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(Original Signature of Member)

112TH CONGRESS
1ST SESSION

H. R. | |

To address certain water-related concerns on the San Joaquin River, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. NUNES (for himself, Mr. MCCARTHY of California, and Mr. DENHAM) introduced the following bill; which was referred to the Committee on | | | | | | | | | | | | | | | |

A BILL

To address certain water-related concerns on the San Joaquin River, 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 ''San Joaquin Valley Water Reliability Act''.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title.
Sec. 2. Table of contents.

TITLE I—CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFORMS

Sec. 101. Amendment to purposes.
Sec. 102. Amendment to definition.
Sec. 103. Limitation on contracting and contract reform.
Sec. 104. Water transfers, improved water management, and conservation.
Sec. 105. Fish, wildlife, and habitat restoration.
Sec. 106. Restoration Fund.
Sec. 107. Additional authorities.
Sec. 108. Compliance with Endangered Species Act of 1973.
Sec. 109. Authorized service area.
Sec. 110. Area of Origin and Prior Rights.
Sec. 111. Water Storage.

TITLE II—SAN JOAQUIN RIVER RESTORATION

Sec. 201. Reference.
Sec. 202. Preemption of state law.
Sec. 203. Repeal of the San Joaquin River Settlement.
Sec. 204. Satisfaction and discharge of obligations.
Sec. 205. San Joaquin River Habitat Restoration.
Sec. 206. Restoration Fund.
Sec. 207. Natural and artificially spawned species.

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

Sec. 301. Repayment contracts and acceleration of repayment of construction costs.

TITLE I—CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFORMS

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 Cen-

tral 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(a) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended 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;''.

SEC. 103. LIMITATION ON CONTRACTING AND CONTRACT REFORM.

Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4710) is amended 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,

1 and renew such contracts for successive periods of 40
2 years each.
3 ''(b) DELIVERY CHARGE.—Beginning on the date of
4 the enactment of this Act, a contract entered into or re-
5 newed pursuant to this section shall include a provision
6 that requires the Secretary to charge the other party to
7 such contract only for water actually delivered by the Sec-
8 retary.''.

9 **SEC. 104. WATER TRANSFERS, IMPROVED WATER MANAGE-**
10 **MENT, AND CONSERVATION.**

11 Section 3405 of the Central Valley Project Improve-
12 ment Act (106 Stat. 4710) is amended as follows:
13 (1) In subsection (a)—
14 (A) by inserting before ''Except as pro-
15 vided herein'' the following: ''The Secretary
16 shall take all necessary actions to facilitate and
17 expedite transfers of Central Valley Project
18 water in accordance with such Act or any other
19 provision of law.''
20 (B) in paragraph (1)(A), by striking ''to
21 combination'' and inserting ''or combination'';
22 (C) in paragraph (2), by adding at the end
23 the following:
24 ''(E) The contracting district from which
25 the water is coming, the agency, or the Sec-

1 retary shall determine if a written transfer pro-
2 posal is complete within 45 days after the date
3 of submission of such proposal. If such district
4 or agency or the Secretary determines that such
5 proposal is incomplete, such district or agency
6 or the Secretary shall state with specificity
7 what must be added to or revised in order for
8 such proposal to be complete.
9 ''(F) Except as provided in this section,
10 the Secretary shall not impose mitigation or
11 other requirements on a proposed transfer, but
12 the contracting district from which the water is
13 coming or the agency shall retain all authority
14 under State law to approve or condition a pro-
15 posed transfer.''; and
16 (D) by adding at the end the following:
17 ''(4) Notwithstanding any other provision of
18 law—
19 ''(A) the authority to make transfers or ex-
20 changes of, or banking or recharge arrange-
21 ments using, Central Valley Project water that
22 could have been conducted before October 30,
23 1992, is valid, and such transfers, exchanges,
24 or arrangements shall not be subject to, limited,
25 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)) to read as follows:

"(e) RESTORATION FUND.—All revenues received by the Secretary that exceed the cost-of-service rate applicable to the delivery of water transferred from irrigation use to municipal and industrial use under subsection (a) shall

be deposited into the Restoration Fund, as established under section 3407.''.

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), by amending subparagraph (B) to read as follows:

''(B) MODIFICATION OF PROGRAM.—

''(i) IN GENERAL.—As needed to achieve the goals of the program established under this paragraph, the Secretary 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. Such flows shall be provided—

''(I) from the quantity of water dedicated for fish, wildlife, and habitat restoration purposes under paragraph (2);

''(II) from the water supplies acquired pursuant to paragraph (3); and

''(III) from other sources that do not conflict with fulfillment of the

1 Secretary's remaining contractual ob-
2 ligations to provide Central Valley
3 Project water for other authorized
4 purposes.
5 ''(ii) INSTREAM FLOW NEEDS.—Rea-
6 sonable instream flow needs for all Central
7 Valley Project controlled streams and riv-
8 ers shall be determined by the Secretary
9 based on recommendations of the United
10 States Fish and Wildlife Service and the
11 National Marine Fisheries Service after
12 consultation with the United States Geo-
13 logical Survey.'';
14 (B) by amending paragraph (2) to read as
15 follows:
16 ''(2) upon October 30, 1992, dedicate and man-
17 age annually 800,000 acre-feet of Central Valley
18 Project yield for the purposes of implementing the
19 fish, wildlife, and habitat restoration purposes and
20 measures authorized by such Act; assisting the State
21 of California in its efforts to protect the waters of
22 the San Francisco Bay/Sacramento-San Joaquin
23 Delta Estuary; and helping to meet such obligations
24 as may be legally imposed upon the Central Valley
25 Project under State or Federal law following Octo-

ber 30, 1992, including additional obligations under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.). For the purpose of this section, the term 'Central Valley Project yield' means 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. 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.''; and

(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 programs and activities authorized by this section, the Secretary shall be deemed to have met the mitigation, protection, restoration, and enhancement purposes of section 2 of the Act of August 26, 1937 (Chapter 832; 50 Stat. 850).''.

1 **SEC. 106. RESTORATION FUND.**

2 Section 3407 of the Central Valley Project Improve-
3 ment Act (106 Stat. 4714) is amended as follows:

4 (1) By amending subsection (a) to read as fol-
5 lows:

6 ''(a) RESTORATION FUND ESTABLISHED.—

7 ''(1) IN GENERAL.—There is established in the
8 Treasury the 'Central Valley Project Restoration
9 Fund', which shall be available for deposit of dona-
10 tions from any source and revenues collected under
11 sections 3404(c)(3), 3405(f), 3406(c)(1), and
12 3407(d). Funds donated to the Restoration Fund by
13 a non-Federal entity for a specific purpose shall be
14 expended for such purpose only and shall not be
15 subject to appropriation. Amounts deposited shall be
16 credited as offsetting collections. Not less than 50
17 percent of the amounts deposited to the Restoration
18 Fund shall be expended for purposes of the Central
19 Valley Project unit or division regarding which the
20 amounts were collected.

21 ''(2) PROHIBITION.—The Secretary may not—

22 ''(A) directly or indirectly require a dona-
23 tion or other payment to the Restoration Fund,
24 or environmental restoration or mitigation fees
25 not otherwise provided by law, as—

1 "(i) a condition to providing for the
2 storage or conveyance of non-Central Val-
3 ley Project water pursuant to Federal rec-
4 lamation laws; or
5 "(ii) a condition to the delivery of
6 water pursuant to section 215 of the Rec-
7 lamation Reform Act of 1982 (Public Law
8 97–293; 96 Stat. 1270); or
9 "(B) require a donation or other payment
10 to the Restoration Fund for any water that is
11 delivered with the sole intent of groundwater re-
12 charge.
13 "(3) USE OF CERTAIN AMOUNTS.—The Sec-
14 retary shall use the amounts collected pursuant to
15 section 3406(c)(1)—
16 "(A) to assist in improving water quality,
17 riparian values, and fish habitat in the San
18 Joaquin River from Friant Dam to Mendota
19 Pool; or
20 "(B) to support other projects benefitting
21 land within the Friant Division.
22 "(4) CERTAIN USE OF RESTORATION FUND.—
23 Except as provided under paragraph (1), funds de-
24 posited into the Restoration Fund may be appro-
25 priated for the acquisition of water supplies and the

1 construction of facilities used to implement projects
2 or programs undertaken pursuant to section
3 3408(j).''.
4 (2) In subsection (c), by amending paragraph
5 (1) to read as follows:
6 ''(1) To the extent required in Acts of appro-
7 priation, the Secretary shall assess and collect addi-
8 tional annual payments, in addition to the charges
9 collected under sections 3404(c)(3), 3405(a)(1)(C),
10 3405(f), and 3406(c)(1), consisting of charges to di-
11 rect beneficiaries of the Central Valley Project under
12 subsection (d) of this section in order to recover a
13 portion or all of the costs of carrying out programs,
14 projects, plans, habitat restoration, improvement,
15 and acquisition provisions of this title.''.
16 (3) By adding at the end the following:
17 ''(g) REPORT ON EXPENDITURE OF FUNDS.—At the
18 end of each fiscal year, the Secretary, in consultation with
19 the Restoration Fund Advisory Board, shall submit to
20 Congress a plan for the expenditure of all of the funds
21 deposited into the Restoration Fund during the preceding
22 fiscal year. Such plan shall contain a cost effectiveness
23 analysis of each expenditure.
24 ''(h) ADVISORY BOARD.—

1 ''(1) ESTABLISHMENT.—There is hereby estab-
2 lished the Restoration Fund Advisory Board (herein-
3 after in this section referred to as the 'Advisory
4 Board') composed of 12 members selected by the
5 Secretary, each for four year terms, one of whom
6 shall be designated by the Secretary as Chairman.
7 The members shall be selected so as to represent the
8 various Central Valley Project stakeholders, four of
9 whom shall be from CVP agricultural users, three
10 from CVP municipal and industrial users, three
11 from CVP power contractors, and two at the discre-
12 tion of the Secretary. The Secretary and the Sec-
13 retary of Commerce may each designate a represent-
14 ative to act as an observer of the Advisory Board.
15 ''(2) DUTIES.—The duties of the Advisory
16 Board are as follows:
17 ''(A) To meet at least semi-annually to de-
18 velop and make recommendations to the Sec-
19 retary regarding priorities and spending levels
20 on projects and programs carried out pursuant
21 to the Central Valley Project Improvement Act.
22 ''(B) To ensure that any advice or rec-
23 ommendation made by the Advisory Board to
24 the Secretary reflect the independent judgment
25 of the Advisory Board.

1 ''(C) Not later than December 31, 2012,
2 and annually thereafter, to transmit to the Sec-
3 retary and Congress recommendations required
4 under subparagraph (A).
5 ''(D) Not later than December 31, 2012,
6 and biennially thereafter, to transmit to Con-
7 gress a report that details the progress made in
8 achieving the goals of the Restoration Fund as
9 identified in this Act.
10 ''(3) ADMINISTRATION.—With the consent of
11 the appropriate agency head, the Advisory Board
12 may use the facilities and services of any Federal
13 agency. Non-Federal members of the Advisory
14 Board, while engaged in the performance of their
15 duties away from their homes or regular places of
16 business, may be allowed travel expenses, including
17 per diem in lieu of subsistence under section 5703
18 of title 5, United States Code. Funds from the Res-
19 toration Fund may be used to carry out this para-
20 graph.
21 ''(4) FACA.—The Federal Advisory Committee
22 Act (5 U.S.C. App.) shall not apply to the Advisory
23 Board.''.

1 **SEC. 107. ADDITIONAL AUTHORITIES.**

2 (a) AUTHORITY FOR CERTAIN ACTIVITIES.—Section
3 3408(c) of the Central Valley Project Improvement Act
4 (106 Stat. 4728) is amended to read as follows:

5 ''(c) CONTRACTS FOR ADDITIONAL STORAGE AND
6 DELIVERY OF WATER.—

7 ''(1) IN GENERAL.—The Secretary is authorized
8 to enter into contracts pursuant to Federal reclama-
9 tion law and this title with any Federal agency, Cali-
10 fornia water user or water agency, State agency, or
11 private organization for the exchange, impoundment,
12 storage, carriage, and delivery of non-project water
13 for domestic, municipal, industrial, fish and wildlife,
14 and any other beneficial purpose.

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

18 ''(3) AUTHORITY FOR CERTAIN ACTIVITIES.—
19 The Secretary shall use the authority granted by
20 this subsection in connection with requests to ex-
21 change, impound, store, carry, or deliver nonproject
22 water using Central Valley Project facilities for any
23 beneficial purpose.

24 ''(4) RATES.—

25 ''(A) IN GENERAL.—The Secretary shall
26 develop rates not to exceed the amount required

1 to recover the reasonable costs incurred by the
2 Secretary in connection with a beneficial pur-
3 pose under this subsection. Such rates shall be
4 charged to a party using Central Valley Project
5 facilities for such purpose. Such costs shall not
6 include any donation or other payment to the
7 Restoration Fund.

8 ''(B) REDUCTION IN OPERATIONS AND
9 MAINTENANCE.—Any payment received in con-
10 nection with the use of Central Valley Project
11 facilities shall be applied to reduce the current-
12 year operations and maintenance expenses, oth-
13 erwise payable by Central Valley Project con-
14 tractors, for such facilities used.

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

20 (b) REPORTING REQUIREMENTS.—Section 3408(f) of
21 the Central Valley Project Improvement Act (106 Stat.
22 4729) is amended—

23 (1) by striking ''Interior and Insular Affairs
24 and Merchant Marine and Fisheries'' and inserting
25 ''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)''; and

(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 to read as follows:

''(j) PROJECT YIELD INCREASE.—

''(1) PLAN REQUIRED.—In order to minimize adverse effects upon existing Central Valley Project water contractors resulting from the water dedicated for fish and wildlife under this title, and to assist the State of California in meeting its future water needs, the Secretary, on a priority basis and not later than September 30, 2012, shall submit to Congress a least-cost plan to 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

1 and otherwise required to meet the purposes of the
2 Central Valley Project including satisfying contrac-
3 tual obligations.
4 ''(2) CONTENTS OF PLAN.—The plan required
5 by paragraph (1) shall include—
6 ''(A) recommendations on appropriate cost-
7 sharing arrangements and authorizing legisla-
8 tion or other measures needed to implement the
9 intent, purposes, and provisions of this sub-
10 section; and
11 ''(B) a description of how the Secretary in-
12 tends to use the following options:
13 ''(i) Improvements in, modification of,
14 or additions to the facilities and operations
15 of the project and construction of new
16 water storage facilities.
17 ''(ii) Conservation.
18 ''(iii) Transfers.
19 ''(iv) Conjunctive use.
20 ''(v) Purchase of water.
21 ''(vi) Purchase and idling of agricul-
22 tural land.
23 ''(vii) Direct purchase of water rights.
24 ''(viii) Water banking and recharge.

1 "(3) IMPLEMENTATION OF PLAN.—Subject to
2 the availability of appropriated funds, the Secretary
3 shall implement the plan required by paragraph (1)
4 commencing on October 1, 2012. In order to carry
5 out this subsection, the Secretary shall coordinate
6 with the State of California in implementing meas-
7 ures for the long-term resolution of problems in the
8 San Francisco Bay/Sacramento-San Joaquin Delta
9 Estuary.
10 "(4) FAILURE OF THE PLAN.—Not with-
11 standing any other provision of law, if by September
12 30, 2016, the plan required by paragraph (1) fails
13 to increase the annual delivery capability of the Cen-
14 tral Valley Project by 800,000 acre-feet, implemen-
15 tation of section 3406(b)(2) shall be suspended until
16 the plan achieves an increase in the annual delivery
17 capability of the Central Valley Project by 800,000
18 acre-feet.".
19 (d) TECHNICAL CORRECTION.—Section 3408(h) of
20 the Central Valley Project Improvement Act (106 Stat.
21 4729) is amended—
22 (1) in paragraph (1), by striking "paragraph
23 (h)(2)" and inserting "paragraph (2)"; and
24 (2) in paragraph (2), by striking "paragraph
25 (h)(i)" and inserting "paragraph (1)".

1 **SEC. 108. COMPLIANCE WITH ENDANGERED SPECIES ACT**
2 **OF 1973.**

3 (a) COMPLIANCE.—

4 (1) IN GENERAL.—All requirements of the En-
5 dangered Species Act of 1973 (16 U.S.C. 1531 et
6 seq.) shall be considered to be fully met for the pro-
7 tection and conservation of the species listed pursu-
8 ant to the Act for the operations of the Central Val-
9 ley Project and the California State Water Project,
10 if the Central Valley Project and the California
11 State Water Project are operated in a manner con-
12 sistent with the ''Principles for Agreement on the
13 Bay-Delta Standards Between the State of Cali-
14 fornia and the Federal Government'' dated Decem-
15 ber 15, 1994.

16 (2) BIOLOGICAL OPINIONS AND MODIFICA-
17 TION.—The Secretary of the Interior and the Sec-
18 retary of Commerce shall issue biological opinions
19 for coordinated operations of the Central Valley
20 Project and the California State Water Project that
21 are no more restrictive than provisions of the ''Prin-
22 ciples for Agreement on the Bay-Delta Standards
23 Between the State of California and the Federal
24 Government'' dated December 15, 1994. Such bio-
25 logical opinions may be modified only with the con-
26 sent of the signatories to the ''Principles for Agree-

1 ment on the Bay-Delta Standards Between the State
2 of California and the Federal Government'' dated
3 December 15, 1994.
4 (b) PREEMPTION OF STATE LAW.—
5 (1) STATE LAW PREEMPTION.—Neither the
6 State of California, an agency of the State, nor any
7 political subdivision of the State shall adopt or en-
8 force any requirement for the protection or conserva-
9 tion of any species listed under the Endangered Spe-
10 cies Act for the operations of the Central Valley
11 Project or the California State Water Project that is
12 more restrictive than the requirements of this sec-
13 tion. Any provision of California State law that au-
14 thorizes the imposition of conditions or restrictions
15 on the operations of the Central Valley Project or
16 the California State Water Project for the protection
17 or conservation of a species that is more restrictive
18 than this section is preempted.
19 (2) NATIVE SPECIES PROTECTION.—Any re-
20 striction imposed under California law on the take
21 or harvest of any nonnative or introduced aquatic or
22 terrestrial species that preys upon a native fish spe-
23 cies that occupies the Sacramento and San Joaquin
24 Rivers and their tributaries or the Sacramento-San
25 Joaquin Rivers Delta shall be void and is preempted.

1 **SEC. 109. AUTHORIZED SERVICE AREA.**

2 The authorized service area of the Central Valley
3 Project shall include the area within the boundaries of the
4 Kettleman City Community Services District, California,
5 as those boundaries exist on the date of the enactment
6 of this title. Notwithstanding the provisions of the Act of
7 October 30, 1992, (Public Law 102–575, 106 Stat. 4600
8 et seq.) upon enactment of this title, the Secretary is au-
9 thorized and directed to enter into a long-term contract
10 in accordance with the Reclamation laws with the
11 Kettleman City Community Services District, California,
12 for the delivery of up to 900 acre-feet of Central Valley
13 Project water for municipal and industrial use. The Sec-
14 retary may temporarily reduce deliveries of the quantity
15 of water made available pursuant to up to 25 percent of
16 such total whenever reductions due to hydrologic cir-
17 cumstances are imposed upon agricultural deliveries of
18 Central Valley Project water.

19 **SEC. 110. AREA OF ORIGIN AND PRIOR RIGHTS.**

20 Nothing in this title shall affect the Secretary's duty
21 to operate the Central Valley Project in a manner con-
22 sistent with applicable provisions of State water law pro-
23 tecting any area of origin, watershed of origin, county of
24 origin, or any other water rights, such as senior appropria-
25 tive rights, including rights appropriated prior to Decem-
26 ber 19, 1914.

1 **SEC. 111. WATER STORAGE.**

2 The Secretary, acting through the Commissioner of
3 the Bureau of Reclamation, may provide funds authorized
4 to be appropriated to the surface storage projects identi-
5 fied in section 103(d)(1) of the Water Supply, Reliability,
6 and Environmental Improvement Act (Public Law 108–
7 361) and Acts supplemental and amendatory of that Act,
8 to local joint powers authorities formed pursuant to State
9 law by irrigation districts and other local water districts
10 and local governments within the applicable hydrologic re-
11 gion, to advance those projects.

12 TITLE II—SAN JOAQUIN RIVER 13 RESTORATION

14 **SEC. 201. REFERENCE.**

15 Subtitle A of title X of Public Law 111–11 is hereby
16 repealed.

17 **SEC. 202. PREEMPTION OF STATE LAW.**

18 Notwithstanding section 8 of the Reclamation Act of
19 1902, except as provided herein, this title preempts and
20 supersedes any State law, regulation, or requirement that
21 imposes more restrictive requirements or regulations on
22 the activities authorized under such title. Provided nothing
23 herein shall exempt the Friant Division, Hidden Unit, and
24 Buchanan Unit of the Central Valley Project from orders
25 issued by the State Water Resources Control Board pursu-

1 ant to the Porter-Cologne Water Quality Control Act
2 (California Water Code Sections 13000 et seq.).

3 **SEC. 203. REPEAL OF THE SAN JOAQUIN RIVER SETTLE-**
4 **MENT.**

5 As of the date of enactment of this title, the Secretary
6 shall cease any action to implement the San Joaquin River
7 Restoration Settlement Act (subtitle A of title X of Public
8 Law 111–11) and the Stipulation of Settlement (*Natural*
9 *Resources Defense Council, et al.* v. *Kirk Rodgers, et al.,*
10 Eastern District of California, No. Civ. S–88–1658 LKK/
11 GGH).

12 **SEC. 204. SATISFACTION AND DISCHARGE OF OBLIGA-**
13 **TIONS.**

14 Congress finds and declares that the enactment of
15 this section satisfies and discharges all of the following
16 obligations:

17 (1) Those of the Secretary contained in section
18 3406(c)(1) of the Reclamation Projects Authoriza-
19 tion and Adjustment Act of 1992 (Public Law 102–
20 575), except that the Secretary shall continue to as-
21 sess and collect the charges described in such section
22 3406(c)(1).

23 (2) Those of the Secretary and all other parties
24 to protect and keep in good condition any fish that
25 may be planted or exist below Friant Dam, including

1 any obligations under section 5937 of the California
2 Fish and Game Code and the public trust doctrine.

3 **SEC. 205. SAN JOAQUIN RIVER HABITAT RESTORATION.**

4 (a) PURPOSE.—The purpose of this section is to im-
5 plement a program of increased water releases from
6 Friant Dam to address environmental, habitat, fisheries,
7 and water quality concerns on the San Joaquin River from
8 Friant Dam to Sack Dam.

9 (b) DEFINITIONS.—For the purposes of this section:

10 (1) RESTORATION FLOWS.—The term ''Res-
11 toration Flows'' means the minimum flow of 50
12 cubic feet per second at Sack Dam, located approxi-
13 mately 85 river miles downstream from Friant Dam.

14 (2) SECRETARY.—The term ''Secretary'' means
15 the Secretary of the Interior.

16 (3) WATER YEAR.—The term ''Water Year''
17 means October 1 through the following September
18 30.

19 (c) CRITICAL WATER YEAR.—For purposes of this
20 section a Critical Water Year is when the total unimpaired
21 runoff at Friant Dam is less than 400,000 acre-feet.

22 (d) RELEASE OF RESTORATION FLOWS.—In each
23 Water Year, commencing in the Water Year starting on
24 October 1, 2012, the Secretary—

1 (1) shall modify Friant Dam operations so as
2 to release the Restoration Flows for that Water
3 Year, except in any critical water year;
4 (2) shall ensure that the release of Restoration
5 Flows are maintained at the levels prescribed by this
6 section;
7 (3) shall release the Restoration Flows in a
8 manner that improves the fishery in the San Joa-
9 quin River below Friant Dam, but upstream of
10 Gravelly Ford in existence as of the date of the en-
11 actment of this section, and the associated riparian
12 habitat, while improving water quality in the San
13 Joaquin River at Vernalis and achieving such other
14 environmental benefits as the Secretary may reason-
15 ably determine; and
16 (4) may, without limiting the actions required
17 under paragraphs (1) through (3) and subject to
18 subsection (m), use the Restoration Flows to en-
19 hance or restore a warm water fishery if the Sec-
20 retary determines that it is reasonable, prudent, and
21 feasible to do so.
22 (e) EFFECT ON EXISTING OBLIGATIONS.—Except as
23 described in subsection (f), nothing in this section shall
24 modify any existing obligation of the United States under
25 Federal Reclamation law to operate the Central Valley

1 Project in conformity with State law and existing or to
2 be renewed water service, repayment, purchase, or ex-
3 change contracts.

4 (f) RECOVERY OF RESTORATION FLOWS.—Not later
5 than 1 year after the date of the enactment of this section,
6 the Secretary shall develop and implement a least-cost
7 plan to fully recover or replace all Restoration Flows and
8 provide such recovered or replacement flows to those water
9 service contractors within the Friant Division, Hidden
10 Unit, and Buchanan Unit of the Central Valley Project
11 that relinquished the Restoration Flows so recovered or
12 replaced. Such a program shall not impact the water sup-
13 ply or water rights of any entity outside the Friant Divi-
14 sion, Hidden Unit, and Buchanan Unit of the Central Val-
15 ley Project.

16 (g) GROUNDWATER IMPACT PLAN.—

17 (1) IN GENERAL.—Not later than 1 year after
18 the date of the enactment of this section, the Sec-
19 retary, in cooperation with representatives of af-
20 fected landowners, shall develop and implement a
21 least-cost plan to fully mitigate the impact on
22 groundwater resources within the service area of the
23 Friant Division, Hidden Unit, and Buchanan Unit
24 of the Central Valley Project caused by the release
25 of Restoration Flows.

1 (2) MITIGATION.—The mitigation required
2 under paragraph (1) may include one or more of the
3 following: the development of new water supplies,
4 land retirement, and groundwater banking and re-
5 charge projects. To the extent Restoration Flows are
6 recovered or replaced pursuant to subsection (g) in
7 a manner that mitigates the impact on groundwater
8 resources caused by the release of Restoration
9 Flows, such recovery or replacement may be consid-
10 ered to be a part of the plan to be implemented
11 under this subsection.
12 (h) PRIVATE RIGHTS OF ACTION.—Nothing in this
13 section shall confer upon any person or entity a private
14 right of action or claim for relief to interpret or enforce
15 the provisions of this section. Any Central Valley Project
16 long-term water service or repayment contractor within
17 the Friant Division, Hidden Unit, or Buchanan Unit ad-
18 versely affected by the Secretary's failure to comply with
19 subsection (f) or (g) may bring an action against the Sec-
20 retary for injunctive relief or damages, or both. Any action
21 for damages shall be brought in the United States Court
22 of Federal Claims.
23 (i) NO IMPACTS ON OTHER INTERESTS.—No Central
24 Valley Project or other water other than San Joaquin
25 River water impounded by or bypassed from Friant Dam

1 shall be used to implement subsection (d) unless such use
2 is on a voluntary basis. No cost associated with the imple-
3 mentation of this section shall be imposed directly or indi-
4 rectly on any Central Valley Project contractor, or any
5 other person or entity, outside the Friant Division, the
6 Hidden Unit, or the Buchanan Unit, unless such costs are
7 incurred on a voluntary basis. The implementation of this
8 section shall not result directly or indirectly in any reduc-
9 tion in water supplies or water reliability on any Central
10 Valley Project contractor, any State Water Project con-
11 tractor, or any other person or entity, outside the Friant
12 Division, the Hidden Unit, or the Buchanan Unit, unless
13 such reductions or costs are incurred on a voluntary basis.
14 (j) PRIORITY.—
15 (1) IN GENERAL.—All actions taken under this
16 section shall be subordinate to the Secretary's use of
17 Central Valley Project facilities to make Project
18 water, other than water released from the Friant
19 Dam pursuant to this section, and the Secretary's
20 performance of the Agreement.
21 (2) DEFINITION OF AGREEMENT.—For the pur-
22 poses of this subsection, the term ''Agreement''
23 means the Agreement of November 24, 1986, be-
24 tween the United States and the Department of
25 Water Resources of the State of California for the

1 coordinated operation of the Central Valley Project
2 and the State Water Project as authorized by sec-
3 tion 103 of Public Law 99–546, including any
4 agreement to resolve conflicts arising from that
5 Agreement.

6 **SEC. 206. RESTORATION FUND.**

7 There is hereby established within the Treasury of
8 the United States a fund, to be known as the San Joaquin
9 River Fishery Restoration Fund, into which the following
10 funds shall be deposited and used solely for the purpose
11 of implementing this title:

12 (1) All payments received pursuant to section
13 3406(c)(1) of the Reclamation Projects Authoriza-
14 tion and Adjustment Act of 1992 (Public Law 102–
15 575; 106 Stat. 4721).

16 (2) Any non-Federal funds, including State
17 cost-sharing funds, contributed to the United States
18 for this purpose.

19 (3) Funds in the San Joaquin River Restora-
20 tion Fund, (Public Law 111–11 section
21 10009(c)(1)), on the day before the date of the en-
22 actment of this Act.

23 **SEC. 207. NATURAL AND ARTIFICIALLY SPAWNED SPECIES.**

24 After the date of the enactment of this title, the Sec-
25 retary shall not distinguish between natural-spawned and

1 hatchery-spawned or otherwise artificially propagated
2 strains of a species in making any determination under
3 the Endangered Species Act of 1973 (16 U.S.C. 1531 et
4 seq.) that relates to any anadromous fish species present
5 in the Sacramento and San Joaquin Rivers or their tribu-
6 taries and ascend those rivers and their tributaries to re-
7 produce after maturing in San Francisco Bay or the Pa-
8 cific Ocean.

9 TITLE III—REPAYMENT CON-
10 TRACTS AND ACCELERATION
11 OF REPAYMENT OF CON-
12 STRUCTION COSTS

13 SEC. 301. REPAYMENT CONTRACTS AND ACCELERATION OF
14 REPAYMENT OF CONSTRUCTION COSTS.

15 (a) CONVERSION OF CONTRACTS.—

16 (1) Not later than 1 year after enactment, the
17 Secretary of the Interior, upon request of the con-
18 tractor, shall convert all existing long-term contracts
19 with any Central Valley Project contracts entered
20 under subsection (e) of section 9 of the Act of Au-
21 gust 4, 1939 (53 Stat. 1196), to contracts under
22 subsection (d) of section 9 of said Act (53 Stat.
23 1195), under mutually agreeable terms and condi-
24 tions.

(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 ½ 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

1 the Interior to each contractor no later than
2 180 days after enactment;
3 (B) require that, notwithstanding sub-
4 section (c)(2), construction costs or other cap-
5 italized costs incurred after the effective date of
6 the contract or not reflected in the schedule ref-
7 erenced in subparagraph (A), and properly as-
8 signable to such contractor, shall be repaid in
9 not more than 5 years after notification of the
10 allocation if such amount is a result of a collec-
11 tive annual allocation of capital costs to the
12 contractors exercising contract conversions
13 under this subsection of less than $5,000,000.
14 If such amount is $5,000,000 or greater, such
15 cost shall be repaid as provided by applicable
16 Reclamation law, provided that the reference to
17 the amount of $5,000,000 shall not be a prece-
18 dent in any other context; and
19 (C) provide that power revenues will not be
20 available to aid in repayment of construction
21 costs allocated to irrigation under the contract.
22 (4) All contracts entered into pursuant to para-
23 graph (2) shall—
24 (A) require the repayment in lump sum of
25 the remaining amount of construction costs

1 identified in the most current version of the
2 Central Valley Project Schedule of Municipal
3 and Industrial Water Rates, as adjusted to re-
4 flect payments not reflected in such schedule,
5 and properly assignable for ultimate return by
6 the contractor, no later than January 31, 2016.
7 An estimate of the remaining amount of con-
8 struction costs as of January 31, 2016, as ad-
9 justed, shall be provided by the Secretary of the
10 Interior to each contractor no later than 180
11 days after enactment; and
12 (B) require that, notwithstanding sub-
13 section (c)(2), construction costs or other cap-
14 italized costs incurred after the effective date of
15 the contract or not reflected in the schedule ref-
16 erenced in subparagraph (A), and properly as-
17 signable to such contractor, shall be repaid in
18 not more than 5 years after notification of the
19 allocation if such amount is a result of a collec-
20 tive annual allocation of capital costs to the
21 contractors exercising contract conversions
22 under this subsection of less than $5,000,000.
23 If such amount is $5,000,000 or greater, such
24 cost shall be repaid as provided by applicable
25 Reclamation law, provided that the reference to

1 the amount of $5,000,000 shall not be a prece-
2 dent in any other context.
3 (b) FINAL ADJUSTMENT.—The amounts paid pursu-
4 ant to subsection (a) shall be subject to adjustment fol-
5 lowing a final cost allocation by the Secretary of the Inte-
6 rior upon completion of the construction of the Central
7 Valley Project. In the event that the final cost allocation
8 indicates that the costs properly assignable to the con-
9 tractor are greater than what has been paid by the con-
10 tractor, the contractor shall be obligated to pay the re-
11 maining allocated costs. The term of such additional re-
12 payment contract shall be no less than 1 year and no more
13 than 10 years, however, mutually agreeable provisions re-
14 garding the rate of repayment of such amount may be de-
15 veloped by the parties. In the event that the final cost allo-
16 cation indicates that the costs properly assignable to the
17 contractor are less than what the contractor has paid, the
18 Secretary of the Interior is authorized and directed to
19 credit such overpayment as an offset against any out-
20 standing or future obligation of the contractor.
21 (c) APPLICABILITY OF CERTAIN PROVISIONS.—
22 (1) Notwithstanding any repayment obligation
23 under subsection (a)(3)(B) or subsection (b), upon a
24 contractor's compliance with and discharge of the
25 obligation of repayment of the construction costs as

1 provided in subsection (a)(3)(A), the ownership and
2 full-cost pricing limitations of any provision of Fed-
3 eral Reclamation Law shall not apply to lands in
4 such district.

5 (2) Notwithstanding any repayment obligation
6 under paragraph (3)(B) or paragraph (4)(B) of sub-
7 section (a), or subsection (b), upon a contractor's
8 compliance with and discharge of the obligation of
9 repayment of the construction costs as provided in
10 paragraphs (3)(A) and (4)(A) of subsection (a), the
11 Secretary of the Interior shall waive the pricing pro-
12 visions of section 3405(d) of the Reclamation
13 Projects Authorization and Adjustment Act of 1992
14 (Public Law 102–575) for such contractor, provided
15 that such contractor shall continue to pay applicable
16 operation and maintenance costs and other charges
17 applicable to such repayment contracts pursuant to
18 the then-current rate-setting policy and applicable
19 law.

20 (d) CERTAIN REPAYMENT OBLIGATIONS NOT AL-
21 TERED.—Implementation of the provisions of this section
22 shall not alter the repayment obligation of any other long-
23 term water service or repayment contractor receiving
24 water from the Central Valley Project, or shift any costs
25 that would otherwise have been properly assignable to any

1 contractors absent this section, including operations and
2 maintenance costs, construction costs, or other capitalized
3 costs incurred after the date of enactment of this Act, to
4 other such contractors.

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