

SACRAMENTO-SAN JOAQUIN VALLEY WATER  
RELIABILITY ACT

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FEBRUARY 27, 2012.—Committed to the Committee of the Whole House on the State  
of the Union and ordered to be printed

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Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1837]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 1837) to address certain water-related concerns on the San Joaquin River, and for other purposes, 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:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the “Sacramento-San Joaquin Valley Water Reliability Act”.

**SEC. 2. TABLE OF CONTENTS.**

Sec. 1. Short title.  
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**TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY**

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

Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—

- (1) in subsection (f), by striking the period at the end; and
- (2) by adding at the end the following:  
 “(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2016, at the lowest cost reasonably achievable; and  
 “(h) to facilitate and expedite water transfers in accordance with this Act.”.

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

Section 3403 of the Central Valley Project Improvement Act (106 Stat. 4707) is amended—

- (1) by amending subsection (a) to read as follows:  
 “(a) the term ‘anadromous fish’ means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean;”;
- (2) in subsection (l), by striking “and;”
- (3) in subsection (m), by striking the period and inserting “; and”, and
- (4) by adding at the end the following:  
 “(n) the term ‘reasonable flows’ means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.”.

**SEC. 103. CONTRACTS.**

Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4708) is amended—

- (1) in the heading, by striking “**LIMITATION ON CONTRACTING AND CONTRACTS REFORM**” and inserting “**CONTRACTS**”; and
- (2) by striking the language of the section and by adding:  
 “(a) **RENEWAL OF EXISTING LONG-TERM CONTRACTS.**—Upon request of the contractor, the Secretary shall renew any existing long-term repayment or water service contract that provides for the delivery of water from the Central Valley Project for a period of 40 years, and renew such contracts for successive periods of 40 years each.  
 “(b) **DELIVERY CHARGE.**—Beginning on the date of the enactment of this Act, a contract entered into or renewed pursuant to this section shall include a provision that requires the Secretary to charge the other party to such contract only for water actually delivered by the Secretary.”.

**SEC. 104. WATER TRANSFERS, IMPROVED WATER MANAGEMENT, AND CONSERVATION.**

Section 3405 of the Central Valley Project Improvement Act (106 Stat. 4709) is amended as follows:

- (1) In subsection (a)—

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

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

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

“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of such proposal. If such district or agency or the Secretary determines that such proposal is incomplete, such district or agency or the Secretary shall state with specificity what must be added to or revised in order for such proposal to be complete.

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

(D) by adding at the end the following:

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

“(A) the authority to make transfers or exchanges of, or banking or recharge arrangements using, Central Valley Project water that could have been conducted before October 30, 1992, is valid, and such transfers, exchanges, or arrangements shall not be subject to, limited, or conditioned by this title; and

“(B) this title shall not supersede or revoke the authority to transfer, exchange, bank, or recharge Central Valley Project water that existed prior to October 30, 1992.”.

(2) In subsection (b)—

(A) in the heading, by striking “METERING” and inserting “MEASUREMENT”; and

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

(3) By striking subsection (d).

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

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

(A) by striking “as a result of the increased repayment” and inserting “that exceed the cost-of-service”;

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

(C) by striking “, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section,”.

#### SEC. 105. FISH, WILDLIFE, AND HABITAT RESTORATION.

Section 3406 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended as follows:

(1) In subsection (b)—

(A) in paragraph (1)(B)—

(i) by striking “is authorized and directed to” and inserting “may”;

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

(iii) by striking “anadromous fish, except that such” and inserting “anadromous fish. Such”;

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

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

(vi) by striking “California Department of Fish and Game” and inserting “United States Geological Survey”;

(B) in paragraph (2)—

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

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

and

(iii) by adding after the period the following: “All Central Valley Project water used for the purposes specified in this paragraph shall be credited to the quantity of Central Valley Project yield dedicated and managed under this paragraph by determining how the dedication and management of such water would affect the delivery capability of the Central Valley Project during the 1928 to 1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, have been met. To the fullest extent possible and in accordance with section 3411, Central Valley Project water dedicated and managed pursuant to this paragraph shall be reused to fulfill the Secretary’s remaining contractual obligations to provide Central Valley Project water for agricultural or municipal and industrial purposes.”;

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

“(C) If by March 15th of any year the quantity of Central Valley Project water forecasted to be made available to water service or repayment contractors in the Delta Division of the Central Valley Project is below 75 percent of the total quantity of water to be made available under said contracts, the quantity of Central Valley Project yield dedicated and managed for that year under this paragraph shall be reduced by 25 percent.”.

(2) By adding at the end the following:

“(i) SATISFACTION OF PURPOSES.—By pursuing the activities described in this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of this title.”.

**SEC. 106. RESTORATION FUND.**

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

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

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

(3) By adding at the end the following:

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

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

“(i) providing for the storage or conveyance of non-Central Valley Project water pursuant to Federal reclamation laws; or

“(ii) the delivery of water pursuant to section 215 of the Reclamation Reform Act of 1982 (Public Law 97–293; 96 Stat. 1270); or

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

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

(1) by striking “mitigation and restoration”;

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

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

(c) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—Section 3407(d)(2) of the Central Valley Project Improvement Act is amended by inserting “, or after October 1, 2013, \$4 per megawatt-hour for Central Valley Project power sold to power contractors (October 2013 price levels)” after “\$12.00 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project”.

(d) COMPLETION OF ACTIONS.—Section 3407(d)(2)(A) of the Central Valley Project Improvement Act is amended by inserting “, no later than December 31, 2020,” after “That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title.”.

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

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

“(h) ADVISORY BOARD.—

“(1) ESTABLISHMENT.—There is hereby established the Restoration Fund Advisory Board (hereinafter in this section referred to as the ‘Advisory Board’) composed of 12 members selected by the Secretary, each for four-year terms, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent the various Central Valley Project stakeholders, four of whom shall be from CVP agricultural users, three from CVP municipal and industrial users, three from CVP power contractors, and two at the discretion of the Secretary. The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

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

“(A) To meet at least semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to the Central Valley Project Improvement Act.

“(B) To ensure that any advice or recommendation made by the Advisory Board to the Secretary reflect the independent judgment of the Advisory Board.

“(C) Not later than December 31, 2013, and annually thereafter, to transmit to the Secretary and Congress recommendations required under subparagraph (A).

“(D) Not later than December 31, 2013, and biennially thereafter, to transmit to Congress a report that details the progress made in achieving the actions mandated under section 3406 of this title.

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

**SEC. 107. ADDITIONAL AUTHORITIES.**

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

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

“(1) **IN GENERAL.**—The Secretary is authorized to enter into contracts pursuant to Federal reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private organization for the exchange, impoundment, storage, carriage, and delivery of nonproject water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose.

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

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

“(4) **RATES.**—The Secretary shall develop rates not to exceed the amount required to recover the reasonable costs incurred by the Secretary in connection with a beneficial purpose under this subsection. Such rates shall be charged to a party using Central Valley Project facilities for such purpose. Such costs shall not include any donation or other payment to the Restoration Fund.

“(5) **CONSTRUCTION.**—This subsection shall be construed and implemented to facilitate and encourage the use of Central Valley Project facilities to exchange, impound, store, carry, or deliver nonproject water for any beneficial purpose.”.

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

(1) by striking “Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries” and inserting “Natural Resources”;

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

(3) by adding at the end the following: “The filing and adequacy of such report shall be personally certified to the Committees referenced above by the Regional Director of the Mid-Pacific Region of the Bureau of Reclamation.”.

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

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

(2) By striking “In order to minimize adverse effects, if any, upon” and inserting “(1) **IN GENERAL.**—In order to minimize adverse effects upon”.

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

(4) By striking “increase,” and all that follows through “options—” and inserting “increase, as soon as possible but not later than September 30, 2016 (except for the construction of new facilities which shall not be limited by that deadline), the water of the Central Valley Project by the amount dedicated and managed for fish and wildlife purposes under this title and otherwise required to meet the purposes of the Central Valley Project including satisfying contractual obligations. The plan required by this subsection shall include recommendations on appropriate cost-sharing arrangements and authorizing legislation or other measures needed to implement the intent, purposes, and provisions of this subsection and a description of how the Secretary intends to use the following options—”.

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

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

(7) In subparagraph (G), by striking the period and all that follows through the end of the subsection and inserting “, and”.

(8) By inserting after subparagraph (G) the following:

“(H) Water banking and recharge.”.

(9) By adding at the end the following:

“(2) IMPLEMENTATION OF PLAN.—The Secretary shall implement the plan required by paragraph (1) commencing on October 1, 2013. In order to carry out this subsection, the Secretary shall coordinate with the State of California in implementing measures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.

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

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

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

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

(e) WATER STORAGE PROJECT CONSTRUCTION.—The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability, and Environmental Improvement Act (Public Law 108–361)(and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance these projects. No Federal funds are authorized for this purpose and each water storage project is authorized for construction if non-Federal funds are used for financing and constructing the project.

#### SEC. 108. BAY-DELTA ACCORD.

(a) CONGRESSIONAL DIRECTION REGARDING CENTRAL VALLEY PROJECT AND CALIFORNIA STATE WATER PROJECT OPERATIONS.—The Central Valley Project and the State Water Project shall be operated pursuant to the water quality standards and operational constraints described in the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” dated December 15, 1994, and such operations shall proceed without regard to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other law pertaining to the operation of the Central Valley Project and the California State Water Project. Implementation of this section shall be in strict conformance with the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” dated December 15, 1994.

(b) APPLICATION OF LAWS TO OTHERS.—Neither a Federal department nor the State of California, including any agency or board of the State of California, shall impose on any valid water right obtained pursuant to State law, including a pre-1914 appropriative right, any condition that restricts the exercise of that water right in order to conserve, enhance, recover or otherwise protect any species that is affected by operations of the Central Valley Project or California State Water Project. Nor shall the State of California, including any agency or board of the State of California, restrict the exercise of any valid water right obtained pursuant to State law, including a pre-1914 appropriative right, in order to protect, enhance, or restore under the Public Trust Doctrine any public trust value. Implementation of the “Principles for Agreement on the Bay-Delta Standards Between the State of Cali-

fornia and the Federal Government” dated December 15, 1994, shall be in strict compliance with the water rights priority system and statutory protections for areas of origin.

(c) COSTS.—No cost associated with the implementation of this section shall be imposed directly or indirectly on any Central Valley Project contractor, or any other person or entity, unless such costs are incurred on a voluntary basis.

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

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

After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous fish species present in the Sacramento and San Joaquin Rivers or their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.

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

The authorized service area of the Central Valley Project shall include the area within the boundaries of the Kettleman City Community Services District, California, as those boundaries exist on the date of the enactment of this title. Notwithstanding the provisions of the Act of October 30, 1992 (Public Law 102–575, 106 Stat. 4600 et seq.), upon enactment of this title, the Secretary is authorized and directed to enter into a long-term contract in accordance with the reclamation laws with the Kettleman City Community Services District, California, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use. The Secretary may temporarily reduce deliveries of the quantity of water made available pursuant to up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water. If any additional infrastructure or related-costs are needed to implement this section, such costs shall be the responsibility of the non-Federal entity.

**SEC. 111. REGULATORY STREAMLINING.**

(a) APPLICABILITY OF CERTAIN LAWS.—Filing of a Notice of Determination or a Notice of Exemption for any project, including the issuance of a permit under State law, related to any project of the CVP or the delivery of water therefrom in accordance with the California Environmental Quality Act shall be deemed to meet the requirements of section 102(2)(C) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)) for that project or permit.

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

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

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

(2) PROJECT.—The term “project”—

(A) means an activity that—

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

(ii) has a potential to result in physical change to the environment; and

(iii) may be subject to several discretionary approvals by governmental agencies;

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

(C) as defined under the California Environmental Quality Act in section 21065 of the California Public Resource Code.

## **TITLE II—SAN JOAQUIN RIVER RESTORATION**

**SEC. 201. REPEAL OF THE SAN JOAQUIN RIVER SETTLEMENT.**

As of the date of enactment of this title, the Secretary shall cease any action to implement the Stipulation of Settlement (*Natural Resources Defense Council, et al.*

v. *Kirk Rodgers, et al.*, Eastern District of California, No. Civ. S–88–1658 LKK/GGH).

**SEC. 202. PURPOSE.**

Section 10002 of the San Joaquin River Restoration Settlement Act (Public Law 111–11) is amended by striking “implementation of the Settlement” and inserting “restoration of the San Joaquin River”.

**SEC. 203. DEFINITIONS.**

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

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

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

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

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

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

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

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

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

(1) in subsection (a)—

(A) in the matter preceding paragraph (1), by striking “authorized and directed” and all that follows through “in the Settlement” and inserting “authorized to carry out the following:”;

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

(C) in paragraph (3)—

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

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

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

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

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

“(B) shall ensure that the release of Restoration Flows are maintained at the level prescribed by this part, but that Restoration Flows do not reach downstream of Mendota Pool;

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

“(D) may, without limiting the actions required under paragraphs (A) and (C) and subject to subsections 10004(a)(3) and 10004(l), use the Restoration Flows to enhance or restore a warm water fishery downstream of Gravelly Ford to and including Mendota Pool, if the Secretary determines that it is reasonable, prudent, and feasible to do so; and

“(3) Not later than 1 year after the date of the enactment of this section, the Secretary shall develop and implement, in cooperation with the State of California, a reasonable plan, to fully recirculate, recapture, reuse, exchange, or transfer all Restoration Flows and provide such recirculated, recaptured, reused, exchanged, or transferred flows to those contractors within the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project that relinquished the Restoration Flows so recirculated, recaptured, reused, exchanged, or transferred. Such a plan shall address any impact on ground water resources within the service area of the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project and mitigation may include ground water banking and recharge projects. Such a plan shall not impact the water supply or water rights of any entity outside the Friant Division, Hidden unit, and Buchanan Unit of the Central Valley Project. Such a plan shall be subject to applicable provisions of California water law and the Secretary’s use of Central Valley Project facilities to make Project water (other than water released from Friant Dam pursuant to this part) and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors.”;

- (2) in subsection (b)—
- (A) in paragraph (1), by striking “the Settlement” and inserting “this part”;
  - (B) in paragraph (2), by striking “the Settlement” and inserting “this part”;
- (3) in subsection (c), by striking “the Settlement” and inserting “this part”;
- (4) by striking subsection (d) and inserting the following:
- “(d) MITIGATION OF IMPACTS.—Prior to October 1, 2013, the Secretary shall identify—
- “(1) the impacts associated with the release of Restoration Flows prescribed in this part;
  - “(2) the measures which shall be implemented to mitigate impacts on adjacent and downstream water users, landowners and agencies as a result of Restoration Flows prescribed in this part; and
  - “(3) prior to the implementation of decisions or agreements to construct, improve, operate, or maintain facilities that the Secretary determines are needed to implement this part, the Secretary shall implement all mitigations measures identified in subsection (d)(2) before Restoration Flows are commenced.”;
  - (5) in subsection (e), by striking “the Settlement” and inserting “this part”;
  - (6) in subsection (f), by striking “the Settlement” and all that follows through “section 10011” and insert “this part”;
  - (7) in subsection (g)—
    - (A) by striking “the Settlement and” before this part; and
    - (B) by striking “or exchange contract” and inserting “exchange contract, or water rights settlement or holding contracts”;
  - (8) in subsection (h)—
    - (A) by striking “INTERIM” in the header;
    - (B) in paragraph (1)—
      - (i) in the matter preceding subparagraph (A), by striking “Interim Flows under the Settlement” and inserting “Restoration Flows under this part”;
      - (ii) in subparagraph (C)—
        - (I) in clause (i), by striking “Interim” and inserting “Restoration”;
        - and
        - (II) in clause (ii), by inserting “and” after the semicolon;
      - (iii) in subparagraph (D), by striking “and” at the end; and
      - (iv) by striking subparagraph (E);
    - (C) in paragraph (2)—
      - (i) by striking “Interim” and inserting “Restoration”;
      - (ii) by striking subparagraph (A); and
      - (iii) by striking “(B) exceed” and inserting “exceed”;
    - (D) in paragraph (3), by striking “Interim” and inserting “Restoration”;
    - and
    - (E) by striking paragraph (4) and inserting the following:
- “(4) CLAIMS.—Within 60 days of enactment of this Act the Secretary shall promulgate a rule establishing a claims process to address current and future claims including, but not limited to, ground water seepage, flooding, or levee instability damages caused as a result of, arising out of, or related to implementation of subtitle A of title X of Public Law 111–11.”;
- (9) in subsection (i)—
- (A) in paragraph (1)—
    - (i) in the matter preceding subparagraph (A), by striking “the Settlement and parts I and III” and inserting “this part”;
    - (ii) in subparagraph (A), by inserting “and” after the semicolon;
    - (iii) in subparagraph (B)—
      - (I) by striking “additional amounts authorized to be appropriated, including the”;
      - (II) by striking “; and” and inserting a period; and
    - (iv) by striking subparagraph (C); and
  - (B) by striking paragraph (3); and
- (10) by adding at the end the following new subsections:
- “(k) NO IMPACTS ON OTHER INTERESTS.—No Central Valley Project or other water other than San Joaquin River water impounded by or bypassed from Friant Dam shall be used to implement subsection (a)(2) unless such use is on a voluntary basis. No cost associated with the implementation of this section shall be imposed directly or indirectly on any Central Valley Project contractor, or any other person or entity, outside the Friant Division, the Hidden Unit, or the Buchanan Unit, unless such costs are incurred on a voluntary basis. The implementation of this part shall not result directly or indirectly in any reduction in water supplies or water reliability

on any Central Valley Project contractor, any State Water Project contractor, or any other person or entity, outside the Friant Division, the Hidden Unit, or the Buchanan Unit, unless such reductions or costs are incurred on a voluntary basis.

“(l) PRIORITY.—All actions taken under this part shall be subordinate to the Secretary’s use of Central Valley Project facilities to make Project water available to Project contractors, other than water released from the Friant Dam pursuant to this part.

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

“(n) PROJECT IMPLEMENTATION.—Projects to implement this title shall be phased such that each project shall follow the sequencing identified below and include at least the—

- “(1) project purpose and need;
- “(2) identification of mitigation measures;
- “(3) appropriate environmental review; and
- “(4) prior to releasing Restoration Flows under this part, the Secretary shall—
  - “(A) complete the implementation of mitigation measures required; and
  - “(B) complete implementation of the project.”.

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

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

- (1) in subsection (a), by striking “the Settlement authorized by this part” and inserting “this part”;
- (2) in subsection (b)—
  - (A) in paragraph (1)—
    - (i) by striking “(1) IN GENERAL.—The Secretary” and inserting “The Secretary”; and
    - (ii) by striking “the Settlement authorized by this part” and inserting “this part”; and
  - (B) by striking paragraph (2); and
- (3) in subsection (c)—
  - (A) in paragraph (1), by striking “the Settlement” and inserting “this part”;
  - (B) in paragraph (2)—
    - (i) by striking “through the exercise of its eminent domain authority”; and
    - (ii) by striking “the Settlement” and inserting “this part”; and
  - (C) in paragraph (3), by striking “section 10009(c)” and inserting “section 10009”.

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

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

- (1) in subsection (a)—
  - (A) in paragraph (1), by inserting “unless otherwise provided by this part” before the period at the end; and
  - (B) in paragraph (2), by striking “the Settlement” and inserting “this part”;
- (2) in subsection (b), by inserting “, unless otherwise provided by this part” before the period at the end;
- (3) in subsection (c)—
  - (A) in paragraph (2), by striking “section 10004” and inserting “this part”; and
  - (B) in paragraph (3), by striking “the Settlement” and inserting “this part”; and
- (4) in subsection (d)—
  - (A) by inserting “, including without limitation to sections 10004(d) and 10004(h)(4) of this part,” after “implementing this part”; and
  - (B) by striking “for implementation of the Settlement”.

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

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

- (1) in the matter preceding paragraph (1),
  - (A) by striking “the Settlement” and inserting “enactment of this part”;
  - and
  - (B) by inserting: “and the obligations of the Secretary and all other parties to protect and keep in good condition any fish that may be planted or exist below Friant Dam including any obligations under section 5937 of the California Fish and Game Code and the public trust doctrine, and those of the Secretary and all other parties under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)” before “, provided”; and
- (2) in paragraph (1), by striking “, as provided in the Settlement”.

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

Section 10008(a) of the San Joaquin River Restoration Settlement Act (Public Law 111-11) is amended—

- (1) by striking “not a party to the Settlement” after “person or entity” ; and
- (2) by striking “or the Settlement” before the period and inserting “unless otherwise provided by this part. Any Central Valley Project long-term water service or repayment contractor within the Friant Division, Hidden unit, or Buchanan Unit adversely affected by the Secretary’s failure to comply with section 10004(a)(3) of this part may bring an action against the Secretary for injunctive relief or damages, or both.”.

**SEC. 209. IMPLEMENTATION.**

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

- (1) in the header by striking “; SETTLEMENT FUND”;
- (2) in subsection (a)—
  - (A) in paragraph (1)—
    - (i) by striking “the Settlement” and inserting “this part”;
    - (ii) by striking “, estimated to total” and all that follows through “subsection (b)(1),”; and
    - (iii) by striking “, provided; however,” and all that follows through “\$110,000,000 of State funds”;
  - (B) in paragraph (2)—
    - (i) in subparagraph (A), by striking “(A) IN GENERAL.—The Secretary” and inserting “The Secretary”;
    - (ii) by striking subparagraph (B); and
  - (C) in paragraph (3)—
    - (i) by striking “Except as provided in the Settlement, to” and inserting “To”; and
    - (ii) by striking “this Settlement” and inserting “this part”;
- (3) in subsection (b)(1)—
  - (A) by striking “In addition” through “however, that the” and inserting “The”;
  - (B) by striking “such additional appropriations only in amounts equal to”;
  - and
  - (C) by striking “or the Settlement” before the period;
- (4) in subsection (c)—
  - (A) in paragraph (1)—
    - (i) in the matter preceding subparagraph (A), by striking “the Settlement” and inserting “this part”;
    - (ii) in subparagraph (C), by striking “from the sale of water pursuant to the Settlement, or”; and
    - (iii) in subparagraph (D), by striking “the Settlement” and inserting “this part”;
  - (B) in paragraph (2), by striking “the Settlement and” before “this part”;
  - and
  - (5) by striking subsections (d) through (f).

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

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

- (1) in subsection (a)—
  - (A) in paragraph (3)(D), by striking “the Settlement and” after “this part”;
  - and
  - (B) in paragraph (4)(C), by striking “the Settlement and” after “this part”;

- (2) in subsection (c), by striking paragraph (3);
- (3) in subsection (d)(1), by striking “the Settlement” in both places it appears and inserting “this part”;
- (4) in subsection (e)—
  - (A) in paragraph (1)—
    - (i) by striking “Interim Flows or Restoration Flows, pursuant to paragraphs 13 or 15 of the Settlement” and inserting “Restoration Flows, pursuant to this part”;
    - (ii) by striking “Interim Flows or” before “Restoration Flows”; and
    - (iii) by striking “the Interim Flows or Restoration Flows or is intended to otherwise facilitate the Water Management Goal, as described in the Settlement” and inserting “Restoration Flows”; and
  - (B) in paragraph (2)—
    - (i) by striking “except as provided in paragraph 16(b) of the Settlement” after “Friant Division long-term contractor”; and
    - (ii) by striking “the Interim Flows or Restoration Flows or to facilitate the Water Management Goal” and inserting “Restoration Flows”.

**SEC. 211. REPEAL.**

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

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

Section 10202(b) of the San Joaquin River Restoration Settlement Act (Public Law 111–11) is amended—

- (1) in paragraph (1), by striking “the Interim or Restoration Flows authorized in part I of this subtitle” and inserting “Restoration Flows authorized in this part”;
- (2) in paragraph (2), by striking “the Interim or Restoration Flows authorized in part I of this subtitle” and inserting “Restoration Flows authorized in this part”; and
- (3) in paragraph (3)—
  - (A) in subparagraph (A), by striking “meet the Restoration Goal as described in part I of this subtitle” and inserting “recover Restoration Flows as described in this part”;
  - (B) in subparagraph (C)—
    - (i) by striking “the Interim or Restoration Flows authorized in part I of this subtitle” and inserting “Restoration Flows authorized in this part”; and
    - (ii) by striking “, and for ensuring appropriate adjustment in the recovered water account pursuant to section 10004(a)(5)”.

**SEC. 213. ADDITIONAL AUTHORITIES.**

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

- (1) in subsection (b)—
  - (A) by striking “section 10004(a)(4)” and inserting “section 10004(a)(3)”;
  - and
  - (B) by striking “, provided” and all that follows through “section 10009(f)(2)”;
- (2) by striking subsection (c).

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

**SEC. 301. REPAYMENT CONTRACTS AND ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS.****(a) CONVERSION OF CONTRACTS.—**

(1) Not later than 1 year after enactment, the Secretary of the Interior, upon request of the contractor, shall convert all existing long-term Central Valley Project contracts entered under subsection (e) of section 9 of the Act of August 4, 1939 (53 Stat. 1196), to a contract under subsection (d) of section 9 of said Act (53 Stat. 1195), under mutually agreeable terms and conditions.

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

(3) All contracts entered into pursuant to paragraph (1) shall—

(A) require the repayment, either in lump sum or by accelerated prepayment, of the remaining amount of construction costs identified in the most current version of the Central Valley Project Schedule of Irrigation Capital Allocations by Contractor, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor, no later than January 31, 2013, or if made in approximately equal annual installments, no later than January 31, 2016; such amount to be discounted by the Treasury Rate. An estimate of the remaining amount of construction costs as of January 31, 2013, as adjusted, shall be provided by the Secretary of the Interior to each contractor no later than 180 days after enactment;

(B) require that, notwithstanding subsection (c)(2), construction costs or other capitalized costs incurred after the effective date of the converted contract or not reflected in the schedule referenced in subparagraph (A), and properly assignable to such contractor, shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversions under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law, provided that the reference to the amount of \$5,000,000 shall not be a precedent in any other context; and

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

(4) All contracts entered into pursuant to paragraph (2) shall—

(A) require the repayment in lump sum of the remaining amount of construction costs identified in the most current version of the Central Valley Project Schedule of Municipal and Industrial Water Rates, as adjusted to reflect payments not reflected in such schedule, and properly assignable for ultimate return by the contractor, no later than January 31, 2016. An estimate of the remaining amount of construction costs as of January 31, 2016, as adjusted, shall be provided by the Secretary of the Interior to each contractor no later than 180 days after enactment; and

(B) require that, notwithstanding subsection (c)(2), construction costs or other capitalized costs incurred after the effective date of the contract or not reflected in the schedule referenced in subparagraph (A), and properly assignable to such contractor, shall be repaid in not more than 5 years after notification of the allocation if such amount is a result of a collective annual allocation of capital costs to the contractors exercising contract conversions under this subsection of less than \$5,000,000. If such amount is \$5,000,000 or greater, such cost shall be repaid as provided by applicable reclamation law, provided that the reference to the amount of \$5,000,000 shall not be a precedent in any other context.

(b) FINAL ADJUSTMENT.—The amounts paid pursuant to subsection (a) shall be subject to adjustment following a final cost allocation by the Secretary of the Interior upon completion of the construction of the Central Valley Project. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are greater than what has been paid by the contractor, the contractor shall be obligated to pay the remaining allocated costs. The term of such additional repayment contract shall be no less than 1 year and no more than 10 years, however, mutually agreeable provisions regarding the rate of repayment of such amount may be developed by the parties. In the event that the final cost allocation indicates that the costs properly assignable to the contractor are less than what the contractor has paid, the Secretary of the Interior is authorized and directed to credit such overpayment as an offset against any outstanding or future obligation of the contractor.

(c) APPLICABILITY OF CERTAIN PROVISIONS.—

(1) Notwithstanding any repayment obligation under subsection (a)(3)(B) or subsection (b), upon a contractor's compliance with and discharge of the obligation of repayment of the construction costs as provided in subsection (a)(3)(A), the ownership and full-cost pricing limitations of any provision of Federal reclamation law shall not apply to lands in such district.

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

(d) **CERTAIN REPAYMENT OBLIGATIONS NOT ALTERED.**—Implementation of the provisions of this section shall not alter the repayment obligation of any other long-term water service or repayment contractor receiving water from the Central Valley Project, or shift any costs that would otherwise have been properly assignable to any contractors absent this section, including operations and maintenance costs, construction costs, or other capitalized costs incurred after the date of enactment of this Act, to other such contractors.

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

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

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

### **SEC. 401. WATER RIGHTS AND AREA-OF-ORIGIN PROTECTIONS.**

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

(1) the Secretary of the Interior (“Secretary”) is directed, in the operation of the Central Valley Project, to strictly adhere to State water rights law governing water rights priorities by honoring water rights senior to those belonging to the Central Valley Project, regardless of the source of priority;

(2) the Secretary is directed, in the operation of the Central Valley Project, to strictly adhere to and honor water rights and other priorities that are obtained or exist pursuant to the provisions of California Water Code sections 10505, 10505.5, 11128, 11460, and 11463; and sections 12200 to 12220, inclusive; and

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

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

In the implementation of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), in the Bay-Delta and on the Sacramento River, the Secretary and the Secretary of Commerce are directed to apply any limitations on the operation of the Central Valley Project or to formulate any “reasonable prudent alternative” associated with the operation of the Central Valley Project in a manner that strictly adheres to and applies the water rights priorities for “Project Water” and “Base Supply” provided for in the Sacramento River Settlement Contracts. Article 3(i) of the Sacramento River Settlement Contracts shall not be utilized by the United States as means to provide shortages to the Sacramento River Settlement Contracts that are different than those provided for in Article 5(a) of those contracts.

### **SEC. 403. SACRAMENTO RIVER WATERSHED WATER SERVICE CONTRACTORS.**

(a) **IN GENERAL.**—Subject to subsection (b) and the absolute priority of the Sacramento River Settlement Contractors to Sacramento River supplies over Central Valley Project diversions and deliveries to other contractors, the Secretary is directed, in the operation of the Central Valley Project, to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in compliance with the following:

- (1) Not less than 100% of their contract quantities in a “Wet” year.
- (2) Not less than 100% of their contract quantities in an “Above Normal” year.
- (3) Not less than 100% of their contract quantities in a “Below Normal” year.
- (4) Not less than 75% of their contract quantities in a “Dry” year.
- (5) Not less than 50% of their contract quantities in a “Critically Dry” year.

(b) **PROTECTION OF MUNICIPAL AND INDUSTRIAL SUPPLIES.**—Nothing in subsection (a) shall be deemed to (i) modify any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary, (ii) affect or limit the authority of the Secretary to adopt or modify municipal and industrial water shortage policies, (iii) affect or limit the authority of the Secretary to implement municipal and industrial water shortage policies, or (iv) affect allocations to Central Valley Project municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary’s implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the Central

Valley Project's American River Division or any deliveries from that Division, its units or its facilities.

(c) DEFINITIONS.—In this section:

(1) The term “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” means water service contractors within the Shasta, Trinity, and Sacramento River Divisions of the Central Valley Project, that have a water service contract in effect, on the date of the enactment of this section, that provides water for irrigation.

(2) The year type terms used in subsection (a) have the meaning given those year types in the Sacramento Valley Water Year Type (40–30–30) Index.

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

The Secretary shall insure that there are no redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed or to the State Water Project arising from the Secretary's operation of the Central Valley Project to meet legal obligations imposed by or through any State or Federal agency, including, but not limited to those legal obligations emanating from the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or this Act, or actions or activities implemented to meet the twin goals of improving water supply or addressing environmental needs of the Bay Delta.

## **TITLE V—MISCELLANEOUS**

**SEC. 501. PRECEDENT.**

Congress finds and declares that—

(1) coordinated operations between the Central Valley Project and the State Water Project, previously requested and consented to by the State of California and the Federal Government, require assertion of Federal supremacy to protect existing water rights throughout the system; and

(2) these circumstances are unique to California.

Therefore, nothing in this Act shall serve as precedent in any other State.

### **PURPOSE OF THE BILL**

The purpose of H.R. 1837, as ordered reported, is to address certain water-related concerns on the San Joaquin River.

### **BACKGROUND AND NEED FOR LEGISLATION**

H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act, eliminates future man-made droughts in California caused by a number of federal laws and regulations and past Congressional inaction. As amended, the bill not only provides water supply certainty and water rights protections to those in the Sacramento and San Joaquin Valleys of California, but will also preserve and create thousands of jobs at no taxpayer expense, expedite revenue to the U.S. Treasury, and decrease reliance on foreign food sources.

California's water supply system was once legendary, transforming desert into some of the most productive farmland in the world and fueling rapid growth in the southern part of the State. Now, however, the system has been compromised due to environmental lawsuits, age and lack of new facilities. The current California water storage and delivery system is designed to serve 22 million people, yet the State has 37 million residents and the population is expected to nearly double by 2050. This legislation seeks to help remedy that situation by restoring water supply balance.

California has experienced drought twelve times since 1850 according to hydrologic records. These drought periods and the need to provide water to a rapidly growing population and farms led to an innovative and complex water storage and delivery system designed by the federal and state governments. The Central Valley Project (CVP) is a federal multi-purpose system of reservoirs and canals that collects and delivers waters from northern California

and the Sierra Nevada mountains. In normal water years, the CVP can deliver a total of seven million acre feet (one acre foot is about 326,000 gallons, or enough water for two families for a year) of water. Most water is used to irrigate over three million acres of farmland while about 15 percent of the water is used to serve over two million urban and industrial customers. The State Water Project (SWP) serves similar purposes, providing supplemental water to approximately 25 million Californians and about 750,000 acres of irrigated farmland. The CVP and SWP, which are operated as one integrated unit under the terms of Public Law 99-546, have helped create a massive agricultural economy that supplies the nation with the majority of our vegetables, fruits and nuts.

Water from both the CVP and SWP delivered to southern portions of the State is conveyed through the Sacramento/San Joaquin Bay-Delta through two massive pump systems near Tracy, California. Since northern California contains over two-thirds of the water resources and southern California has two-thirds of the human population and needs irrigation water, these two projects deliver water to over 27 million humans south of the Delta pumps and around the San Francisco Bay area. The westside of the San Joaquin Valley, which is south of the pumps, is a prime recipient of water delivered from the CVP pumps.

While infrastructure is not being built on an adequate scale to account for population growth and other factors, environmental regulations continue to restrict water supplies for human needs. In 1992, Congress passed the Central Valley Project Improvement Act (CVPIA, Public Law 102-575) to include the "protection, restoration, and mitigation of fish and wildlife" as a new purpose for the CVP. This purpose was given equal priority with agricultural water supply and other original uses. The controversial CVPIA was enacted while California was experiencing the effects of a long-term drought. One of the most contentious aspects of the CVPIA was the dedication of 800,000 acre-feet/year of CVP water for fish and wildlife purposes. This provision reallocated water that had been delivered to farmers and cities. However, many have questioned whether the flows have had any positive impact on fish and wildlife flows compared to other factors, such as ocean conditions and predation. In addition, many have accused the Department of the Interior (DOI) of allocating more than 800,000 acre feet due to vague language in the statute. H.R. 1837 resolves this situation by setting a ceiling of 800,000 acre feet. With this and other water sources, H.R. 1837 would still allow for over 1 million acre feet to be dedicated for fish and wildlife purposes.

The CVPIA also created the CVP Restoration Fund to help pay for the vast majority of the actions taken to implement this law. Over \$800 million in water and power ratepayer revenues have been collected for this purpose and deposited into the Fund since 1992. Many water and power customers have cited a lack of transparency over funding expenditures and have questioned their impact on fish and wildlife. H.R. 1837 requires more transparency and creates an Advisory Board for program expenditures.

The CVPIA and the Endangered Species Act (ESA) have contributed significantly to water supply uncertainty and instability. Environmental organizations blaming the water pumps as the main cause of endangered Delta smelt declines successfully used the fed-

eral court system to achieve many of their objectives. In May 2007, a Federal District Court judge ruled in *Natural Resources Defense Council vs. Kempthorne* that DOI's Biological Opinion on Delta smelt was "arbitrary, capricious and contrary to law." This eventually led to a revised Biological Opinion that caused massive water shut-offs in 2009 and 2010. Under that Biological Opinion, increased amounts of water were re-allocated towards Delta smelt during the time farm communities in the west side of the San Joaquin Valley needed it most. A Biological Opinion on salmon and orcas led to additional water restrictions. There is disagreement about the causes of the salmon fisheries declines in California rivers, but a 2010 report by the National Marine Fisheries Service determined that poor ocean conditions were by far the most important factor causing this decline.

The results of the water restrictions were devastating. Over one million acre feet of water were lost due to the smelt and salmon Biological Opinions. Although jobs estimates differ, thousands of jobs were lost and hundreds of thousands of acres of land were fallowed in 2010. The City of Mendota experienced an unemployment rate of 40 percent as a result of such restrictions. Since 1992—with the enactment of the CVPIA and in light of ESA restrictions—west side San Joaquin Valley irrigators have gone from receiving an average of 92 percent of their water supply to a current annual average of 35 to 40 percent. On February 22, 2012, after this bill was ordered favorably reported from the Committee, the Obama Administration announced that the farmers in the San Joaquin Valley initially would only receive 30 percent of their allocated water for 2012.

Even though California experienced substantial precipitation and snowpack (165 percent of normal) in 2011, some irrigation districts south of the Delta only received 80 percent of their water allocation. The Bureau of Reclamation (Reclamation), the federal agency operating the CVP, maintains that this allocation would be normal for this type of above average water year, but farmers who receive the water counter that in a year like last year, their allocation should have been at 90 percent at a minimum. The farmers' assertion is correct in light of recent history. In 2006, a water year that was much like the 2011 water year, the farmers received a 65 percent allocation in February, but by April they were at 85 percent and in May went to a 100 percent allocation. In 2005, a year that was actually drier than the current water year, these farmers received an initial allocation of 65 percent in February and ultimately went up to an 85 percent allocation. There is only one difference between 2011 and then: in 2005 and 2006, the operations of the CVP were not constrained by Biological Opinions issued in December 2008 and May 2009 by the U.S. Fish and Wildlife Service (smelt) and the National Marine Fisheries Service (salmon), respectively.

H.R. 1837 attempts to reverse the impacts of the ESA lawsuits by declaring that the CVP and SWP are compliant with the ESA if the projects are implemented in a manner consistent with the 1994 "Principles for Agreement on Bay-Delta Standards between the State of California and the Federal Government," better known as the "Bay-Delta Accord." This document serves as a landmark and universally praised agreement to improve water quality in the

Delta and increase water reliability for users. The Bay-Delta Accord included the following elements: provisions to regulate spring-time flow and export limits to benefit fish species; operational flexibility to comply with ESA provisions that address water supply and species monitoring issues among others; and measures to improve environmental conditions in the Bay-Delta Estuary.

H.R. 1837 codifies the standards set forth in the Bay-Delta Accord to return balance and certainty to Sacramento-San Joaquin flows. The bill also preempts California's ESA standards to ensure that the environmental community does not sue and to keep the State regulatory community from seizing water from the SWP and others to impose more strict limits if they cannot get water from the federal CVP. This preemption is necessary given that the SWP and CVP are intertwined legally and functionally (pursuant to Public Law 99-546). This already existing preemption is the only such circumstance in the western United States, so the preemption in H.R. 1837 is limited solely to this situation. The Committee voted on a bipartisan basis to recognize this unique situation and to state that H.R. 1837 should not serve as precedent for any other State because no similar circumstance exists.

The second title of the bill revolves around reforming the San Joaquin River Restoration Program, as authorized in Public Law 111-11. For decades, controversy has surrounded construction of the Friant Dam, which diverts San Joaquin River flows to provide much of the water for the Friant Division of the CVP. The Friant Division provides irrigation and municipal water to farms and communities along the southern San Joaquin Valley's east side.

In 1987, the Friant water users started to negotiate the renewal of their water contracts with the federal government. In December 1988, the Natural Resources Defense Council (NRDC) and a coalition of conservation and fishing groups filed Natural Resources Defense Council, et al. vs. Kirk Rodgers, et al. to challenge the contract renewals. Subsequent amendments to the lawsuit alleged that Reclamation violated California Fish and Game Code Section 5937, the National Environmental Protection Act (NEPA), and the ESA. Section 5937 of Public Law 111-11 requires dam owners to "allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam." In August 2004 and July 2005, a federal District Court judge ruled in NRDC's favor, finding that Reclamation violated Section 5937.

A new series of settlement negotiations began, with negotiating parties agreeing on a final settlement on June 30, 2006. After three years of heated disputes regarding the merits of the settlement, the 111th Congress codified the settlement agreement and directed Reclamation to carry out certain activities in the settlement: (1) restoring the dry part of the San Joaquin River through a series of interim and permanent flows that divert, on average, more than 200,000 acre feet per year from farms to fish; (2) re-introducing an "experimental" population of Chinook salmon into the river; and (3) mitigating water user impacts associated with river restoration and salmon re-introduction. At the time of enactment of this settlement, the Congressional Budget Office estimated that the law and settlement agreement would increase net direct spending by \$190 million over the 2009-2018 period and \$200 million over the 2019-

2040 period. In addition, implementation would increase discretionary spending by \$271 million over the 2009–2018 period. Most water users estimate that the program will cost around \$1.2 billion over twenty years. Title II of H.R. 1837 substantially reforms this program and eliminates all authorized federal appropriation amounts while still allowing flows for a warm water fishery.

The third title of the bill creates a mechanism for CVP water users to convert their water service contracts to capital repayment contracts. Under a CVP water service contract, a water user pays for only the water allocated and delivered, whereas a capital repayment contract is for the cost of the water and the appropriate facility (capital) being used to store and convey the water. When the CVP water user enters a capital repayment contract in H.R. 1837, the water user has the ability to pay off that contract early to the federal government. That early payment increases short-term revenue to the U.S. Treasury, but also releases the water user from acreage and pricing limitations imposed under the Reclamation Reform Act of 1982 (Public Law 97–293). This will allow farmers to put more acreage in production when they have water supplied under the bill. This provision is nearly identical to prepayment provisions in the San Joaquin River Settlement Act (Public Law 111–11).

The bill, as amended at Committee, now includes a fourth title. This title is intended to ensure that other titles of the legislation will not have unintended consequences on other water rights holders and to protect private property rights established under California law. These provisions will give northern California's water rights holders unprecedented protections at the federal level.

The Committee also added a fifth title to the bill during markup. This title includes a provision describing the unique situation of the CVP and SWP coordination and existing preemption while stating that nothing in the Act shall serve as a precedent in another State.

#### COMMITTEE ACTION

H.R. 1837 was introduced on May 11, 2011, by Congressman Devin Nunes (R–CA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Water and Power. On June 2, 2011 and June 13, 2011, the Subcommittee held hearings on the bill. On February 16, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Water and Power was discharged by unanimous consent. Congressman Tom McClintock (R–CA) offered an amendment in the nature of a substitute to the bill. Congresswoman Grace Napolitano (D–CA) offered amendment designated .014 to the amendment in the nature of a substitute; the amendment was not adopted by a bipartisan roll call vote of 17 to 27, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 1

Meeting on / Amendment: **HR 1837** – An amendment to the ANS offered by Mrs. Napolitano.014 was NOT AGREED TO by a roll call vote of 17 yeas and 27 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishek, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, MD</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Runyan, NJ</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Johnson, OH</b>		X	
<i>Mr. Boren, OK</i>		X		<b>Mr. Amodei, NV</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	17	27	

Congressman Scott Tipton (R-CO) offered amendment designated .004 to the amendment in the nature of a substitute; the amendment was adopted by a bipartisan roll call vote of 31 to 13, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 2

Meeting on / Amendment: **HR 1837** – An amendment to the ANS offered by Mr. Tipton.004 was **AGREED**  
TO by a roll call vote of 31 yeas and 13 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>	X			<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>		X		<b>Mr. Benishek, MI</b>	X		
<b>Mr. Young, AK</b>	X			<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>		X		<b>Mr. Rivera, FL</b>	X		
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>	X		
<b>Mr. Gohmert, TX</b>	X			<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		<b>Mr. Tipton, CO</b>	X		
<b>Mr. Bishop, UT</b>	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Pallone, NJ</i>		X		<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mrs. Napolitano, CA</i>		X		<b>Mr. Labrador, ID</b>	X		
<b>Mr. Wittman, VA</b>	X			<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>		X		<b>Ms. Noem, SD</b>	X		
<b>Mr. Broun, GA</b>	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Grijalva, AZ</i>		X		<b>Mr. Southerland, FL</b>	X		
<b>Mr. Fleming, LA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Ms. Bordallo, GU</i>		X		<b>Mr. Harris, MD</b>	X		
<b>Mr. Coffman, CO</b>	X			<b>Mr. Landry, LA</b>	X		
<i>Mr. Costa, CA</i>	X			<b>Mr. Runyan, NJ</b>	X		
<b>Mr. McClintock, CA</b>	X			<b>Mr. Johnson, OH</b>	X		
<i>Mr. Boren, OK</i>	X			<b>Mr. Amodei, NV</b>	X		
<b>Mr. Thompson, PA</b>	X						
<i>Mr. Sablan, CNMI</i>		X					
<b>Mr. Denham, CA</b>	X						
				<b>TOTALS</b>	31	13	

Congresswoman Grace Napolitano (D-CA) offered amendment designated .003 to the amendment in the nature of a substitute; the amendment was not adopted by a bipartisan roll call vote of 17 to 27, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 3

Meeting on / Amendment: **HR 1837** – An amendment the ANS offered by Mrs. Napolitano.003 was NOT AGREED TO by a roll call vote of 17 yeas and 27 nays

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishke, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, MD</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Runyan, NJ</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Johnson, OH</b>		X	
<i>Mr. Boren, OK</i>		X		<b>Mr. Amodei, NV</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	17	27	

Congressman Jim Costa (D-CA) offered amendment designated .008 to the amendment in the nature of a substitute; the amendment was withdrawn. Congressman John Garamendi (D-CA) offered amendment designated .002 to the amendment in the nature of a substitute; the amendment was not adopted by voice vote. Congressman Garamendi offered amendment designated .077 to the amendment in the nature of a substitute; the amendment was not adopted by voice vote. Congressman Garamendi offered amendment designated .079 to the amendment in the nature of a substitute; the amendment was not adopted by voice vote. Congressman Garamendi offered amendment designated .082 to the amendment in the nature of a substitute; the amendment was not adopted by a bipartisan roll call vote of 17 to 27, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 4

Meeting on / Amendment: **HR 1837** – An amendment to the ANS offered by Mr. Garamendi.082 was NOT AGREED TO by a roll call vote of 17 yeas and 27 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishke, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, MD</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Runyan, NJ</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Johnson, OH</b>		X	
<i>Mr. Boren, OK</i>		X		<b>Mr. Amodei, NV</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	17	27	

Congressman Garamendi offered amendment designated .083 to the amendment in the nature of a substitute. Congressman Jeff Denham (R-CA) offered a substitute amendment to the Garamendi amendment designated .083; the Denham amendment was adopted by a bipartisan roll call vote of 27 to 17, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 5

Meeting on / Amendment: **HR 1837** – A substitute amendment offered by Mr. Denham to the Garamendi.083 amendment was **AGREED TO** by a roll call vote of 27 yeas and 17 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		<b>Mr. Benishek, MI</b>	X		
<b>Mr. Young, AK</b>	X			<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>		X		<b>Mr. Rivera, FL</b>	X		
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>		X		<b>Mr. Duncan of SC</b>	X		
<b>Mr. Gohmert, TX</b>	X			<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		<b>Mr. Tipton, CO</b>	X		
<b>Mr. Bishop, UT</b>	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Pallone, NJ</i>		X		<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mrs. Napolitano, CA</i>		X		<b>Mr. Labrador, ID</b>	X		
<b>Mr. Wittman, VA</b>	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mr. Holt, NJ</i>		X		<b>Ms. Noem, SD</b>	X		
<b>Mr. Broun, GA</b>	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Grijalva, AZ</i>		X		<b>Mr. Southerland, FL</b>	X		
<b>Mr. Fleming, LA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Ms. Bordallo, GU</i>		X		<b>Mr. Harris, MD</b>	X		
<b>Mr. Coffman, CO</b>	X			<b>Mr. Landry, LA</b>	X		
<i>Mr. Costa, CA</i>	X			<b>Mr. Runyan, NJ</b>	X		
<b>Mr. McClintock, CA</b>	X			<b>Mr. Johnson, OH</b>	X		
<i>Mr. Boren, OK</i>	X			<b>Mr. Amodei, NV</b>	X		
<b>Mr. Thompson, PA</b>	X						
<i>Mr. Sablan, CNMI</i>		X					
<b>Mr. Denham, CA</b>	X						
				<b>TOTALS</b>	27	17	

The amendment offered by Congressman Garamendi designated .083, as amended by the Denham substitute amendment, was adopted by voice vote. Congressman Garamendi offered amendment designated .084 to the amendment in the nature of a substitute; the amendment was not adopted by a bipartisan roll call vote of 17 to 27, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 6

Meeting on / Amendment: **HR 1837**. An amendment to the ANS offered by Mr. Garamendi.084 was NOT AGREED TO by a roll call vote of 17 yeas and 27 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishke, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, MD</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Runyan, NJ</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Johnson, OH</b>		X	
<i>Mr. Boren, OK</i>		X		<b>Mr. Amodei, NV</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	17	27	

Congressman Garamendi offered amendment designated .085 to the amendment in the nature of a substitute; the amendment was not adopted by voice vote. Congressman Garamendi offered amendment designated .086 to the amendment in the nature of a substitute; the amendment was not adopted by a bipartisan roll call of 17 to 27, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 7

Meeting on / Amendment: **HR 1837** – An amendment to the ANS offered by Mr. Garamendi.086 was NOT AGREED TO by a roll call vote of 17 yeas and 27 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			<b>Mr. Benishek, MI</b>		X	
<b>Mr. Young, AK</b>		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>	X			<b>Mr. Rivera, FL</b>		X	
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>	X			<b>Mr. Duncan of SC</b>		X	
<b>Mr. Gohmert, TX</b>		X		<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			<b>Mr. Tipton, CO</b>		X	
<b>Mr. Bishop, UT</b>		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			<b>Mr. Labrador, ID</b>		X	
<b>Mr. Wittman, VA</b>		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			<b>Ms. Noem, SD</b>		X	
<b>Mr. Broun, GA</b>		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			<b>Mr. Southerland, FL</b>		X	
<b>Mr. Fleming, LA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Ms. Bordallo, GU</i>	X			<b>Mr. Harris, MD</b>		X	
<b>Mr. Coffman, CO</b>		X		<b>Mr. Landry, LA</b>		X	
<i>Mr. Costa, CA</i>		X		<b>Mr. Runyan, NJ</b>		X	
<b>Mr. McClintock, CA</b>		X		<b>Mr. Johnson, OH</b>		X	
<i>Mr. Boren, OK</i>		X		<b>Mr. Amodei, NV</b>		X	
<b>Mr. Thompson, PA</b>		X					
<i>Mr. Sablan, CNMI</i>	X						
<b>Mr. Denham, CA</b>		X					
				<b>TOTALS</b>	17	27	

The McClintock amendment in the nature of a substitute, as amended, was adopted by voice vote. The bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 27 to 17, as follows:

**Committee on Natural Resources**  
U.S. House of Representatives  
112<sup>th</sup> Congress

Date: February 16, 2012

Recorded Vote #: 8

Meeting on / Amendment: **HR 1837** – Adopted and favorably reported to the House of Representatives, as amended, by a roll call vote of 27 yeas and 17 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
<b>Mr. Hastings, WA Chairman</b>	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		<b>Mr. Benishkek, MI</b>	X		
<b>Mr. Young, AK</b>	X			<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>		X		<b>Mr. Rivera, FL</b>	X		
<b>Mr. Duncan of TN</b>				<i>Mr. Sarbanes, MD</i>			
<i>Mr. DeFazio, OR</i>		X		<b>Mr. Duncan of SC</b>	X		
<b>Mr. Gohmert, TX</b>	X			<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		<b>Mr. Tipton, CO</b>	X		
<b>Mr. Bishop, UT</b>	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Pallone, NJ</i>		X		<b>Mr. Gosar, AZ</b>			
<b>Mr. Lamborn, CO</b>	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mrs. Napolitano, CA</i>		X		<b>Mr. Labrador, ID</b>	X		
<b>Mr. Wittman, VA</b>	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mr. Holt, NJ</i>		X		<b>Ms. Noem, SD</b>	X		
<b>Mr. Broun, GA</b>	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Grijalva, AZ</i>		X		<b>Mr. Southerland, FL</b>	X		
<b>Mr. Fleming, LA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Ms. Bordallo, GU</i>		X		<b>Mr. Harris, MD</b>	X		
<b>Mr. Coffman, CO</b>	X			<b>Mr. Landry, LA</b>	X		
<i>Mr. Costa, CA</i>	X			<b>Mr. Runyan, NJ</b>	X		
<b>Mr. McClintock, CA</b>	X			<b>Mr. Johnson, OH</b>	X		
<i>Mr. Boren, OK</i>	X			<b>Mr. Amodei, NV</b>	X		
<b>Mr. Thompson, PA</b>	X						
<i>Mr. Sablan, CNMI</i>		X					
<b>Mr. Denham, CA</b>	X						
				<b>TOTALS</b>	27	17	

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This section, as amended, cites the bill as the “Sacramento-San Joaquin Valley Water Reliability Act.”

*Section 2. Table of contents*

## TITLE I—CENTRAL VALLEY PROJECT WATER RELIABILITY

*Section 101. Amendment to purposes*

This section amends Section 3402 of the Central Valley Project Improvement Act (CVPIA, Public Law 102–575) by adding two new purposes to the CVPIA. These new purposes include the replacement of water dedicated to fish and wildlife purposes by the year 2016 at a reasonably low cost and to facilitate and expedite water transfers. The intent of this section is to reaffirm that 800,000 acre feet of water re-allocated annually from farms to fish and wildlife will be replaced for those farmers and that water transfers between willing sellers within the Central Valley of California are purposes to help meet water demand during drought.

*Section 102. Amendment to definition*

This section amends Section 3403 of the CVPIA to prioritize restoration on native fish species (salmon, steelhead and sturgeon) in the Sacramento and San Joaquin Rivers as of October 30, 1992, by removing non-native American shad and striped bass from the definition of “anadromous fish.” It further adds the definition of “reasonable flows” to provide the Secretary of the Interior (Secretary) guidance when making decisions on “reasonable” levels of environmental flows.

*Section 103. Contracts*

This section amends Section 3404 of the CVPIA to allow for 40-year renewal of existing Central Valley Project (CVP) long-term water user contracts with the Bureau of Reclamation (Reclamation) and retains the existing CVPIA provision requiring that contracts shall include a provision to charge such water users only for water actually delivered. The current contractual term is 25 years, under the CVPIA. The intent of Section 103 is to return the contractual duration back to the 40-year term allowed for in similar water user contracts with Reclamation throughout the western United States.

*Section 104. Water transfers, improved water management, and conservation*

This section generally seeks to streamline the process for willing seller-based water transfers while giving water users in the originating water basin the rights to approve and modify such transfers. The section amends Section 3405(a) of the CVPIA to add that the water district of origin or the Secretary shall determine whether a transfer proposal is complete within 45 days of submission and, in addition, shall specify what must be added or revised to complete the transfer proposal. The provision further delineates that the Secretary shall not impose mitigation or other requirements on a proposed transfer, but the water district of origin shall

retain authority to approve or condition a proposed transfer as provided under state law.

This section also amends Section 3405(a) of CVPIA to clarify that transfers, exchanges and water banking arrangements among CVP water users which could have been conducted prior to the enactment of the CVPIA may still take place and are not subject to the CVPIA, which imposed a super-structure of regulations on existing and future water transfers.

This section also amends Section 3405(b) of the CVPIA to clarify the obligation to measure surface water deliveries by deleting the word “metering” and replacing it with “measurement.” This change is intended to require all CVP water users to ensure that all water delivery systems are equipped with devices or methods to measure the monthly volume of surface water delivered within its boundaries and specifies the area of surface water that must be measured.

This section deletes Section 3405(d) of the CVPIA, which required “tiered pricing” provisions in CVP water service contracts. This deletion is intended to provide incentives for water users to buy and conserve transferred water and bank such water in groundwater basins to help overcome drought and provide water for wildlife uses.

*Section 105. Fish, wildlife, and habitat restoration*

This section amends Section 3406(b)(1)(B) of the CVPIA to provide reasonable flows to restore anadromous fish production in the Central Valley. This section also amends Section 3406(b)(2) of the CVPIA to affirm that the management of 800,000 acre-feet of CVP water for fish, wildlife and habitat purposes is a ceiling, rather than a floor, on the amount of water re-allocated from water users. The section reauthorizes and directs reuse or diversion of any part of the 800,000 acre-feet to agriculture or municipal and industrial purposes after it has fulfilled its fish and wildlife purposes. It further authorizes that, if by March 15th of any year, the water allocation for the Delta Division of the CVP is below 75 percent, then the 800,000 acre-feet mandate is reduced by 25 percent. The section adds new Section 3406(i) to the CVPIA to clarify that by pursuing the specific mitigation projects, programs and activities authorized by this section, the Secretary shall be deemed to have met the mitigation, protection, restoration and enhancement purposes established in CVPIA.

*Section 106. Restoration Fund*

This section generally changes the CVP Restoration Fund (Fund), which was created as an environmental mitigation fund financed by water and power users under the CVPIA. This section deletes references to specific Fund activities that have already been accomplished or outdated. This section also adds a new provision to Section 3407(a)(2) to the CVPIA to prohibit the Secretary from requiring donations to the Fund as a condition to contracting for storage or conveyance of non-CVP water pursuant to Reclamation laws. It also prohibits Fund charges on any water that is delivered with the sole intent of groundwater recharge. The section also amends Section 3407(c)(1) of the CVPIA to make certain technical

and conforming amendments to provide for assessment and collections into the Fund.

This section also amends Section 3407(d)(2)(A) of the CVPIA by setting a Fund fee cap of \$4 per megawatt-hour for CVP power sold to power users beginning on October 1, 2013. The intent of this provision is to provide cost certainty to power users that have experienced fluctuations in Fund charges. Such cost certainties already exist for water users. The amendment also reduces the amount of overall annual CVP Restoration Funds from \$50 million to \$35 million a year beginning after December 31, 2020.

This section adds Section 3407(g) to the CVPIA to direct the Secretary, in consultation with the Restoration Fund Advisory Board created in Section 3407(h), to submit to Congress a report outlining the proposed expenditure of the Restoration Funds deposited in the preceding year and describing why that plan provides optimum benefits.

This section also adds Section 3407(h) to the CVPIA to create a Restoration Fund Advisory Board composed of twelve members selected by the Secretary. The board members serve four-year terms and consist of four CVP agricultural users, three CVP municipal and industrial users, three CVP power contractors, and two at the discretion of the Secretary. The Secretaries of the Interior and Commerce may also each designate a representative to act as an observer. The duties of the Advisory Board are to make recommendations, annually, to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to the CVPIA and to report to Congress biennially on the progress made to achieve the goals for the Fund as identified in Section 3406 of the CVPIA.

#### *Section 107. Additional authorities*

This section amends Section 3408(c) of the CVPIA by striking “non-profit,” thereby expanding the authority of the Secretary to enter into conveyance, storage and similar contracts with all private entities; directs the Secretary to use authority granted in this subsection to exchange, impound, store, carry or deliver non-project water using CVP facilities; and stipulates that nothing in the section shall supersede the provisions of Section 103 of Public Law 99-546, commonly referred to as the Coordinated Operations Agreement between the federal government and the State of California.

This section also amends Section 3408(f) of the CVPIA by striking out “Interior and Insular Affairs and Merchant Marine and Fisheries” and inserting in lieu thereof “Natural Resources,” requires the reporting of progress on the plan required by subsection (j) (project yield increase), and requires the Mid-Pacific Regional Director of the Bureau of Reclamation to certify required annual reports.

This section also amends Section 3408(j) of the CVPIA by requiring the Secretary to develop and implement a plan to replace the 800,000 acre-feet of water dedicated to fish and wildlife by establishing a plan to increase (by no later than 2016) the yield of the CVP. The section also requires that the plan include recommendations on appropriate cost-sharing and requires that the dedication of the 800,000 acre-feet for fish, wildlife and habitat purposes be

suspended until the plan achieves an increase in the annual delivery capability of the CVP by 800,000 acre-feet.

This section, as amended, also authorizes the Secretary to partner with local joint powers authorities to advance surface water storage project studies authorized in Public Law 108–361. The section makes it specific that federal funding is not authorized for such partnerships and is intended to utilize non-federal funding, expertise and efficiencies to advance such studies. However, nothing in the provision is intended to prohibit such ongoing studies from moving forward with or without the partnerships. The section also authorizes each water storage project for construction if non-federal funds are used for financing and constructing each project. This provision is intended to facilitate construction of each project in a manner like how Reclamation’s water recycling and rural water projects are authorized for construction.

*Section 108. Bay-Delta Accord*

This section intends to restore operational flexibility for California’s two major water projects and restore water to farmers while protecting senior water rights holders and other northern California water users from any potential, unintended impacts. The section directs the CVP and the State Water Project (SWP) to be operated in a manner consistent with the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” (known as the Bay-Delta Accord of 1994). This language codifies the Bay-Delta Accord’s flows as it relates to the CVP and prevents the State of California from imposing further flow reductions to ensure the Bay-Delta Accord commitments. This provision is warranted given the coordinated operations between the CVP and SWP pursuant to Public Law 99–546, a pre-emption sought by the State of California. The Committee believes that this circumstance is unique and does not serve as a precedent since there is no such similar situation in any other State. This section ensures that implementation of the Bay-Delta Accord shall be in strict compliance with the water rights priority system and statutory protections for areas of origin. Subsection (b) further protects property rights established under state law by prohibiting the federal government or the State of California from imposing restrictions on pre-1914 and other water rights holders. Subsection (c) prohibits the State of California from imposing restrictions on the “take” of any non-native fish that preys on one or more native fish species in the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento/San Joaquin Bay Delta.

*Section 109. Natural and artificially spawned species*

This section specifically directs the Secretaries of the Interior and Commerce to not distinguish between natural-spawned and hatchery-spawned species when making any determinations under the Endangered Species Act (ESA) that relate to anadromous fish in the Sacramento and San Joaquin Rivers and their tributaries.

*Section 110. Authorized service area*

This section adds the Kettleman City Community Services District as a new authorized service area of the CVP. This section authorizes the Secretary to enter into a long-term contract, in accord-

ance with Reclamation laws, for the delivery of up to 900 acre-feet of CVP water for municipal and industrial use. The Secretary can reduce deliveries by 25 percent if restrictions are imposed on agricultural deliveries. As amended, this section ensures that any infrastructure or other costs related to this section are borne by Kettleman City.

*Section 111. Regulatory streamlining*

This section seeks to streamline federal and State of California environmental permitting regulations. It declares that a Notice of Determination or a Notice of Exemption prepared pursuant to the California Environmental Quality Act (CEQA) for a project or issuance of a permit related to a CVP water project will satisfy the requirements of the National Environmental Policy Act (NEPA). The section allows Reclamation to proceed with activities on a CVP project if there is a pending legal challenge to the Notice of Determination. The section defines the project as being part of the CVP and having the following qualities: an action being undertaken by a public agency or that requires a issuance of a permit by a public agency, has potential to result in a physical change of the environment, and may be subject to discretionary approvals by government agencies. The definition further includes, but is not limited to, construction activities, clearing or grading of land, improvements to existing structures, activities or equipment involving the issuance of a permit, and proposals and activities defined as a project by the State of California under CEQA.

TITLE II—SAN JOAQUIN RIVER RESTORATION

*Section 201. Repeal of the San Joaquin River Settlement*

This section requires the Secretary to cease any action related to the implementation of the Stipulation of Settlement filed in federal court of the Eastern District of California in Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., Eastern District of California (No. Civ. S–88–1658 LKK/GHH).

*Section 202. Purpose*

This section amends Section 10002 of Public Law 111–11 by striking the words “implementation of the Settlement” and replacing it with “restoration of the San Joaquin River.” By doing so, this section changes the purpose of the law to end the Settlement and replace it with a warm water fishery restoration with the intent of saving water for local farmers while creating a more viable fishery.

*Section 203. Definitions*

The section amends Section 10003 of Public Law 111–11 by striking the terms “Friant Division long-term contractors”, “Interim Flows”, “Restoration Flows”, “Recovered Water Account”, “Restoration Goal”, “Water Management Goal”, and “Settlement.”

The section also adds the following definitions to Section 10003 of Public Law 111–11: “Restoration Flows” means additional water released from Friant Dam to ensure a target flow entering Mendota Pool does not fall below 50 cubic feet per second; “Water Year” means March 1 through the last day of February of the following

Calendar Year; and “Critical Water Year” is defined as when total unimpaired runoff at Friant Dam is less than 400,000 acre feet.

*Section 204. Implementation of restoration*

This section amends Section 10004 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement” and directs the Secretary, beginning in March 2013, to modify Friant Dam operations to release “Restoration Flows” in every year except a “Critical Water Year” in a manner that improves the fishery in the San Joaquin River between Friant Dam and Gravelly Ford. The section further authorizes the Secretary to, within one year of enactment, develop and implement a plan to fully re-circulate, recapture, reuse, exchange or transfer all “Restoration Flows.” The Secretary is further directed to address any impact on groundwater resources within the Friant service area and stipulates that mitigation may include groundwater banking and recharge projects.

This section also directs the Secretary to: identify the impacts associated with the release of Restoration Flows prescribed in Public Law 111–11; identify measures necessary to mitigate impacts on downstream landowners as a result of Restoration Flows as prescribed in this title; and fully implement such measures before Restoration Flows begin. This section also clarifies that Reclamation must follow a claims process to reimburse current and future claims from groundwater seepage, flooding or levee instability damages caused as a result of Restoration Flows prescribed in Public Law 111–11. The Committee believes that the agency already has such authority to provide for such claims; however, this provision is intended to ensure that the agency follows this process.

This section declares that, notwithstanding Section 8 of the Reclamation Act of 1902 and Title IV of H.R. 1837, the title preempts and supersedes any State law, regulation or requirement that imposes more restrictive requirements or regulations on the activities under this title. This provision is intended to preempt the State of California’s Fish and Game Code Section 5937, which was used as the legal basis to sue the federal government and water users receiving water from the Friant Division on the San Joaquin River. Section 5937 states: “The owner of any dam shall allow sufficient water at all times to pass through a fishway, or in the absence of a fishway, allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam.” This provision further declares that the Friant Division, Hidden Unit, and Buchanan Unit of the CVP shall comply with orders issued by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act provided that such orders are consistent with the Congressional authorization for any affected federal facilities.

The section further directs the Secretary to phase-in each project to implement this title in the following order: identify project purpose and need, identify mitigation measures, conduct environmental review, and complete project.

*Section 205. Disposal of property; title to facilities*

This section amends Section 10005 of Public Law 111–11 by striking all language that references or directs the implementation

of the “Settlement” and strikes the federal authorization to use eminent domain.

*Section 206. Compliance with applicable law*

This section amends Section 10006 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement.”

*Section 207. Compliance with Central Valley Project Improvement Act*

This section amends Section 10007 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement.” This section also declares that implementation under this title satisfies federal obligations under Section 5937 of the California Fish and Game Code.

*Section 208. No private right of action*

This section amends Section 10008 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement.” The section also affirms that nothing shall confer on anyone a private right of action or claim for relief to interpret or enforce the provisions of Section 10004(a)(3) (except for contractors within Friant Division, Hidden Unit, or Buchanan Unit).

*Section 209. Implementation*

This section amends Section 10009 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement”. The section also strikes \$250 million in authorized federal funding, descriptive language concerning levels of funding, limitations on contributions, and the Reach 4B study.

*Section 210. Repayment contracts and acceleration of repayment of construction costs*

This section amends Section 10010 of Public Law 111–11 by striking the word “Settlement,” the word “Interim Flows,” the word “Water Management Goal,” and references to the “Settlement.”

*Section 211. Repeal*

This section repeals Section 10011 (Salmon Restoration Program) of Public Law 111–11.

*Section 212. Water supply mitigation*

This section amends Section 10202 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement.”

*Section 213. Additional authorities*

This section amends Section 10203 of Public Law 111–11 by striking all language that references or directs the implementation of the “Settlement” and striking \$50 million in authorized federal funding.

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

*Section 301. Repayment contracts and acceleration of repayment of construction costs*

This section allows CVP water users to pre-pay their share of the capital construction costs of the CVP. The provision is based on

nearly identical authorizing language in the San Joaquin River Restoration program (Public Law 111–11). The section specifically directs the Secretary, upon the request of a water contractor, to convert a long-term CVP contract entered into under subsection 9(e) of the Reclamation Project Act of 1939 into contracts under subsection 9(d) of the same law. It also authorizes the Secretary, upon the request of the contractor, to convert a long-term CVP contract entered into under subsection 9(c)(2) of the Reclamation Project Act of 1939 into a contract under subsection 9(c)(1) of the same law. A contractor who chooses to convert shall be required to, either in lump sum or accelerated prepayment, pay the remaining balance of construction at a Treasury rate discount. In return for pre-paying such contractual obligations to the federal government, pricing and acreage limitations of federal reclamation law shall no longer apply to the water contractors. The section stipulates that any capital costs that have been incurred after the date of conversion will be repaid either within five years of being incurred or later, depending on the amount.

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

*Section 401. Water rights and area-of-origin protections*

This section directs the Secretary, in the operation of the CVP, to strictly adhere to state water rights laws and priorities and to honor water rights senior to those held by the CVP. This section further directs the Secretary to strictly adhere to and honor water rights and priorities that were obtained or existed pursuant to various sections of California Water Code and ensures that the federal ESA is implemented in a manner that honors the priorities delineated in this section.

*Section 402. Sacramento River Settlement Contracts*

This section directs the Secretary to apply any ESA limitations (as they relate to the operation of the CVP) in a manner that strictly adheres to and applies the water rights priorities for “Project Water” and “Base Supply” provided for in the Sacramento River Settlement Contracts. It also ensures that Article 3(i) of the Sacramento River Settlement Contracts shall not be utilized as a means to provide water shortages that are different than those provided for in Article 5(a)16 of those contracts. This section is intended to fulfill the contractual commitments the federal government made with the Sacramento River Settlement Contractors, who have water rights pre-dating the creation of the CVP.

*Section 403. Sacramento River watershed water service contractors*

This section directs the Secretary to provide certain amounts of water to Sacramento Valley water service contractors who receive water from the CVP. Subject to the absolute priority of Sacramento River Settlement Contractors, subsection (a) directs the Secretary to allocate water provided for irrigation purposes to existing CVP agricultural water service contractors within the Sacramento River Watershed in the following order: not less than 100 percent of their contract quantities in a “Wet,” “Above Normal,” and “Below Normal” water year; not less than 75 percent of their contract quan-

tities in a “Dry” water year; and, not less than 50 percent of their contract quantities in a “Critically Dry” water year. The water years follow the Sacramento Valley Water Year Type (40–30–30) Index.

Subsection (b) ensures that nothing in subsection (a) modifies any provision of a water service contract that addresses municipal and industrial water shortage policies of the Secretary, affects or limits the authority of the Secretary to adopt or modify municipal and industrial water shortage policies, affects or limits the authority of the Secretary to implement municipal and industrial water shortage policies, or affects allocations to CVP municipal and industrial contractors pursuant to such policies. Neither subsection (a) nor the Secretary’s implementation of subsection (a) shall constrain, govern or affect, directly or indirectly, the operations of the CVP’s American River Division or any deliveries from that Division, its units or its facilities. The section defines “existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed” as contractors within the Shasta, Trinity, and Sacramento River Divisions of the CVP who have a water service contract in effect on the date of enactment of this Act.

*Section 404. No redirected adverse impacts*

This section directs the Secretary to ensure there are no redirected adverse water supply or fiscal impacts to those within the Sacramento River watershed, or to the SWP, arising from the Secretary’s operation of the CVP to meet legal obligations imposed by state or federal agencies or actions implemented to meet the twin goals of improving water supply and environmental needs of the Bay-Delta.

TITLE V—MISCELLANEOUS

*Section 501. Precedent*

In this section, Congress finds and declares that coordinated operations between the CVP and the SWP, based on the State of California’s request and consented to by the federal government, requires assertion of federal supremacy to protect existing water rights throughout the system and that these circumstances are unique to California. As a result, the section declares that nothing in this Act shall serve as precedent in any other State.

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 Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) 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)(2)(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 pre-

pared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. 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:

*H.R. 1837—Sacramento-San Joaquin Valley Water Reliability Act*

Summary: H.R. 1837 would amend the Central Valley Project Improvement Act (CVPIA) and the San Joaquin River Restoration Settlement Act to change water management plans and environmental restoration goals for the Central Valley region in central California.

Based on information from the Bureau of Reclamation and local water districts in California, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase offsetting receipts (a credit against direct spending) by \$254 million and decrease revenues by \$33 million over the 2013–2022 period. Together, those changes would reduce future budget deficits by \$221 million over the next 10 years, CBO estimates. Because the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

In addition, CBO estimates that implementing the legislation would reduce discretionary spending for restoration activities associated with the San Joaquin River by \$190 million over the 2013–2017 period, assuming appropriation actions consistent with the authorization levels in the bill.

H.R. 1837 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) by preempting state laws and requiring or prohibiting some activities related to water management and wildlife preservation. Based on information from state and local agencies, CBO estimates that the cost for the state of California to comply with those mandates would not exceed the annual thresholds established in UMRA (\$73 million in 2012, adjusted annually for inflation). The legislation contains no private-sector mandates.

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 1837 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—											
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2013-2017	2013-2022
<b>CHANGES IN SPENDING SUBJECT TO APPROPRIATION</b>												
<b>Title II—San Joaquin River Restoration:</b>												
Estimated Authorization Level .....	0	-50	-50	-50	-50	-50	-50	0	0	0	-200	-300
Estimated Outlays .....	0	-40	-50	-50	-50	-50	-50	-10	0	0	-190	-300
<b>CHANGES IN DIRECT SPENDING</b>												
<b>Title III—Early Repayment of Capital Debt:</b>												
Estimated Budget Authority .....	-232	-24	-24	-24	10	10	10	10	10	10	-294	-244
Estimated Outlays .....	-232	-24	-24	-24	10	10	10	10	10	10	-294	-244
<b>Title I—Central Valley Project Reliability Act:</b>												
Estimated Budget Authority .....	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
Estimated Outlays .....	-1	-1	-1	-1	-1	-1	-1	-1	-1	-1	-5	-10
<b>Total Changes:</b>												
Estimated Budget Authority .....	-233	-25	-25	-25	9	9	9	9	9	9	-299	-254
Estimated Outlays .....	-233	-25	-25	-25	9	9	9	9	9	9	-299	-254
<b>CHANGES IN REVENUES</b>												
Estimated Revenues <sup>a</sup> .....	*	-2	-3	-3	-4	-4	-4	-4	-4	-4	-13	-33
<b>NET INCREASE OR DECREASE ( - ) IN THE DEFICIT FROM CHANGES IN DIRECT SPENDING AND REVENUES</b>												
Change in Deficit .....	-233	-23	-22	-22	13	13	13	13	13	13	-286	-221

Notes: Components may not sum to totals because of rounding; \* = revenue loss of less than \$500,000.

<sup>a</sup>For revenues, negative numbers indicate an increase in the deficit. Estimate prepared by staff of the Joint Committee on Taxation.

Basis of estimate: For this estimate, CBO assumes that H.R. 1837 will be enacted in fiscal year 2012. The bill would deauthorize \$300 million originally authorized to be appropriated for implementation of the San Joaquin River Restoration Settlement Act.

CBO estimates that enacting the bill would increase offsetting receipts (a credit against direct spending) by \$254 million over the 2013–2022 period. Additionally, staff of the Joint Committee on Taxation estimates that the legislation would lead to a decrease in revenues of \$33 million over the 2013–2022 period. Together, those changes in direct spending and revenues would reduce future budget deficits by \$221 million, CBO estimates.

#### *Spending subject to appropriation*

Title II would require the bureau to cease all planning and construction activities necessary to implement the San Joaquin River Restoration Settlement Act (title X of Public Law 111–11). That act requires the bureau to restore about 153 miles of the San Joaquin River by improving channels and structures for the purpose of improving water flow and fish habitat and passage. Title II would replace those objectives with a different restoration program that would require the bureau to restore about 65 miles of the river and ensure certain minimum river flows. The bill also would deauthorize the salmon restoration program authorized in the San Joaquin River Restoration Settlement Act. Finally, the bill would deauthorize \$300 million originally authorized to be appropriated for restoration activities in the San Joaquin River Restoration Settlement Act. CBO expects that those funds will be provided in equal increments of \$50 million annually beginning in 2014. Based on that anticipated spending pattern, CBO estimates that H.R. 1837 would lead to a discretionary savings for San Joaquin restoration activities of \$190 million over the 2013–2017 period and \$300 million over the 2013–2022 period, assuming appropriation actions consistent with the bill.

#### *Direct spending and revenues*

Repayment Contracts and Acceleration of Repayment of Construction Costs. Title III would authorize the bureau to convert water service contracts in the Central Valley Project (CVP) to repayment contracts if the contractor requests it. Under a repayment contract, the CVP customers would be required to accelerate the repayment of their share of the capital investment in the project. Water contractors could choose to pay the present value of their future contract payments (discounted at the 20-year constant maturity Treasury rate), either in one lump sum by January 31, 2013, or in equal installments by January 31, 2016. Based on the participation rates of water contractors in a similar program recently offered to contractors in CVP's Friant Division, CBO expects that a majority of CVP contractors would choose the lump-sum option. CBO estimates that the government would receive net accelerated payments from the contractors of \$244 million over the 2013–2022 period. Over the 2022–2030 period, payments of \$420 million would no longer be made under the bill's option to prepay contracts, CBO estimates.

CBO expects that those accelerated payments to the federal government would be financed with bonds exempt from federal tax-

ation, which the staff of the Joint Committee on Taxation estimates would lead to a revenue loss of \$33 million over the next 10 years.

Central Valley Project Water Reliability. Title I would amend the Central Valley Project Improvement Act (Public Law 102-575) by changing several management features of the project. The bill would require the bureau to adhere to a specified timeline when reviewing requests to transfer water among Central Valley Project contractors. Under the bill, certain water transfers would be deemed to have met the requirements of some environmental laws. CBO expects that those provisions and other changes in the bill would lead to more water transfers among contractors than expected under current law. We estimate that those additional transfers and other changes would result in additional offsetting receipts of \$1 million annually because water use would increase.

Pay-As-You-Go Considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 1837 AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON FEBRUARY 16, 2012

	By fiscal year, in millions of dollars—												
	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2012–2017	2012–2022
	NET INCREASE OR DECREASE (–) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	0	–233	–23	–22	–22	13	13	13	13	13	13	–286	–221

Estimated impact on State, Local, and Tribal Governments: H.R. 1837 would impose intergovernmental mandates as defined in UMRA by preempting state laws and requiring or prohibiting some activities related to water management and wildlife preservation. The bill would require the state of California to change how it manages a state system for storing and delivering water. It also would prohibit the state from restricting existing water rights in an effort to protect any species affected by the operations of the water projects in the state. Similarly, it would prohibit restrictions on water rights that are designed to protect, enhance, or restore the value of public water resources. Finally, the bill would preempt several other state laws related to water management and wildlife preservation. Based on information from state and local agencies, CBO estimates that the cost for the state to comply with those mandates would not exceed the annual thresholds established in UMRA (\$73 million in 2012, adjusted annually for inflation).

Estimated impact on the private sector: The bill contains no new private-sector mandates as defined in UMRA.

Estimate prepared by: Federal costs: Aurora Swanson; Impact on state, local, and tribal governments: Melissa Merrell; Impact on the private sector: Amy Petz.

Estimate approved by: Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of 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, credit authority, or an increase or decrease in tax expenditures. Based on information from the Bureau of Reclamation and local water districts in California, CBO and staff of the Joint Committee on Taxation (JCT) estimate that enacting the bill would increase offsetting receipts (a credit against direct spending) by \$254 million and decrease revenues by \$33 million over the 2013–2022 period. Together, those changes would reduce future budget deficits by \$221 million over the next 10 years, CBO estimates. Because the legislation would affect direct spending and revenues, pay-as-you-go procedures apply.

In addition, CBO estimates that implementing the legislation would reduce discretionary spending for restoration activities associated with the San Joaquin River by \$190 million over the 2013–2017 period, assuming appropriation actions consistent with the authorization levels in the bill.

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, as ordered reported, is to address certain water-related concerns on the San Joaquin River.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates as defined under Public Law 104–4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any local or tribal law. The bill preempts and supersedes certain California water and environmental laws, regulations or requirements that impose more restrictive requirements or regulations on the activities under the bill.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

**TITLE XXXIV—CENTRAL VALLEY PROJECT IMPROVEMENT ACT**

\* \* \* \* \*

**SEC. 3402. PURPOSES.**

The purposes of this title shall be—

(a) \* \* \*

\* \* \* \* \*

(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors[.]

(g) *to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2016, at the lowest cost reasonably achievable; and*

(h) *to facilitate and expedite water transfers in accordance with this Act.*

**SEC. 3403. DEFINITIONS.**

As used in this title—

[(a) the term “anadromous fish” means those stocks of salmon (including steelhead), striped bass, sturgeon, and American shad that ascend the Sacramento and San Joaquin rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;]

*(a) the term “anadromous fish” means those native stocks of salmon (including steelhead) and sturgeon that, as of October 30, 1992, were present in the Sacramento and San Joaquin Rivers and their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean;*

\* \* \* \* \*

(l) the terms “Restoration Fund” and “Fund” mean the Central Valley Project Restoration Fund established by this title; [and,]

(m) the term “Secretary” means the Secretary of the Interior[.]; and

*(n) the term “reasonable flows” means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.*

**SEC. 3404. LIMITATION ON CONTRACTING AND CONTRACT REFORM.**

[(a) NEW CONTRACTS.—Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:

[(1) the provisions of subsections 3406(b)–(d) of this title are met;

[(2) the California State Water Resources Control Board concludes the review ordered by the California Court of Appeals in *United States v. State Water Resources Control Board*, 182 Cal. App. 3d 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and,

[(3) at least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives

explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.

[(b) EXCEPTIONS TO LIMIT ON NEW CONTRACTS.—The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Public Law 102–250 or section 206 of Public Law 101–514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county’s water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.

[(c) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of twenty-five years and may renew such contracts for successive periods of up to 25 years each.

[(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply with existing law, including provisions of this title. This title shall be deemed “applicable law” as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.

[(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all re-

quirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.

【(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund: *Provided, however,* That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract immediately upon completion of that environmental impact statement, if such contract has not expired prior to such date.】

(a) *RENEWAL OF EXISTING LONG-TERM CONTRACTS.*—Upon request of the contractor, the Secretary shall renew any existing long-term repayment or water service contract that provides for the delivery of water from the Central Valley Project for a period of 40 years, and renew such contracts for successive periods of 40 years each.

(b) *DELIVERY CHARGE.*—Beginning on the date of the enactment of this Act, a contract entered into or renewed pursuant to this section shall include a provision that requires the Secretary to charge the other party to such contract only for water actually delivered by the Secretary.

**SEC. 3405. WATER TRANSFERS, IMPROVED WATER MANAGEMENT AND CONSERVATION.**

(a) *WATER TRANSFERS.*—In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian tribe, or private nonprofit organization for project purposes or any purpose recognized as beneficial under applicable State law. *The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with this Act or any other provision of Federal reclamation law and the National Environmental Policy Act of 1969.* Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.

(1) **CONDITIONS FOR TRANSFERS.**—All transfers to Central Valley Project water authorized by this subsection shall be subject to review and approval by the Secretary under the conditions specified in this subsection. Transfers involving more than 20 percent of the Central Valley Project water subject to long-term contract within any contracting district or agency shall also be subject to review and approval by such district or agency under the conditions specified in this subsection:

(A) No transfer **[to combination]** or combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.

\* \* \* \* \*

(2) **REVIEW AND APPROVAL OF TRANSFERS.**—All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:

(A) \* \* \*

\* \* \* \* \*

(E) *The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of such proposal. If such district or agency or the Secretary determines that such proposal is incomplete, such district or agency or the Secretary shall state with specificity what must be added to or revised in order for such proposal to be complete.*

(F) *Except as provided in this section, the Secretary shall not impose mitigation or other requirements on a proposed transfer, but the contracting district from which the water is coming or the agency shall retain all authority under State law to approve or condition a proposed transfer.*

\* \* \* \* \*

(4) **Notwithstanding any other provision of Federal reclamation law—**

(A) *the authority to make transfers or exchanges of, or banking or recharge arrangements using, Central Valley Project water that could have been conducted before October 30, 1992, is valid, and such transfers, exchanges, or arrangements shall not be subject to, limited, or conditioned by this title; and*

(B) *this title shall not supersede or revoke the authority to transfer, exchange, bank, or recharge Central Valley Project water that existed prior to October 30, 1992.*

(b) **[METERING] MEASUREMENT OF WATER USE REQUIRED.**—All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water

measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. *The contracting district or agency, not including contracting districts serving multiple agencies with separate governing boards, shall ensure that all contractor-owned water delivery systems within its boundaries measure surface water at the district or agency's facilities up to the point the surface water is commingled with other water supplies.* The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.

\* \* \* \* \*

[(d) WATER PRICING REFORM.—All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:

[(1) the first rate tier shall apply to a quantity of water up to 80 percent of the contract total and shall not be less than the applicable contract rate;

[(2) the second rate tier shall apply to that quantity of water over 80 percent and under 90 percent of the contract total and shall be at a level halfway between the rates established under paragraphs (1) and (3) of this subsection;

[(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and

[(4) the Secretary shall charge contractors only for water actually delivered.

The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for waterfowl in fields where the water is used and the crops are produced: *Provided*, That such waiver shall apply only if such habitat values can be assured consistent with the purposes of this title through binding agreements executed with or approved by the Secretary.]

[(e) (d) WATER CONSERVATION STANDARDS.—The Secretary shall establish and administer an office of Central Valley Project water conservation best management practices that shall, in consultation with the Secretary of Agriculture, the California Department of Water Resources, California academic institutions, and Central Valley Project water users, develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982.

(1) \* \* \*

\* \* \* \* \*

[(f)] (e) INCREASED REVENUES.—All revenues received by the Secretary [as a result of the increased repayment] *that exceed the cost-of-service* rates applicable to *the delivery of* water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section[, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section,] shall be covered to the Restoration Fund.

**SEC. 3406. FISH, WILDLIFE AND HABITAT RESTORATION.**

(a) \* \* \*

(b) FISH AND WILDLIFE RESTORATION ACTIVITIES.—The Secretary, immediately upon the enactment of this title, shall operate the Central Valley Project to meet all obligations under State and Federal law, including but not limited to the Federal Endangered Species Act, 16 U.S.C. 1531, et seq., and all decisions of the California State Water Resources Control Board establishing conditions on applicable licenses and permits for the project. The Secretary, in consultation with other State and Federal agencies, Indian tribes, and affected interests, is further authorized and directed to:

(1) develop within three years of enactment and implement a program which makes all reasonable efforts to ensure that, by the year 2002, natural production of anadromous fish in Central Valley rivers and streams will be sustainable, on a long-term basis, at levels not less than twice the average levels attained during the period of 1967–1991; *Provided*, That this goal shall not apply to the San Joaquin River between Friant Dam and the Mendota Pool, for which a separate program is authorized under subsection 3406(c) of this title; *Provided further*, That the programs and activities authorized by this section shall, when fully implemented, be deemed to meet the mitigation, protection, restoration, and enhancement purposes established by subsection 3406(a) of this title; *And provided further*, That in the course of developing and implementing this program the Secretary shall make all reasonable efforts consistent with the requirements of this section to address other identified adverse environmental impacts of the Central Valley Project not specifically enumerated in this section.

(A) \* \* \*

(B) As needed to achieve the goals of this program, the Secretary [is authorized and directed to] *may* modify Central Valley Project operations to provide *reasonable water* flows of suitable quality, quantity, and timing to protect all life stages of [anadromous fish, except that such] *anadromous fish*. Such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. [Instream flow] *Reasonable instream flow* needs for all Central Val-

ley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the United States Fish and Wildlife Service *and the National Marine Fisheries Service* after consultation with the [California Department of Fish and Game] *United States Geological Survey*.

\* \* \* \* \*

(2) upon enactment of this title dedicate and manage annually eight hundred thousand acre-feet of Central Valley Project yield for the [primary purpose] *purposes* of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help to meet such obligations as may be legally imposed upon the Central Valley Project under State or Federal law following the date of enactment of this title, including [but not limited to] additional obligations under the Federal Endangered Species Act. *All Central Valley Project water used for the purposes specified in this paragraph shall be credited to the quantity of Central Valley Project yield dedicated and managed under this paragraph by determining how the dedication and management of such water would affect the delivery capability of the Central Valley Project during the 1928 to 1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing on October 30, 1992, have been met. To the fullest extent possible and in accordance with section 3411, Central Valley Project water dedicated and managed pursuant to this paragraph shall be reused to fulfill the Secretary's remaining contractual obligations to provide Central Valley Project water for agricultural or municipal and industrial purposes.* For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928–1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.

(A) \* \* \*

\* \* \* \* \*

[(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; *Provided*, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; *Provided further*, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.]

*(C) If by March 15th of any year the quantity of Central Valley Project water forecasted to be made available to water service or repayment contractors in the Delta Division of the Central Valley Project is below 75 percent of the total quantity of water to be made available under said contracts, the quantity of Central Valley Project yield dedicated and managed for that year under this paragraph shall be reduced by 25 percent.*

\* \* \* \* \*

*(i) SATISFACTION OF PURPOSES.—By pursuing the activities described in this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of this title.*

**SEC. 3407. RESTORATION FUND.**

(a) RESTORATION FUND ESTABLISHED.—(1) *IN GENERAL.*—There is hereby established in the Treasury of the United States the “Central Valley Project Restoration Fund” (hereafter “Restoration Fund”) which shall be available for deposit of donations from any source and revenues provided under sections 3404(c)(3), 3405(f), 3406(c)(1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. [Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b)(4)–(6), (10)–(18), and (20)–(22) of this title. Monies] *Monies* donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.

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

*(A) or environmental restoration or mitigation fees not otherwise provided by law, as a condition to—*

*(i) providing for the storage or conveyance of non-Central Valley Project water pursuant to Federal reclamation laws;*  
*or*

*(ii) the delivery of water pursuant to section 215 of the Reclamation Reform Act of 1982 (Public Law 97–293; 96 Stat. 1270); or*

*(B) for any water that is delivered with the sole intent of groundwater recharge.*

\* \* \* \* \*

(c) MITIGATION AND RESTORATION PAYMENTS BY WATER AND POWER BENEFICIARIES.—

(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual [mitigation and restoration] payments, in addition to the charges [provided for or] collected under sections 3404(c)(3), 3405(a)(1)(C), 3405(f), and 3406(c)(1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs [of fish, wildlife, and habitat restoration programs

and projects under this title.] *of carrying out all activities described in this title.*

\* \* \* \* \*

(d) ADJUSTMENT AND ASSESSMENT OF MITIGATION AND RESTORATION PAYMENTS.—

(1) \* \* \*

(2) The Secretary shall assess and collect the following mitigation and restoration payments, to be covered to the Restoration Fund, subject to the requirements of paragraph (1) of this subsection:

(A) The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c)(2) of this subsection; *Provided*, That such additional payments shall not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling average basis; *Provided further*, That such additional annual payments shall be allocated so as not to exceed \$6 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by the Central Valley Project, and \$12 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project, *or after October 1, 2013, \$4 per megawatt-hour for Central Valley Project power sold to power contractors (October 2013 price levels)*; *Provided further*, That the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; *Provided further*, That the Secretary shall impose an additional annual charge of \$25 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; *And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title,, *no later than December 31, 2020*, the Secretary shall reduce the sums described in paragraph (c)(2) of this section to \$35,000,000 per year (October 1992 price levels) and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in the same proportion, measured over a ten-year rolling average,

as water and power users' respective allocations for repayment of the Central Valley Project.

\* \* \* \* \*

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

(h) *ADVISORY BOARD.*—

(1) *ESTABLISHMENT.*—There is hereby established the Restoration Fund Advisory Board (hereinafter in this section referred to as the “Advisory Board”) composed of 12 members selected by the Secretary, each for four-year terms, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent the various Central Valley Project stakeholders, four of whom shall be from CVP agricultural users, three from CVP municipal and industrial users, three from CVP power contractors, and two at the discretion of the Secretary. The Secretary and the Secretary of Commerce may each designate a representative to act as an observer of the Advisory Board.

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

(A) To meet at least semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to the Central Valley Project Improvement Act.

(B) To ensure that any advice or recommendation made by the Advisory Board to the Secretary reflect the independent judgment of the Advisory Board.

(C) Not later than December 31, 2013, and annually thereafter, to transmit to the Secretary and Congress recommendations required under subparagraph (A).

(D) Not later than December 31, 2013, and biennially thereafter, to transmit to Congress a report that details the progress made in achieving the actions mandated under section 3406 of this title.

(3) *ADMINISTRATION.*—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.

**SEC. 3408. ADDITIONAL AUTHORITIES.**

(a) \* \* \*

\* \* \* \* \*

[(c) *CONTRACTS FOR ADDITIONAL STORAGE AND DELIVERY OF WATER.*—The Secretary is authorized to enter into contracts pursuant to Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private nonprofit organization for the exchange, impoundment, storage, carriage, and delivery of Central Valley Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose, except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Public Law 99–546 (100 Stat. 3051).]

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

(1) *IN GENERAL.*—*The Secretary is authorized to enter into contracts pursuant to Federal reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private organization for the exchange, impoundment, storage, carriage, and delivery of nonproject water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose.*

(2) *LIMITATION.*—*Nothing in this subsection shall be deemed to supersede the provisions of section 103 of Public Law 99-546 (100 Stat. 3051).*

(3) *AUTHORITY FOR CERTAIN ACTIVITIES.*—*The Secretary shall use the authority granted by this subsection in connection with requests to exchange, impound, store, carry, or deliver nonproject water using Central Valley Project facilities for any beneficial purpose.*

(4) *RATES.*—*The Secretary shall develop rates not to exceed the amount required to recover the reasonable costs incurred by the Secretary in connection with a beneficial purpose under this subsection. Such rates shall be charged to a party using Central Valley Project facilities for such purpose. Such costs shall not include any donation or other payment to the Restoration Fund.*

(5) *CONSTRUCTION.*—*This subsection shall be construed and implemented to facilitate and encourage the use of Central Valley Project facilities to exchange, impound, store, carry, or deliver nonproject water for any beneficial purpose.*

\* \* \* \* \*

(f) *ANNUAL REPORTS TO CONGRESS.*—*Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of the Senate and the Committee on [Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries] *Natural Resources* of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this title, including progress on the plan required by subsection (j). Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title. *The filing and adequacy of such report shall be personally certified to the Committees referenced above by the Regional Director of the Mid-Pacific Region of the Bureau of Reclamation.**

\* \* \* \* \*

(h) *LAND RETIREMENT.*—

(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in [paragraph (h)(2)] *paragraph (2)* which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.

(2) The Secretary is authorized to purchase, under the authority of ~~paragraph (h)(i)~~ *paragraph (I)*, and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary—

(A) \* \* \*

\* \* \* \* \*

(j) PROJECT YIELD INCREASE.—~~In order to minimize adverse effects, if any, upon~~ (1) *IN GENERAL.*—*In order to minimize adverse effects upon existing Central Valley Project water contractors resulting from the water dedicated to fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary shall, not later than three years after the date of enactment of this title, develop and submit to the Congress, a least-cost plan to increase, within fifteen years after the date of enactment of this title, the yield of the Central Valley Project by the amount dedicated to fish and wildlife purposes under this title. The plan authorized by this subsection shall include, but shall not be limited to a description of how the Secretary intends to use the following options:*

- ~~[(1)]~~ (A) improvements in, modification of, or additions to the facilities and operations of the project *and construction of new water storage facilities;*
- ~~[(2)]~~ (B) conservation;
- ~~[(3)]~~ (C) transfers;
- ~~[(4)]~~ (D) conjunctive use;
- ~~[(5)]~~ (E) purchase of water;
- ~~[(6)]~~ (F) purchase and idling of agricultural land; ~~and~~
- ~~[(7)]~~ (G) direct purchase of water rights~~["."]; and~~

~~[Such plan shall include recommendations on appropriate cost-sharing arrangements and shall be developed in a manner consistent with all applicable State and Federal law.]~~

~~(H) Water banking and recharge.~~

(2) *IMPLEMENTATION OF PLAN.*—*The Secretary shall implement the plan required by paragraph (1) commencing on October 1, 2013. In order to carry out this subsection, the Secretary shall coordinate with the State of California in implementing measures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.*

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

\* \* \* \* \*

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**SAN JOAQUIN RIVER RESTORATION SETTLEMENT ACT**

\* \* \* \* \*

**TITLE X—WATER SETTLEMENTS SUB-  
TITLE A—SAN JOAQUIN RIVER RES-  
Toration SETTLEMENT**

**PART I—SAN JOAQUIN RIVER RESTORATION  
SETTLEMENT ACT**

\* \* \* \* \*

**SEC. 10002. PURPOSE.**

The purpose of this part is to authorize [implementation of the Settlement] *restoration of the San Joaquin River.*

**SEC. 10003. DEFINITIONS.**

In this part:

[(1) The terms “Friant Division long-term contractors”, “Interim Flows”, “Restoration Flows”, “Recovered Water Account”, “Restoration Goal”, and “Water Management Goal” have the meanings given the terms in the Settlement.]

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

\* \* \* \* \*

[(3) The term “Settlement” means the Stipulation of Settlement dated September 13, 2006, in the litigation entitled Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., United States District Court, Eastern District of California, No. CIV. S-88-1658-LKK/GGH.]

(3) *The term “Water Year” means March 1 through the last day of February of the following Calendar Year, both dates inclusive*

(4) *The term “Critical Water Year” means when the total unimpaired runoff at Friant Dam is less than 400,000 acre-feet, as forecasted as of March 1 of that water year by the California Department of Water Resources.*

**SEC. 10004. IMPLEMENTATION OF SETTLEMENT.**

(a) IN GENERAL.—The Secretary of the Interior is hereby [authorized and directed to implement the terms and conditions of the Settlement in cooperation with the State of California, including the following measures as these measures are prescribed in the Settlement] *authorized to carry out the following:*

[(1) Design and construct channel and structural improvements as described in paragraph 11 of the Settlement, provided, however, that the Secretary shall not make or fund any such improvements to facilities or property of the State of California without the approval of the State of California and the State’s agreement in 1 or more memoranda of understanding to participate where appropriate.

[(2) Modify Friant Dam operations so as to provide Restoration Flows and Interim Flows.]

[(3)] (1) Acquire water, water rights, or options to acquire water as described in [paragraph 13 of the Settlement] *this*

*part*, provided, however, such acquisitions shall only be made from willing sellers and not through eminent domain.

[(4) Implement the terms and conditions of paragraph 16 of the Settlement related to recirculation, recapture, reuse, exchange, or transfer of water released for Restoration Flows or Interim Flows, for the purpose of accomplishing the Water Management Goal of the Settlement, subject to—

[(A) applicable provisions of California water law;

[(B) the Secretary's use of Central Valley Project facilities to make Project water (other than water released from Friant Dam pursuant to the Settlement) and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors; and

[(C) the Secretary's performance of the Agreement of November 24, 1986, between the United States of America and the Department of Water Resources of the State of California for the coordinated operation of the Central Valley Project and the State Water Project as authorized by Congress in section 2(d) of the Act of August 26, 1937 (50 Stat. 850, 100 Stat. 3051), including any agreement to resolve conflicts arising from said Agreement.

[(5) Develop and implement the Recovered Water Account as specified in paragraph 16(b) of the Settlement, including the pricing and payment crediting provisions described in paragraph 16(b)(3) of the Settlement, provided that all other provisions of Federal reclamation law shall remain applicable.]

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

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

(B) *shall ensure that the release of Restoration Flows are maintained at the level prescribed by this part, but that Restoration Flows do not reach downstream of Mendota Pool;*

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

(D) *may, without limiting the actions required under paragraphs (A) and (C) and subject to subsections 10004(a)(3) and 10004(l), use the Restoration Flows to enhance or restore a warm water fishery downstream of Gravelly Ford to and including Mendota Pool, if the Secretary determines that it is reasonable, prudent, and feasible to do so; and*

(3) *Not later than 1 year after the date of the enactment of this section, the Secretary shall develop and implement, in cooperation with the State of California, a reasonable plan, to fully recirculate, recapture, reuse, exchange, or transfer all Restoration Flows and provide such recirculated, recaptured, reused, exchanged, or transferred flows to those contractors within the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project that relinquished the Restoration Flows*

*so recirculated, recaptured, reused, exchanged, or transferred. Such a plan shall address any impact on ground water resources within the service area of the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project and mitigation may include ground water banking and recharge projects. Such a plan shall not impact the water supply or water rights of any entity outside the Friant Division, Hidden unit, and Buchanan Unit of the Central Valley Project. Such a plan shall be subject to applicable provisions of California water law and the Secretary's use of Central Valley Project facilities to make Project water (other than water released from Friant Dam pursuant to this part) and water acquired through transfers available to existing south-of-Delta Central Valley Project contractors.*

(b) AGREEMENTS.—

(1) AGREEMENTS WITH THE STATE.—In order to facilitate or expedite implementation of **【the Settlement】** *this part*, the Secretary is authorized and directed to enter into appropriate agreements, including cost-sharing agreements, with the State of California.

(2) OTHER AGREEMENTS.—The Secretary is authorized to enter into contracts, memoranda of understanding, financial assistance agreements, cost sharing agreements, and other appropriate agreements with State, tribal, and local governmental agencies, and with private parties, including agreements related to construction, improvement, and operation and maintenance of facilities, subject to any terms and conditions that the Secretary deems necessary to achieve the purposes of **【the Settlement】** *this part*.

(c) ACCEPTANCE AND EXPENDITURE OF NON-FEDERAL FUNDS.—The Secretary is authorized to accept and expend non-Federal funds in order to facilitate implementation of **【the Settlement】** *this part*.

**【(d) MITIGATION OF IMPACTS.—**Prior to the implementation of decisions or agreements to construct, improve, operate, or maintain facilities that the Secretary determines are needed to implement the Settlement, the Secretary shall identify—

**【(1) the impacts associated with such actions; and**

**【(2) the measures which shall be implemented to mitigate impacts on adjacent and downstream water users and landowners.】**

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

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

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

*(3) prior to the implementation of decisions or agreements to construct, improve, operate, or maintain facilities that the Secretary determines are needed to implement this part, the Secretary shall implement all mitigations measures identified in subsection (d)(2) before Restoration Flows are commenced.*

(e) DESIGN AND ENGINEERING STUDIES.—The Secretary is authorized to conduct any design or engineering studies that are necessary to implement **the Settlement** *this part*.

(f) EFFECT ON CONTRACT WATER ALLOCATIONS.—Except as otherwise provided in this section, the implementation of **the Settlement and the reintroduction of California Central Valley Spring Run Chinook salmon pursuant to the Settlement and section 10011** *this part*, shall not result in the involuntary reduction in contract water allocations to Central Valley Project long-term contractors, other than Friant Division long-term contractors.

(g) EFFECT ON EXISTING WATER CONTRACTS.—Except as provided in **the Settlement and** *this part*, nothing in this part shall modify or amend the rights and obligations of the parties to any existing water service, repayment, purchase, **or exchange contract** *exchange contract, or water rights settlement or holding contracts*.

(h) **INTERIM** FLOWS.—

(1) STUDY REQUIRED.—Prior to releasing any **Interim Flows under the Settlement** *Restoration Flows under this part*, the Secretary shall prepare an analysis in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), including at a minimum—

(A) \* \* \*

\* \* \* \* \*

(C) an evaluation of—

(i) possible impacts associated with the release of **Interim** *Restoration* Flows; and

(ii) mitigation measures for those impacts that are determined to be significant; *and*

(D) a description of the associated flow monitoring program **and**.

**(E) an analysis of the likely Federal costs, if any, of any fish screens, fish bypass facilities, fish salvage facilities, and related operations on the San Joaquin River south of the confluence with the Merced River required under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) as a result of the Interim Flows.**

(2) CONDITIONS FOR RELEASE.—The Secretary is authorized to release **Interim** *Restoration* Flows to the extent that such flows would not—

**(A) impede or delay completion of the measures specified in Paragraph 11(a) of the Settlement; or**

**(B) exceed** *exceed* existing downstream channel capacities.

(3) SEEPAGE IMPACTS.—The Secretary shall reduce **Interim** *Restoration* Flows to the extent necessary to address any material adverse impacts to third parties from groundwater seepage caused by such flows that the Secretary identifies based on the monitoring program of the Secretary.

**(4) TEMPORARY FISH BARRIER PROGRAM.**—The Secretary, in consultation with the California Department of Fish and Game, shall evaluate the effectiveness of the Hills Ferry barrier in preventing the unintended upstream migration of anadromous fish in the San Joaquin River and any false migratory pathways. If that evaluation determines that any such migration past the barrier is caused by the introduction of the In-

terim Flows and that the presence of such fish will result in the imposition of additional regulatory actions against third parties, the Secretary is authorized to assist the Department of Fish and Game in making improvements to the barrier. From funding made available in accordance with section 10009, if third parties along the San Joaquin River south of its confluence with the Merced River are required to install fish screens or fish bypass facilities due to the release of Interim Flows in order to comply with the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), the Secretary shall bear the costs of the installation of such screens or facilities if such costs would be borne by the Federal Government under section 10009(a)(3), except to the extent that such costs are already or are further willingly borne by the State of California or by the third parties.】

(4) *CLAIMS.*—*Within 60 days of enactment of this Act the Secretary shall promulgate a rule establishing a claims process to address current and future claims including, but not limited to, ground water seepage, flooding, or levee instability damages caused as a result of, arising out of, or related to implementation of subtitle A of title X of Public Law 111-11.*

(i) **FUNDING AVAILABILITY.**—

(1) **IN GENERAL.**—Funds shall be collected in the San Joaquin River Restoration Fund through October 1, 2019, and thereafter, with substantial amounts available through October 1, 2019, pursuant to section 10009 for implementation of 【the Settlement and parts I and III】 *this part*, including—

(A) \$88,000,000, to be available without further appropriation pursuant to section 10009(c)(2); *and*

(B) 【additional amounts authorized to be appropriated, including the】 charges required under section 10007 and an estimated \$20,000,000 from the CVP Restoration Fund pursuant to section 10009(b)(2)【; and】.

【(C) an aggregate commitment of at least \$200,000,000 by the State of California.】

\* \* \* \* \*  
 【(3) **EFFECT OF SUBSECTION.**—Nothing in this subsection limits the availability of funds authorized for appropriation pursuant to section 10009(b) or 10203(c).】

\* \* \* \* \*  
 (k) *NO IMPACTS ON OTHER INTERESTS.*—*No Central Valley Project or other water other than San Joaquin River water impounded by or bypassed from Friant Dam shall be used to implement subsection (a)(2) unless such use is on a voluntary basis. No cost associated with the implementation of this section shall be imposed directly or indirectly on any Central Valley Project contractor, or any other person or entity, outside the Friant Division, the Hidden Unit, or the Buchanan Unit, unless such costs are incurred on a voluntary basis. The implementation of this part shall not result directly or indirectly in any reduction in water supplies or water reliability on any Central Valley Project contractor, any State Water Project contractor, or any other person or entity, outside the Friant Division, the Hidden Unit, or the Buchanan Unit, unless such reductions or costs are incurred on a voluntary basis.*

(l) *PRIORITY.*—All actions taken under this part shall be subordinate to the Secretary’s use of Central Valley Project facilities to make Project water available to Project contractors, other than water released from the Friant Dam pursuant to this part.

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

(n) *PROJECT IMPLEMENTATION.*—Projects to implement this title shall be phased such that each project shall follow the sequencing identified below and include at least the—

- (1) project purpose and need;
- (2) identification of mitigation measures;
- (3) appropriate environmental review; and
- (4) prior to releasing Restoration Flows under this part, the Secretary shall—
  - (A) complete the implementation of mitigation measures required; and
  - (B) complete implementation of the project.

\* \* \* \* \*

**SEC. 10005. ACQUISITION AND DISPOSAL OF PROPERTY; TITLE TO FACILITIES.**

(a) *TITLE TO FACILITIES.*—Unless acquired pursuant to subsection (b), title to any facility or facilities, stream channel, levees, or other real property modified or improved in the course of implementing **the Settlement authorized by this part** *this part*, and title to any modifications or improvements of such facility or facilities, stream channel, levees, or other real property—

- (1) \* \* \*
- \* \* \* \* \*

(b) *ACQUISITION OF PROPERTY.*—  
**[(1) IN GENERAL.—The Secretary]** *The Secretary* is authorized to acquire through purchase from willing sellers any property, interests in property, or options to acquire real property needed to implement **the Settlement authorized by this part** *this part*.

**[(2) APPLICABLE LAW.—The Secretary is authorized, but not required, to exercise all of the authorities provided in section 2 of the Act of August 26, 1937 (50 Stat. 844, chapter 832), to carry out the measures authorized in this section and section 10004.]**

(c) *DISPOSAL OF PROPERTY.*—  
 (1) *IN GENERAL.*—Upon the Secretary’s determination that retention of title to property or interests in property acquired

pursuant to this part is no longer needed to be held by the United States for the furtherance of **the Settlement** *this part*, the Secretary is authorized to dispose of such property or interest in property on such terms and conditions as the Secretary deems appropriate and in the best interest of the United States, including possible transfer of such property to the State of California.

(2) **RIGHT OF FIRST REFUSAL.**—In the event the Secretary determines that property acquired pursuant to this part **through the exercise of its eminent domain authority** is no longer necessary for implementation of **the Settlement** *this part*, the Secretary shall provide a right of first refusal to the property owner from whom the property was initially acquired, or his or her successor in interest, on the same terms and conditions as the property is being offered to other parties.

(3) **DISPOSITION OF PROCEEDS.**—Proceeds from the disposal by sale or transfer of any such property or interests in such property shall be deposited in the fund established by **section 10009(c)** *section 10009*.

\* \* \* \* \*

**SEC. 10006. COMPLIANCE WITH APPLICABLE LAW.**

(a) **APPLICABLE LAW.**—

(1) **IN GENERAL.**—In undertaking the measures authorized by this part, the Secretary and the Secretary of Commerce shall comply with all applicable Federal and State laws, rules, and regulations, including the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), as necessary *unless otherwise provided by this part*.

(2) **ENVIRONMENTAL REVIEWS.**—The Secretary and the Secretary of Commerce are authorized and directed to initiate and expeditiously complete applicable environmental reviews and consultations as may be necessary to effectuate the purposes of **the Settlement** *this part*.

(b) **EFFECT ON STATE LAW.**—Nothing in this part shall preempt State law or modify any existing obligation of the United States under Federal reclamation law to operate the Central Valley Project in conformity with State law, *unless otherwise provided by this part*.

(c) **USE OF FUNDS FOR ENVIRONMENTAL REVIEWS.**—

(1) \* \* \*

(2) **PARTICIPATION IN ENVIRONMENTAL REVIEW PROCESS.**—In undertaking the measures authorized by **section 10004** *this part*, and for which environmental review is required, the Secretary may provide funds made available under this part to affected Federal agencies, State agencies, local agencies, and Indian tribes if the Secretary determines that such funds are necessary to allow the Federal agencies, State agencies, local agencies, or Indian tribes to effectively participate in the environmental review process.

(3) **LIMITATION.**—Funds may be provided under paragraph (2) only to support activities that directly contribute to the implementation of the terms and conditions of **the Settlement** *this part*.

(d) NONREIMBURSABLE FUNDS.—The United States' share of the costs of implementing this part, *including without limitation to sections 10004(d) and 10004(h)(4) of this part*, shall be nonreimbursable under Federal reclamation law, provided that nothing in this subsection shall limit or be construed to limit the use of the funds assessed and collected pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721, 4727), [for implementation of the Settlement], nor shall it be construed to limit or modify existing or future Central Valley Project ratesetting policies.

**SEC. 10007. COMPLIANCE WITH CENTRAL VALLEY PROJECT IMPROVEMENT ACT.**

Congress hereby finds and declares that [the Settlement] *enactment of this part* satisfies and discharges all of the obligations of the Secretary contained in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721) *and the obligations of the Secretary and all other parties to protect and keep in good condition any fish that may be planted or exist below Friant Dam including any obligations under section 5937 of the California Fish and Game Code and the public trust doctrine, and those of the Secretary and all other parties under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)*, provided, however, that—

(1) the Secretary shall continue to assess and collect the charges provided in section 3406(c)(1) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721)[, as provided in the Settlement]; and

\* \* \* \* \*

**SEC. 10008. NO PRIVATE RIGHT OF ACTION.**

(a) IN GENERAL.—Nothing in this part confers upon any person or entity [not a party to the Settlement] a private right of action or claim for relief to interpret or enforce the provisions of this part [or the Settlement] *unless otherwise provided by this part. Any Central Valley Project long-term water service or repayment contractor within the Friant Division, Hidden unit, or Buchanan Unit adversely affected by the Secretary's failure to comply with section 10004(a)(3) of this part may bring an action against the Secretary for injunctive relief or damages, or both.*

\* \* \* \* \*

**SEC. 10009. APPROPRIATIONS[; SETTLEMENT FUND].**

(a) IMPLEMENTATION COSTS.—

(1) IN GENERAL.—The costs of implementing [the Settlement] *this part* shall be covered by payments or in-kind contributions made by Friant Division contractors and other non-Federal parties, including the funds provided in subparagraphs (A) through (D) of subsection (c)(1)[, estimated to total \$440,000,000, of which the non-Federal payments are estimated to total \$200,000,000 (at October 2006 price levels) and the amount from repaid Central Valley Project capital obligations is estimated to total \$240,000,000, the additional Federal appropriation of \$250,000,000 authorized pursuant to sub-

section (b)(1),] and such additional funds authorized pursuant to subsection (b)(2); provided however, that the costs of implementing the provisions of section 10004(a)(1) shall be shared by the State of California pursuant to the terms of a memorandum of understanding executed by the State of California and the Parties to the Settlement on September 13, 2006, which includes at least \$110,000,000 of State funds.

(2) ADDITIONAL AGREEMENTS.—

[(A) IN GENERAL.—The Secretary] *The Secretary* shall enter into 1 or more agreements to fund or implement improvements on a project-by-project basis with the State of California.

[(B) REQUIREMENTS.—Any agreements entered into under subparagraph (A) shall provide for recognition of either monetary or in-kind contributions toward the State of California’s share of the cost of implementing the provisions of section 10004(a)(1).]

(3) LIMITATION.—[Except as provided in the Settlement, to] *To* the extent that costs incurred solely to implement [this Settlement] *this part* would not otherwise have been incurred by any entity or public or local agency or subdivision of the State of California, such costs shall not be borne by any such entity, agency, or subdivision of the State of California, unless such costs are incurred on a voluntary basis.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—[In addition to the funding provided in subsection (c), there are also authorized to be appropriated not to exceed \$250,000,000 (at October 2006 price levels) to implement this part and the Settlement, to be available until expended; provided however, that the] *The Secretary* is authorized to spend [such additional appropriations only in amounts equal to] the amount of funds deposited in the San Joaquin River Restoration Fund (not including payments under subsection (c)(1)(B) and proceeds under subsection (c)(1)(C)), the amount of in-kind contributions, and other non-Federal payments actually committed to the implementation of this part [or the Settlement].

\* \* \* \* \*

(c) FUND.—

(1) IN GENERAL.—There is hereby established within the Treasury of the United States a fund, to be known as the San Joaquin River Restoration Fund, into which the following funds shall be deposited and used solely for the purpose of implementing [the Settlement] *this part* except as otherwise provided in subsections (a) and (b) of section 10203:

(A) \* \* \*

\* \* \* \* \*

(C) Proceeds [from the sale of water pursuant to the Settlement, or] from the sale of property or interests in property as provided in section 10005.

(D) Any non-Federal funds, including State cost-sharing funds, contributed to the United States for implementation of [the Settlement] *this part*, which the Secretary may ex-

pend without further appropriation for the purposes for which contributed.

(2) AVAILABILITY.—All funds deposited into the Fund pursuant to subparagraphs (A), (B), and (C) of paragraph (1) are authorized for appropriation to implement [the Settlement and] this part, in addition to the authorization provided in subsections (a) and (b) of section 10203, except that \$88,000,000 of such funds are available for expenditure without further appropriation; provided that after October 1, 2019, all funds in the Fund shall be available for expenditure without further appropriation.

[(d) LIMITATION ON CONTRIBUTIONS.—Payments made by long-term contractors who receive water from the Friant Division and Hidden and Buchanan Units of the Central Valley Project pursuant to sections 3406(c)(1) and 3407(d)(2) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4721, 4727) and payments made pursuant to paragraph 16(b)(3) of the Settlement and subsection (c)(1)(B) shall be the limitation of such entities' direct financial contribution to the Settlement, subject to the terms and conditions of paragraph 21 of the Settlement.

[(e) NO ADDITIONAL EXPENDITURES REQUIRED.—Nothing in this part shall be construed to require a Federal official to expend Federal funds not appropriated by Congress, or to seek the appropriation of additional funds by Congress, for the implementation of the Settlement.

[(f) REACH 4B.—

[(1) STUDY.—

[(A) IN GENERAL.—In accordance with the Settlement and the memorandum of understanding executed pursuant to paragraph 6 of the Settlement, the Secretary shall conduct a study that specifies—

[(i) the costs of undertaking any work required under paragraph 11(a)(3) of the Settlement to increase the capacity of reach 4B prior to reinitiation of Restoration Flows;

[(ii) the impacts associated with reinitiation of such flows; and

[(iii) measures that shall be implemented to mitigate impacts.

[(B) DEADLINE.—The study under subparagraph (A) shall be completed prior to restoration of any flows other than Interim Flows.

[(2) REPORT.—

[(A) IN GENERAL.—The Secretary shall file a report with Congress not later than 90 days after issuing a determination, as required by the Settlement, on whether to expand channel conveyance capacity to 4500 cubic feet per second in reach 4B of the San Joaquin River, or use an alternative route for pulse flows, that—

[(i) explains whether the Secretary has decided to expand Reach 4B capacity to 4500 cubic feet per second; and

[(ii) addresses the following matters:

【(I) The basis for the Secretary’s determination, whether set out in environmental review documents or otherwise, as to whether the expansion of Reach 4B would be the preferable means to achieve the Restoration Goal as provided in the Settlement, including how different factors were assessed such as comparative biological and habitat benefits, comparative costs, relative availability of State cost-sharing funds, and the comparative benefits and impacts on water temperature, water supply, private property, and local and downstream flood control.

【(II) The Secretary’s final cost estimate for expanding Reach 4B capacity to 4500 cubic feet per second, or any alternative route selected, as well as the alternative cost estimates provided by the State, by the Restoration Administrator, and by the other parties to the Settlement.

【(III) The Secretary’s plan for funding the costs of expanding Reach 4B or any alternative route selected, whether by existing Federal funds provided under this subtitle, by non-Federal funds, by future Federal appropriations, or some combination of such sources.

【(B) DETERMINATION REQUIRED.—The Secretary shall, to the extent feasible, make the determination in subparagraph (A) prior to undertaking any substantial construction work to increase capacity in reach 4B.

【(3) COSTS.—If the Secretary’s estimated Federal cost for expanding reach 4B in paragraph (2), in light of the Secretary’s funding plan set out in that paragraph, would exceed the remaining Federal funding authorized by this part (including all funds reallocated, all funds dedicated, and all new funds authorized by this part and separate from all commitments of State and other non-Federal funds and in-kind commitments), then before the Secretary commences actual construction work in reach 4B (other than planning, design, feasibility, or other preliminary measures) to expand capacity to 4500 cubic feet per second to implement this Settlement, Congress must have increased the applicable authorization ceiling provided by this part in an amount at least sufficient to cover the higher estimated Federal costs.】

**SEC. 10010. REPAYMENT CONTRACTS AND ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS.**

(a) CONVERSION OF CONTRACTS.—

(1) \* \* \*

\* \* \* \* \*

(3) All such contracts entered into pursuant to paragraph (1) shall—

(A) \* \* \*

\* \* \* \* \*

(D) conform to 【the Settlement and】 this part and shall continue so long as the contractor pays applicable charges, consistent with subsection (c)(2) and applicable law.

(4) All such contracts entered into pursuant to paragraph (2) shall—

(A) \* \* \*

\* \* \* \* \*

(C) conform to **the Settlement and** this part and shall continue so long as the contractor pays applicable charges, consistent with subsection (c)(2) and applicable law.

\* \* \* \* \*

(c) APPLICABILITY OF CERTAIN PROVISIONS.—

(1) \* \* \*

\* \* \* \* \*

**[(3) Provisions of the Settlement applying to Friant Division, Hidden Unit, and Buchanan Unit long-term water service contracts shall also apply to contracts executed pursuant to this section.]**

(d) REDUCTION OF CHARGE FOR THOSE CONTRACTS CONVERTED PURSUANT TO SUBSECTION (a)(1).—

(1) At the time all payments by the contractor required by subsection (a)(3)(A) have been completed, the Secretary shall reduce the charge mandated in section 10007(1) of this part, from 2020 through 2039, to offset the financing costs as defined in section 10010(d)(3). The reduction shall be calculated at the time all payments by the contractor required by subsection (a)(3)(A) have been completed. The calculation shall remain fixed from 2020 through 2039 and shall be based upon anticipated average annual water deliveries, as mutually agreed upon by the Secretary and the contractor, for the period from 2020 through 2039, and the amounts of such reductions shall be discounted using the Treasury Rate; provided, that such charge shall not be reduced to less than \$4.00 per acre foot of project water delivered; provided further, that such reduction shall be implemented annually unless the Secretary determines, based on the availability of other monies, that the charges mandated in section 10007(1) are otherwise needed to cover ongoing federal costs of **the Settlement** *this part*, including any federal operation and maintenance costs of facilities that the Secretary determines are needed to implement **the Settlement** *this part*. If the Secretary determines that such charges are necessary to cover such ongoing federal costs, the Secretary shall, instead of making the reduction in such charges, reduce the contractor's operation and maintenance obligation by an equivalent amount, and such amount shall not be recovered by the United States from any Central Valley Project contractor, provided nothing herein shall affect the obligation of the contractor to make payments pursuant to a transfer agreement with a non-federal operating entity.

\* \* \* \* \*

(e) SATISFACTION OF CERTAIN PROVISIONS.—

(1) IN GENERAL.—Upon the first release of **Interim Flows or Restoration Flows**, pursuant to paragraphs 13 or 15 of the **Settlement** *Restoration Flows, pursuant to this part*, any short- or long-term agreement, to which 1 or more long-term Friant Division, Hidden Unit, or Buchanan Unit contractor that con-

verts its contract pursuant to subsection (a) is a party, providing for the transfer or exchange of water not released as **Interim Flows or** Restoration Flows shall be deemed to satisfy the provisions of subsection 3405(a)(1)(A) and (I) of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575) without the further concurrence of the Secretary as to compliance with said subsections if the contractor provides, not later than 90 days before commencement of any such transfer or exchange for a period in excess of 1 year, and not later than 30 days before commencement of any proposed transfer or exchange with duration of less than 1 year, written notice to the Secretary stating how the proposed transfer or exchange is intended to reduce, avoid, or mitigate impacts to water deliveries caused by **the Interim Flows or Restoration Flows or is intended to otherwise facilitate the Water Management Goal, as described in the Settlement** *Restoration Flows*. The Secretary shall promptly make such notice publicly available.

(2) DETERMINATION OF REDUCTIONS TO WATER DELIVERIES.—Water transferred or exchanged under an agreement that meets the terms of this subsection shall not be counted as a replacement or an offset for purposes of determining reductions to water deliveries to any Friant Division long-term contractor **except as provided in paragraph 16(b) of the Settlement**. The Secretary shall, at least annually, make publicly available a compilation of the number of transfer or exchange agreements exercising the provisions of this subsection to reduce, avoid, or mitigate impacts to water deliveries caused by **the Interim Flows or Restoration Flows or to facilitate the Water Management Goal** *Restoration Flows*, as well as the volume of water transferred or exchanged under such agreements.

\* \* \* \* \*

**[(SEC. 10011. CALIFORNIA CENTRAL VALLEY SPRING RUN CHINOOK SALMON.**

**[(a) FINDING.—**Congress finds that the implementation of the Settlement to resolve 18 years of contentious litigation regarding restoration of the San Joaquin River and the reintroduction of the California Central Valley Spring Run Chinook salmon is a unique and unprecedented circumstance that requires clear expressions of Congressional intent regarding how the provisions of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) are utilized to achieve the goals of restoration of the San Joaquin River and the successful reintroduction of California Central Valley Spring Run Chinook salmon.

**[(b) REINTRODUCTION IN THE SAN JOAQUIN RIVER.—**California Central Valley Spring Run Chinook salmon shall be reintroduced in the San Joaquin River below Friant Dam pursuant to section 10(j) of the Endangered Species Act of 1973 (16 U.S.C. 1539(j)) and the Settlement, provided that the Secretary of Commerce finds that a permit for the reintroduction of California Central Valley Spring Run Chinook salmon may be issued pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973 (16 U.S.C. 1539(a)(1)(A)).

**[(c) FINAL RULE.—**

[(1) DEFINITION OF THIRD PARTY.—For the purpose of this subsection, the term “third party” means persons or entities diverting or receiving water pursuant to applicable State and Federal laws and shall include Central Valley Project contractors outside of the Friant Division of the Central Valley Project and the State Water Project.

[(2) ISSUANCE.—The Secretary of Commerce shall issue a final rule pursuant to section 4(d) of the Endangered Species Act of 1973 (16 U.S.C. 1533(d)) governing the incidental take of reintroduced California Central Valley Spring Run Chinook salmon prior to the reintroduction.

[(3) REQUIRED COMPONENTS.—The rule issued under paragraph (2) shall provide that the reintroduction will not impose more than de minimus: water supply reductions, additional storage releases, or bypass flows on unwilling third parties due to such reintroduction.

[(4) APPLICABLE LAW.—Nothing in this section—

[(A) diminishes the statutory or regulatory protections provided in the Endangered Species Act of 1973 for any species listed pursuant to section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) other than the reintroduced population of California Central Valley Spring Run Chinook salmon, including protections pursuant to existing biological opinions or new biological opinions issued by the Secretary or Secretary of Commerce; or

[(B) precludes the Secretary or Secretary of Commerce from imposing protections under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) for other species listed pursuant to section 4 of that Act (16 U.S.C. 1533) because those protections provide incidental benefits to such reintroduced California Central Valley Spring Run Chinook salmon.

[(d) REPORT.—

[(1) IN GENERAL.—Not later than December 31, 2024, the Secretary of Commerce shall report to Congress on the progress made on the reintroduction set forth in this section and the Secretary’s plans for future implementation of this section.

[(2) INCLUSIONS.—The report under paragraph (1) shall include—

[(A) an assessment of the major challenges, if any, to successful reintroduction;

[(B) an evaluation of the effect, if any, of the reintroduction on the existing population of California Central Valley Spring Run Chinook salmon existing on the Sacramento River or its tributaries; and

[(C) an assessment regarding the future of the reintroduction.

[(e) FERC PROJECTS.—

[(1) IN GENERAL.—With regard to California Central Valley Spring Run Chinook salmon reintroduced pursuant to the Settlement, the Secretary of Commerce shall exercise its authority under section 18 of the Federal Power Act (16 U.S.C. 811) by reserving its right to file prescriptions in proceedings for projects licensed by the Federal Energy Regulatory Commis-

sion on the Calaveras, Stanislaus, Tuolumne, Merced, and San Joaquin rivers and otherwise consistent with subsection (c) until after the expiration of the term of the Settlement, December 31, 2025, or the expiration of the designation made pursuant to subsection (b), whichever ends first.

[(2) EFFECT OF SUBSECTION.—Nothing in this subsection shall preclude the Secretary of Commerce from imposing prescriptions pursuant to section 18 of the Federal Power Act (16 U.S.C. 811) solely for other anadromous fish species because those prescriptions provide incidental benefits to such reintroduced California Central Valley Spring Run Chinook salmon.

[(f) EFFECT OF SECTION.—Nothing in this section is intended or shall be construed—

[(1) to modify the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C. 791a et seq.); or

[(2) to establish a precedent with respect to any other application of the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or the Federal Power Act (16 U.S.C. 791a et seq.).]

\* \* \* \* \*

**PART III—FRIANT DIVISION IMPROVEMENTS**

\* \* \* \* \*

**SEC. 10202. FINANCIAL ASSISTANCE FOR LOCAL PROJECTS.**

(a) \* \* \*

(b) CRITERIA.—

(1) A project shall be eligible for Federal financial assistance under subsection (a) only if all or a portion of the project is designed to reduce, avoid, or offset the quantity of the expected water supply impacts to Friant Division long-term contractors caused by [the Interim or Restoration Flows authorized in part I of this subtitle] *Restoration Flows authorized in this part*, and such quantities have not already been reduced, avoided, or offset by other programs or projects.

(2) Federal financial assistance shall only apply to the portion of a project that the local agency designates as reducing, avoiding, or offsetting the expected water supply impacts caused by [the Interim or Restoration Flows authorized in part I of this subtitle] *Restoration Flows authorized in this part*, consistent with the methodology developed pursuant to paragraph (3)(C).

(3) No Federal financial assistance shall be provided by the Secretary under this part for construction of a project under subsection (a) unless the Secretary—

(A) determines that appropriate planning, design, and environmental compliance activities associated with such a project have been completed, and that the Secretary has been offered the opportunity to participate in the project at a price that is no higher than the local agency’s own costs, in order to secure necessary storage, extraction, and conveyance rights for water that may be needed to [meet the Restoration Goal as described in part I of this subtitle] *recover Restoration Flows as described in this part*, where

such project has capacity beyond that designated for the purposes in paragraph (2) or where it is feasible to expand such project to allow participation by the Secretary;

(B) \* \* \*

(C) determines that a method acceptable to the Secretary has been developed for quantifying the benefit, in terms of reduction, avoidance, or offset of the water supply impacts expected to be caused by [the Interim or Restoration Flows authorized in part I of this subtitle] *Restoration Flows authorized in this part*, that will result from the project[, and for ensuring appropriate adjustment in the recovered water account pursuant to section 10004(a)(5)]; and

\* \* \* \* \*

**SEC. 10203. AUTHORIZATION OF APPROPRIATIONS.**

(a) \* \* \*

(b) In addition to the funds made available pursuant to subsection (a), the Secretary is also authorized to expend such additional funds from the fund established under section 10009 to carry out the purposes of section 10201(a)(2), if such facilities have not already been authorized and funded under the plan provided for pursuant to [section 10004(a)(4)] *section 10004(a)(3)*, in an amount not to exceed \$17,000,000[, provided that the Secretary first determines that such expenditure will not conflict with or delay his implementation of actions required by part I of this subtitle. Notice of the Secretary's determination shall be published not later than his submission of the report to Congress required by section 10009(f)(2)].

[(c) In addition to funds made available in subsections (a) and (b), there are authorized to be appropriated \$50,000,000 (October 2008 price levels) to carry out the purposes of this part which shall be non-reimbursable.]

\* \* \* \* \*

## DISSENTING VIEWS

H.R. 1837 sets an unprecedented standard for state preemption, environmental disregard, and the permanent privatization of public water resources. The legislation as passed out of committee will undermine the progress being made to resolve California's water challenges and should be rejected.

If enacted, this legislation would cause more legal uncertainty for local communities, not less. Title II of H.R. 1837 would repeal the court ordered, legally binding San Joaquin Restoration Settlement Act and prohibit further federal participation in the San Joaquin River Settlement. Proponents of this title *are not party* to the Settlement. Title II is contrary to the views held by the parties to the settlement. For example, the Friant Water Authority has stated that they have a "contractual obligation to comply with the Settlement," and therefore "opposes amendments to the Settlement Act that are not agreed to by the parties."

H.R. 1837 would repeal several provisions of the Central Valley Project Improvement Act (CVPIA), including changing the definition of protected species to fish that were present in 1992. This would exclude any salmon that are recovered as a part of the San Joaquin Settlement, since there were no salmon in the San Joaquin River in 1992. H.R. 1837 would also strike the tiered water system established by the CVPIA, which put in place a pricing system that depends on the amount of water used. H.R. 1837 reverts contract renewal terms back to 40 years from the current 25, and directs the Secretary upon request to renew contracts for successive, 40-year terms in perpetuity. This amounts to de facto privatization of a public resource.

Section 108 of H.R. 1837 would deem that all requirements of the Endangered Species Act (ESA) in the operation of the CVP would be met through the "Principles Agreement on the Bay-Delta Standards between the State of California and the Federal Government," or the 1994 Bay Delta Accord. Reverting to the Bay Delta Accord ignores the last fifteen years of best available science and disregards the negative effects on species as a result of water deliveries. The Pacific Fishery Management Council has expressed concern regarding provisions in this legislation and its "potentially negative impact on coastal communities and fishing related businesses." Congressman John Garamendi (D-CA) offered an amendment to require that the operations of the Central Valley Project (CVP) and the State Water Project be in compliance with state law and the best available science. The amendment was not agreed to.

Provisions in this legislation further prohibit the State from taking any action to manage its water resources as required by the California Water Code and Constitution. In a May 2011 letter from the California State Legislature, signed by President pro Tempore Darrell Steinberg and Assembly Speaker John Perez, H.R. 1837 is

described as “breathtaking in its total disregard for equity and its willful subjugation of the State of California to the whims of federal action.” Water and Power Subcommittee Ranking Member Grace Napolitano offered an amendment that would prevent the preemption of the state constitution. The amendment was not agreed to.

Strong objection to this legislation is echoed by the Western States Water Council, a nonpartisan council consisting of representatives appointed by the governors of 18 western states. Council Chair Weir Labatt III has stated that “the Council opposes any weakening of the deference to state water law as now expressed in Section 8 [of H.R. 1837] as inconsistent with the policy of cooperative federalism that has guided Reclamation Law for over a century. This is a threat to water rights and water rights administration in all of the Western States.” The States of Colorado, Wyoming and Oregon have also sent in letters in opposition to the legislation.

California State Natural Resources Secretary John Laird has also expressed concern, stating that “if this bill passes, no state will be safe from congressional interference in their water rights laws.” Subcommittee Chairman Tom McClintock (R-CA) offered a substitute amendment that added a new Title IV that affirms existing water rights and area of origin rights in Northern California. While the provisions of Title IV are clearly an attempt to address concerns raised with the original bill, Title IV does not supersede the legislation’s overall preemption of both state law and a century of Reclamation law. In response to these concerns, Congressman Garamendi offered an amendment that nothing in the legislation would preempt state law. This amendment was also not agreed to.

The legislation prohibits action to address legitimate environmental concerns as well as any progress on ongoing surface water studies. Republicans held a hearing on new reservoir storage just a week prior to the mark-up where Reclamation explained that the greatest impediment to the construction of new facilities is the lack of congressional authorization and federal funding. Congressman Jim Costa (D-CA) offered an amendment that would have authorized the construction of Shasta Reservoir. The majority considered this amendment an earmark, despite not being located in Congressman Costa’s district. The amendment was withdrawn. Congressman Garamendi also offered an amendment that would have expedited the process of construction of Sites Reservoir. Instead, a Republican substitute amendment was adopted that would prevent the reservoir from going forward by prohibiting the Bureau of Reclamation from working with the Sites Project Joint Powers Authority, a regional consortium of local water agencies and counties united to develop the project.

The scope of harmful provisions included in this legislation is matched only by the number of necessary provisions left out. If enacted, H.R. 1837 will not support the co-equal goals, as stated in the bipartisan Sacramento-San Joaquin Delta Reform Act of 2009, of first providing a more reliable water supply for California, and second protecting, restoring, and enhancing the overall quality of the California Bay-Delta.

H.R. 1837 will not solve California's water problems through a thoughtful, science-based, stakeholder-inclusive process.

H.R. 1837 will not resolve the long-standing issues on the San Joaquin River or provide flood protection and water supply projects for farmers that were approved as a part of the San Joaquin River Restoration Settlement Act.

H.R. 1837 will not sustain or rebuild the salmon populations, which are the backbone of the west coast salmon fishery and support fishermen, their livelihoods, and local coastal communities.

H.R. 1837 would destroy local economies, livelihoods, and the environment, all to benefit special interests, and set the dangerous precedent of Federal law overturning state water law. H.R. 1837 is an attempt to turn back the clock and must be rejected.

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