Bay-Delta Spending Under H.R. 2828:						
Estimated Authorization Level .....	0	114	99	104	131	36
Estimated Outlays .....	17	77	94	91	126	84

Basis of estimate: For this estimate, CBO assumes that H.R. 2828 will be enacted near the end of fiscal year 2004 and that the necessary amounts will be appropriated in each year starting in 2005. Estimates of outlays are based on historical spending patterns of similar programs and information from the Bureau of Reclamation.

*Title I—California Water Security and Environmental Enhancement Act*

Title I would authorize the appropriation of \$389 million over the 2005–2008 period specifically for the proposed environmental water account (\$90 million), stabilizing levees (\$90 million), evaluating and constructing water conveyance structures (\$184 million), and coordinating the federal portion of the Calfed Bay-Delta Program (\$25 million). H.R. 2828 would authorize the Departments of the Interior, Agriculture, and Commerce, the Environmental Protection Agency, and the Army Corps of Engineers to participate in these projects. Under this bill, the federal share of the cost of these projects would be limited to 33.3 percent of the total cost for the 2005–2008 period as outlined in the Record of Decision. Because this bill would limit the federal cost share, CBO expects that spending on these projects will be slower than historical federal spending on similar projects. CBO estimates that implementing the projects outlined in this bill would cost \$350 million over the 2005–2009 period and \$39 million after that period.

In addition, this title would authorize the Secretary of the Interior to participate in the design and construction of four water storage projects if the Congress does not disapprove the feasibility studies for those projects. Under current law, federal agencies are allowed to participate in the feasibility studies for increasing the water storage capacity at Shasta Lake, the Los Vaqueros Reservoir, the Sites Reservoir, and the Upper San Joaquin River. Under H.R. 2828, the bureau and other federal agencies would be authorized to participate in the design and construction of those four storage projects as well, assuming appropriation of the necessary funds.

For this estimate, CBO assumes that some of the pre-construction engineering and design costs for these storage projects would occur over the 2005–2009 period. CBO estimates that the design phase of the Shasta enlargement project would begin in fiscal year 2007, and the design of the other three projects would begin in fiscal year 2008. CBO expects that the design phase would last two to three years. Based on information from the Bureau of Reclama-

tion, CBO estimates that the total design costs for these four projects would cost about \$750 million. The federal share of project funding over the first three years of the Calfed Bay-Delta Program has been about 10 percent. For this estimate, CBO assumes that the federal share of design and construction costs would be \$75 million (10 percent of \$750 million), though it could be higher or lower depending on the ultimate cost allocation that is negotiated between California and federal agencies. CBO estimates that implementing the design phase of these projects would cost 457 million over the 2005–2009 period.

In addition, the bureau estimates that the total construction costs for these storage projects could range from \$2.1 billion to \$3.9 billion. Assuming a 10 percent federal cost share, CBO estimates that the federal share of these costs could range from about \$200 million to \$400 million, though such costs would depend on the ultimate cost allocation negotiated between California and federal agencies. CBO expects that construction would take place after 2010.

*Title II—Establishment of Centralized Regulatory Coordination Offices*

Title II would require the Secretary of the Interior to establish a regulatory coordination office in Sacramento, California, for use by all federal and state agencies that issue permits and prepare environmental assessments. In addition, the bill would authorize the Secretary to establish an office in any of the other 16 states covered by the Bureau of Reclamation if requested to do so by the governor of that state.

For this estimate, CBO assumes that an additional full-time equivalent employee will be hired for the existing Sacramento, California, regional office to improve regulatory coordination in the state. In addition, CBO assumes that the other 13 states that house existing bureau offices would also hire an additional full-time equivalent employee for the same purpose. CBO estimates that implementing this title would cost about \$1 million annually.

*Titles III and IV—Feasibility Studies*

Titles III and IV would require the Secretary of the Interior to conduct two feasibility studies. Under title III, the Secretary would conduct a study to determine the feasibility of constructing rural water systems. Based on information from the Bureau of Reclamation, CBO estimates that conducting this study would cost about \$200,000 in 2005. Under title IV, the Secretary would conduct a study to determine the feasibility of reclaiming the Salton Sea in California. Reclaiming the Salton Sea would be a complex undertaking from an engineering standpoint and would have wide ranging biological consequences according to the bureau. Based on information from the bureau, CBO estimates the it would cost about \$15 million over the 2005–2009 period to conduct this study.

Intergovernmental and private-sector impact: H.R. 2828 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments. The funds authorized by this bill would benefit the state of California and local governments in that state. Any spending by those governments to participate in the CALFED program would

be voluntary. The bill would limit the federal share of CALFED projects to one-third of the total cost.

Previous CBO estimate: On May 5, CBO transmitted a cost estimate for S. 1097, the Calfed Bay-Delta Authorization Act, as ordered reported by the Senate Committee on Energy and Natural Resources on April 28, 2004. The differences in the CBO cost estimates for the two bills stem from different levels of authorized funding.

Estimate prepared by: Federal Costs: Julie Middleton; Impact on State, Local, and Tribal Governments: Marjorie Miller; and Impact on the Private Sector: Selena Caldera.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON RESOURCES,  
*Washington, DC, June 17, 2004.*

Hon. DON YOUNG,  
*Chairman, Committee on Transportation and Infrastructure,  
Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: As you are aware, Chairman Ken Calvert of the Subcommittee on Water and Power has been working tirelessly to pull all the disparate parties together to produce a Calfed Bay-Delta program bill to provide water security and enhancement for the State of California. This has been a long road, but it appears that Chairman Calvert is very close to success. It also appears that the Leadership may be able to schedule H.R. 2828, the Water Supply, Reliability and Environmental Improvement Act, for Floor consideration during the week of June 21, 2004. Given the limited number of legislative days left in the House schedule this Congress and the domination of the appropriations process at the end of the session, we are anxious to take advantage of this opportunity.

I need your assistance to help schedule the bill. The Committee on Resources ordered H.R. 2828 favorable reported on May 5, 2004, and after much effort, we finally have the bill report ready to file this week. While Resources is the primary committee of jurisdiction, the bill was also referred to the Committee on Transportation and Infrastructure because of the roles that the U.S. Army Corps of Engineers and the Environmental Protection Agency play in the Calfed effort. Since reporting the bill, we have worked closely with your staff on resolving some issues, and I pledge that both I and Chairman Calvert will continue to work with you to develop any changes that might be needed in the reported text. However, I ask

that you allow the Committee on Transportation and Infrastructure to be discharged from further consideration of the bill when we file the bill report. This will allow the Resources Committee-reported text to be available to the Members and will give us a chance of making the schedule for next week.

By allowing the Committee on Transportation and Infrastructure to be discharged, the Committee would not be waiving its claim over the provisions of the bill in your jurisdiction, nor would this action serve as precedent for other similar measures. In addition, in the event that a conference is convened on H.R. 2828 or a similar Senate bill, I would support your request to have your committee represented on the conference for those matters in your jurisdiction. Finally, I would be pleased to include this letter and your response in the bill report accompanying H.R. 2828.

Thank you for your cooperation and that of Susan Bodine of your staff. It has been a pleasure to work with you all during my tenure as Chairman of the Committee on Resources.

Sincerely,

RICHARD W. POMBO,  
*Chairman.*

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,  
*Washington, DC, June 17, 2004.*

Hon. RICHARD W. POMBO,  
*Chairman, Committee on Resources,  
Longworth Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to you concerning the jurisdictional interest of the Transportation and Infrastructure Committee in matters being considered in H.R. 2828, the Water Supply, Reliability, and Environmental Improvement Act.

Our Committee recognizes the importance of H.R. 2828 and the need for the legislation to move expeditiously. I appreciate your willingness to work with me to address the Transportation Committee's concerns. Based on your assurance that you will offer a Floor amendment worked out by staff of our two Committees, I will agree to have the Transportation Committee discharged from consideration of the bill. I would appreciate it if you would include a copy of this letter and of your response in the Committee Report on the bill.

The Committee on Transportation and Infrastructure also asks that you support our request to be conferees on the provisions over which we have jurisdiction during any House-Senate conference.

Thank you for your cooperation in this matter.

Sincerely,

DON YOUNG,  
*Chairman.*

## DISSENTING VIEWS

Nearly ten years after the signing of the Bay-Delta Accord, the promise of peace in California's water wars remains largely unfulfilled. Enactment of Federal legislation to authorize implementation of the 2000 Record of Decision, and continued Federal agency participation in the CALFED Bay-Delta Program, is generally agreed to be a desirable, albeit elusive, goal.

We fully support the Committee's desire to provide a legislative framework for the continuation of the CALFED Bay-Delta Program in California. Many significant changes have been made to this bill since its introduction, and a number of contentious issues have been resolved. In addition, important language to encourage water recycling and groundwater remediation was added during Committee consideration of the bill. We sincerely appreciate the efforts of the bill's sponsors to accommodate these concerns.

Unfortunately, Title I of H.R. 2828 as reported by the Committee on Resources will not fairly implement the CALFED Bay-Delta Program, and, in its current form, will instead cause years of delay and litigation. We are concerned that these delays will frustrate agencies and stakeholders alike, and will discourage Congress from funding the program. We sincerely hope the sponsors of this legislation will not bring this legislation to the House Floor in its present form. We encourage the sponsors of H.R. 2828 to work with the Minority and CALFED stakeholders to resolve several important issues before this legislation is brought to the Floor.

## INTRODUCTION AND CONTEXT

Title I of H.R. 2828, The California Water Security and Environmental Enhancement Act, is intended primarily to reauthorize the CALFED Bay-Delta Program, a collaborative effort involving eighteen State and Federal agencies and representatives of California's urban, agricultural, and environmental communities. The goals of the program generally are to improve fish and wildlife habitat, water supply reliability, and water quality in the San Francisco Bay-San Joaquin River Delta, the principal hub of California's water distribution system. Congressional authorization for part of this program, originally granted by the 1996 California Bay-Delta Environmental Enhancement Act, expired over four years ago.

The 1996 Act authorized a total of \$430 million in Federal funds over three years (FY 1998 to FY 2000) for ecosystem restoration activities in the Bay-Delta region. From FY 1998 to FY 2000 a total of \$190 million was provided in appropriations administered by the Bureau of Reclamation and other participating Federal agencies, based on plans developed by CALFED. Other funds in support of CALFED activities and projects have been made available by the California legislature and State bond issues.

Because the Congress has not enacted authorizing legislation, Federal spending for the Bay-Delta program in recent years has been limited to activities that can be undertaken within existing statutory authorities.

The lead CALFED agencies released the Final Programmatic Environmental Impact Statement/Environmental Impact Report and Preferred Alternative on July 21, 2000. A Record of Decision (ROD) was signed by Interior Secretary Bruce Babbitt on August 28, 2000. The ROD formally approved a long-term plan for restoring the Bay-Delta ecosystem and improving water management.

*Title I. California Water Security and Environmental Enhancement Act*

Title I of H.R. 2828 as reported by the Committee on Resources is not a fair and balanced implementation of the Record of Decision. This Title includes several highly controversial provisions that go well beyond the agreements reflected in the ROD. A number of significant commitments made in the ROD are conspicuously missing from this legislation, and some fundamental CALFED and longstanding Reclamation policies would be reversed if Title I of H.R. 2828 is enacted in its present form.

All parties would prefer to see some aspect of the ROD changed. Efforts to alter its balanced program, or to steer it in ways that clearly and unfairly favor certain participants in the CALFED process at the expense of others, will discredit CALFED and jeopardize the effectiveness of this legislation.

1. *Sec. 103(b)(5)(A)* would allow the Secretary of the Interior to undertake major construction projects, including mainstem dams, without specific approval by Congress. This new procedure is without precedent and seriously erodes the prerogatives of the Congress. It is hard to imagine that Congress would agree to strip itself of the authority—well established for over a century—to authorize billion-dollar dam projects. If similar procedures were proposed, for example, to allow the Secretary of the Interior to designate new National Parks without Congressional approval, the outcry would be deafening, and rightly so.

2. *Sec. 103(b)(5)(F)*, Ecosystem Restoration, is of equal concern. By piling on new procedural steps and inventing new requirements for preparing countless new plans, reports, analyses, outlines, certifications, descriptions, determinations, identifications, conditions, and considerations, this section will frustrate, not facilitate, the construction of ecosystem restoration projects. The absurdity of the bureaucratic process created by these new requirements is apparent; their execution will delight the lawyers. This section promises decades of litigation and no restoration. This section will impose de facto new procedures on the Endangered Species Act and the Central Valley Project Improvement Act. If the authors of Title I of H.R. 2828 wish to avoid solving water problems in California, they will succeed if these draconian new provisions are enacted into law.

3. *Sec. 103(b)(5)(B)(iv)(II)* singles out wildlife refuges as significant sources of water pollution and imposes new requirements for “mandatory source controls” and “best drainage management practices.” While the Secretary of the Interior may have authority to regulate water discharges from National Wildlife Refuge lands

owned by the federal government, it is questionable that this authority extends to privately-owned wetlands and water districts.

A January, 2002 report of the Regional Water Quality Control Board<sup>1</sup> acknowledges that “Discharges from managed wetlands also contribute to the LSJR [Lower San Joaquin River’s] salt and boron load.” Specifically, the report states, “Wetland discharges account for at least nine percent of the mean annual LSJR salt load”. However, this same report also states (page 47), “agricultural discharges contribute most of the salt” to the Lower San Joaquin River, accounting for 43 percent of the total salt load of the Lower San Joaquin River (Table 3–5).

A significant cause of the salt loading in the Lower San Joaquin River is the relatively poor quality of imported Central Valley Project (CVP) water supplies. According to the Regional Board’s report (page 79), “almost half of the LSJR’s total annual salt load is imported to the LSJR watershed via the CVP.” As this poor quality water is delivered by the CVP and put to use on farms and managed wetlands, it is essentially recirculated back into the Lower San Joaquin River, further exacerbating the salt balance problems in the area.

Salt loads and other water quality problems in Delta receiving waters are complex and originate from many different sources, including groundwater, irrigated agriculture, and managed wetlands. These matters are properly within the jurisdiction of the State of California (California Environmental Protection Agency, Central Valley Regional Water Quality Control Board). Using CALFED legislation to impose new water quality regulatory requirements on one category of CVP water users is totally without scientific basis and lies far beyond the jurisdiction of the Committee on Resources.

We encourage the sponsors of H.R. 2828 to work with local stakeholders, property owners, and the Regional Water Quality Control Board staff to revise or strike the language of Sec. 103(b)(5)(B)(iv)(II) before the bill is brought to the House Floor. As currently drafted, this language represents a dangerous regulatory assault on the rights of private property owners of wildlife refuge lands.

4. *Sec. 103(b)(5)(J), Diversification of Water Supplies.* We urge the sponsors of H.R. 2828 to revise this language to recognize the importance of acquiring Level 4 water supplies for refuges. The language of S. 1097, as amended (Sec. 3(b)(3)(J)), is suggested as a very reasonable solution:

*(J) DIVERSIFICATION OF WATER SUPPLIES.—Activities under this subparagraph consist of actions to—*  
*(i) diversify sources of level 2 refuge supplies and modes of delivery to refuges; and*  
*(ii) acquire additional water for level 4 refuge supplies.*

We understand that some parties maybe concerned that acquisition of Level 4 refuge water supplies would adversely impact their access to Central Valley Project supplies. We note that, in addition to requiring deliveries of Level 4 water to refuges, the Central Val-

<sup>1</sup> Regional Water Quality Control Board, Central Valley Region, 2002. Total Maximum Daily Load For Salinity and Boron in the Lower San Joaquin River.

ley Project Improvement Act (P.L. 102-575) specifically provides in Sec. 3406(d)(2) that moving to Level 4 deliveries shall be “*through voluntary measures which include water conservation, conjunctive use, purchase, lease, donations, or similar activities, or a combination of such activities which do not require involuntary reallocations of project yield.*”

5. *Sec. 103(b)(7)(B)*, Environmental Water Account. This provision requires Federal taxpayers to pay all the costs of the Environmental Water Account, with no contribution from the State of California, water users, or anybody else. In addition, this provision changes the definition and purpose of the Environmental Water Account by including water quality. Both provisions are in direct conflict with the Record of Decision. Again, the simple authorization language from S. 1097, as amended (Sec. 3(b)(5)(B)), would resolve this controversy:

*(B) ENVIRONMENTAL WATER ACCOUNT.—Of the amounts authorized to be appropriated under section 8, not more than \$90,000,000 may be expended for implementation of the Environmental Water Account.*

NICK J. RAHALL.  
 GEORGE MILLER.  
 EDWARD J. MARKEY.  
 DALE E. KILDEE.  
 FRANK PALLONE, Jr.  
 MARK UDALL.  
 RAUL M. GRIJALVA.  
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