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110TH CONGRESS
2D SESSION

H. R. 6940

To provide flexibility for the operation of the Bureau of Reclamation C.W. ''Bill'' Jones Pumping Plant and the Harvey O. Banks Pumping Plant of the State of California in times of drought emergency, to support the establishment of a fish hatchery program to preserve and restore the Delta Smelt in the Sacramento-San Joaquin Delta, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 18, 2008

Mr. RADANOVICH (for himself, Mr. NUNES, Mr. COSTA, Mr. CARDOZA, Mr. MCCARTHY of California, Mr. ROHRABACHER, Mr. CALVERT, and Mrs. MCMORRIS RODGERS) introduced the following bill; which was referred to the Committee on Natural Resources

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A BILL

To provide flexibility for the operation of the Bureau of Reclamation C.W. ''Bill'' Jones Pumping Plant and the Harvey O. Banks Pumping Plant of the State of California in times of drought emergency, to support the establishment of a fish hatchery program to preserve and restore the Delta Smelt in the Sacramento-San Joaquin Delta, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''California Drought Alleviation Act of 2008''.

SEC. 2. TEMPORARY EXEMPTION DURING DROUGHT EMERGENCIES.

(a) EXEMPTION FOR THE OPERATION OF PUMPING PLANTS DURING DROUGHT EMERGENCIES.—Upon the declaration of a drought emergency by the Governor of California, the Secretary of the Interior shall make a written determination as to the existence of a drought emergency for the service areas of the Central Valley Project and the State Water Project. If the Secretary determines that a drought emergency exists for all or portions of the service areas of the Central Valley Project and the State Water Project, the Secretary shall temporarily exempt the operations of the Bureau of Reclamation C.W. ''Bill'' Jones Pumping Plant and the State of California Harvey O. Banks Pumping Plant from the prohibitions under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) against take of species listed as endangered species or threatened species or adverse modification of critical habitat, until such time as the Secretary determines that the drought emergency conditions are alleviated. For the purposes of section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536), the action of pumping water from these plants shall not be considered discretionary.

(b) TIME FOR DETERMINATION OF DROUGHT EMERGENCY.—The Secretary shall make such a determination as to the existence of a drought emergency within the 30-day period beginning on the date of a gubernatorial drought emergency declaration referred to in subsection (a). If the Secretary fails to make such determination within such period with respect to any portion of a service area referred to in subsection (a), the Secretary is deemed to have made a written determination that a drought emergency exists for that portion.

(c) REASONABLE AND PRUDENT MEASURES TO PROTECT SPECIES.—The Secretary may include in any determination under subsection (a) that a drought emergency exists, reasonable and prudent measures for the protection of an endangered species or its critical habitat. Such reasonable and prudent measures, or the failure of the Secretary to prescribe such reasonable and prudent measures, shall not impede the ability of the C.W. ''Bill'' Jones Pumping Plant and the Harvey O. Banks Pumping Plant to supply sufficient water for municipal, industrial, and irrigation uses. The cost of reasonable and prudent measures prescribed by the Secretary under this subsection shall be borne by the United States and shall be non-reimbursable.

(d) NO EFFECT ON OTHER PROJECTS.—In carrying out this Act, the Secretary of the Interior and the Secretary of Commerce shall not impose additional prescriptions under 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.) on any other water storage or conveyance facility on the San Joaquin River, the Sacramento River, or their tributaries.

SEC. 3. CONTINUED OPERATION OF C.W. "BILL" JONES PUMPING PLANT DURING DROUGHT EMERGENCIES.

If the Secretary of the Interior determines that a drought emergency exists for any portion of the Central Valley Project Service Area in California, the Secretary shall direct the Bureau of Reclamation to operate the C.W. ''Bill'' Jones Pumping Plant at a capacity consistent with the Coordinated Operation Agreement between the Bureau of Reclamation and the California Department of Water Resources, and consistent with otherwise applicable laws (other than prohibitions under the Endangered Species Act of 1973 from which the operation is exempt under subsection (a)) and existing water right, until such time as the Secretary determines that the drought emergency conditions are alleviated.

SEC. 4. DELTA SMELT HATCHERY PROGRAM.

The Secretary of the Interior is authorized to enter, and shall seek to enter, into a cooperative agreement with the State of California to support the establishment of a fish hatchery program to preserve and restore the species Hypomesus transpacificus (popularly known as Delta Smelt) in the Sacramento-San Joaquin Delta. The hatchery program should be designed to establish a sustainable population of Hypomesus transpacificus sufficient to warrant the species' removal from the lists published under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) and the State of California Endangered Species Act. All Hypomesus transpacificus maintained, cultured, introduced, or reintroduced under the program established under this section are deemed to be members of any subspecies or population segment of Hypomesus transpacificus listed under section 4 of the Endangered Species Act of 1973 (16 U.S.C. 1533) for purposes of determining whether such subspecies or population segment is a threatened species or endangered species under such section.

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