



Sacramento-San Joaquin Valley Water Reliability Act

Section-by-Section

TITLE I CENTRAL VALLEY PROJECT WATER RELIABILITY

Sec. 101 – Amendment to purposes

Amends § 3402 of the Central Valley Project Improvement Act (CVPIA) (P.L. 102-575) by adding subsections (g) and (h) to include replacement of water dedicated to fish and wildlife purposes by the CVPIA by the year 2016 at a reasonably low cost and to facilitate and expedite water transfers as a purpose of the CVPIA.

Sec. 102 – Amendment to definition

Amends § 3403(a) of the CVPIA (P.L. 102-575) to target CVPIA actions on a priority basis towards native species of concern present in the Sacramento and San Joaquin Rivers as of 1992 (salmon, steelhead, and sturgeon). Removes both American shad and striped bass, both non-native species, from the definition of ‘anadromous fish’. Adds a definition of “reasonable flows” as water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.

Sec. 103 – Contracts

Amends § 3404 of the CVPIA (P.L. 102-575) to provide for 40 year renewal of existing Central Valley Project long-term water contracts. Retains existing CVPIA provision requiring that contracts shall include a provision to charge the contractor only for water actually delivered.

Sec. 104 – Water transfers, improved water management, and conservation

Affirms that the original intent of the CVPIA (P.L. 102-575) was to facilitate and expedite water transfers and directs the Secretary to take all necessary actions to implement the transfers.

Amends § 3405(a) of CVPIA (P.L. 102-575) to provide for an expedited review of all water transfer applications. This section is amended by adding that the contractor 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 in order 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 contractor shall retain authority to approve or condition a proposed transfer as provided under state law.





Amends § 3405(a) of CVPIA (P.L. 102-575) to clarify that transfers, exchanges and banking arrangements among CVP contractors which could have been conducted under the law in effect prior to the enactment of the CVPIA may still take place and are not subject to the CVPIA and that CVPIA transfer authorities add to, and are not intended to impede, historical transfers, exchanges and banking arrangements.

Amends § 3405(b) of CVPIA (P.L. 102-575) to clarify the obligation to *measure* surface water deliveries. Requires contracting districts 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.

Deletes § 3405(d) of CVPIA (P.L. 102-575) (tiered pricing¹) and the following sections are renumbered accordingly. Therefore the remainder subsections establish that increased revenues in excess of the cost of service for CVP water transferred from agricultural to municipal and industrial use shall be deposited in the Restoration Fund. The amendment serves to clarify that only the portion of transfer revenues which exceeds the Bureau's cost of service rate will be covered to the Restoration Fund. Additionally, because Section 3405(d) is deleted, revenues from tiered water pricing are no longer covered to the Restoration Fund.

Sec. 105 – Fish, wildlife, and habitat restoration

Amends § 3406(b)(1)(B) of CVPIA (P.L. 102-575) to provide *reasonable* flows to restore anadromous fish production in the Central Valley.

Amends § 3406(b)(2) of CVPIA (P.L. 102-575) to affirm that management of 800,000 acre-feet of CVP yield for fish, wildlife, and habitat purposes is a ceiling, rather than a floor, on the amount of water that can be taken from farmers and reallocated to the environment. It authorizes and directs the 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 Central Valley Project is below 75% then the 800,000 acre-feet is reduced by 25%.

Adds § 3406(i) of CVPIA (P.L. 102-575) 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 by CVPIA (P.L. 102-575).

¹ Tiered water pricing, as defined in § 3405(d) of CVPIA (P.L. 102-575), is 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.





Sec. 106 – Restoration Fund

Amends § 3407(a) of CVPIA (P.L. 102-575) by deleting the existing 67/33 percent split². Adds § 3407(a)(2) of CVPIA (P.L. 102-575) which prohibits the Secretary from requiring "donations" to the Restoration Fund as a condition to contracting for storage or conveyance of non-CVP water pursuant to Reclamation laws (such as "Warren Act"³ or "Section 215"⁴ water). It also prohibits Restoration Fund charges on any water that is delivered with the sole intent of groundwater recharge.

Amends § 3407(c)(1) of CVPIA (P.L. 102-575) to make certain technical and conforming amendments to provide for assessment and collection of Restoration Funds from CVP water and power beneficiaries in order to recover a portion or all of the costs of carrying out the elements of the provisions of this title.

Amends § 3407 (d)(2)(A) of CVPIA (P.L. 102-575) by setting a Restoration Fund fee cap of \$4 per megawatt-hour for Central Valley Project power sold to power contractors. It also triggers the reduction in required Restoration Fund payments on December 31, 2020.⁵

Adds § 3407(g) of CVPIA (P.L. 102-575) which directs the Secretary, in consultation with the Restoration Fund Advisory Board created in § 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.

Adds § 3407(h) of CVPIA (P.L. 102-575) which creates a Restoration Fund Advisory Board composed of 12 members selected by the Secretary. The board members will serve four year terms and will 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 Secretary of the Interior and the Secretary of Commerce may also each designate a representative to act as an observer. The duties of the Advisory Board will be to make recommendations, annually, to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to CVPIA (P.L. 102-575) and to report to Congress biennially on the progress made to achieving the actions mandated under § 3406 of CVPIA (P.L. 102-575).

² Section 3407(a) of CVPIA (P.L. 102-575): "...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..."

³ Warren Act of 1911: "An act to authorize the Government to contract for impounding, storing, and carriage of water, and to cooperate in the construction and use of reservoirs and canals under reclamation projects, and for other purposes. (Act of February 21, 1911, ch. 141, 36 Stat. 925)."

⁴ Section 215 of the Reclamation Reform Act of 1982 (P.L. 97-293): "(a) Neither the ownership limitations of this title nor the ownership limitations of any other provision of Federal reclamation law shall apply to lands which receive only a temporary, not to exceed one year, supply of water made possible as a result of— (1) an unusually large water supply not otherwise storable for project purposes; or (2) infrequent and otherwise unmanaged flood flows of short duration. (b) The Secretary shall have the authority to waive payments for a supply of water described in subsection (a)."

⁵ Section 3407 (d)(2)(A) of CVPIA (P.L. 102-575): "*And Provided further*, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title 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.





Sec. 107 – Additional authorities

Amends § 3408(c) of CVPIA (P.L. 102-575) 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 develop rates for such activities. Stipulates that nothing in this section shall supersede the provisions of § 103 of Public Law 99-546⁶ - commonly referred to as the Coordinated Operations Agreement.

Amends § 3408(f) of CVPIA (P.L. 102-575) 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)⁷; requires the Mid-Pacific Regional Director to certify required annual reports.

Amends § 3408(j) of CVPIA (P.L. 102-575) to establish a priority and two-year timetable for the Secretary to develop a plan to increase (by no later than the year 2016) the yield of the CVP to replace the “upfront” water reallocated by the CVPIA for fish and wildlife purposes; requires that the plan include recommendations on appropriate cost-sharing; requires that the dedication of the 800,000 acre-feet for non-mandatory fish, wildlife, and habitat purposes, as defined in § 3406(b)(2) of CVPIA (P.L. 102-575), be suspended until the plan achieves an increase in the annual delivery capability of the Central Valley Project by 800,000 acre-feet.

Authorizes the Secretary of the Interior to partner with local joint powers authorities to advance surface storage projects identified in Section 103(d)(1) of Public Law No: 108-361, the Water Supply, Reliability, and Environmental Improvement Act (Shasta, Los Vaqueros, Sites, Upper San Joaquin River). Authorizes the construction of those projects if non-federal funds are used.

⁶ Section 103 of Public Law 99-546 (Coordinated Operations Agreement): “Section 2 of the Act of August 26, 1937 (50 Stat. 850) is amended by inserting the following new subsection: “(d) The Secretary of the Interior is authorized and directed to execute and implement the ‘Agreement Between the United States of America and the Department of Water Resources of the State of California for Coordinated Operation of the Central Valley Project and the State Water Project’ dated May 20, 1985: *Provided, That-* “(1) the contract with the State of California referred to in subarticle 10(h)(1) of the agreement referred to in this subsection for the conveyance and purchase of Central Valley project water shall become final only after an Act of Congress approving the execution of the contract by the Secretary of the Interior; and, “(2) the termination provisions of the agreement referred to in this subsection may only be exercised if the Secretary of the Interior or the State of California submits a report to: Congress and sixty calendar days have elapsed (which sixty days, however, shall not include days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three days to a day certain) from the date in which said report has been submitted to the Speaker of the House of Representatives and the President of the Senate for reference to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate. The report must outline the reasons for terminating the agreement and, in the case of the report by the Secretary of the Interior, include the views of the Administrator of the Environmental Protection Agency and the Governor of the State of California on the Secretary’s decision.””

⁷ Section 3408(j) of CVPIA (P.L. 102-575): “(j) PROJECT YIELD INCREASE- In order to minimize adverse effects, if any, 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) improvements in, modification of, or additions to the facilities and operations of the project; (2) conservation; (3) transfers; (4) conjunctive use; (5) purchase of water; (6) purchase and idling of agricultural land; and (7) direct purchase of water rights. 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.





Sec. 108 – Bay-Delta Accord

Declares that the Central Valley Project and the State Water Project have complied with all requirements of the Endangered Species Act with relation to listed species if the projects are 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)⁸.

Prohibits federal departments and the State of California from imposing protection conditions, as it relates to species affected by the Central Valley Project and the State Water Project, that restrict water rights obtained pursuant to state law, including a pre-1914 appropriative right⁹. 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 origin¹⁰.

Prohibits the State of California from imposing restrictions on the “take” of any nonnative fish that preys upon one or more native fish species in the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento-San Joaquin Rivers Delta.¹¹

Sec. 109 – Natural and artificially spawned species

Directs the Secretary to recognize hatchery-spawned species when making any determination under the Endangered Species Act that relates to anadromous fish in the Sacramento and San Joaquin Rivers and their tributaries.

⁸ Bay Delta Accord Preamble (December 15, 1994): “In order to provide ecosystem protection for the Bay-Delta Estuary, representatives of the State and Federal governments and urban, agricultural and environmental interests agree to the implementation of a Bay-Delta protection plan through the California State Water Resources Control Board (SWRCB) consistent with the following principles. These Principles describe changes to the California Urban Water Agency/Agricultural Water Users (CUWA/AG) proposal as the base case for Bay-Delta protections...” <http://www.calwater.ca.gov/content/Documents/library/SFBayDeltaAgreement.pdf>

⁹ “Although the legislature had addressed water rights in the Civil Code in 1872, that statute did little more than codify (with minor changes) the common law rules of prior appropriation developed by the gold miners and the courts. In the Water Commission Act of 1913, however, it endeavored to devise a comprehensive system for regulating water rights. The act created a State Water Commission with the power to issue permits and licenses to govern the exercise of water rights. Unfortunately, because of political pressure from various vested interests, the legislature exempted more uses of water than it included in the new regulatory scheme. Pueblo rights, riparian rights, and groundwater rights were completely exempt. Only water appropriations beginning after the effective date of the statute were included. Because the Water Commission Act was put to referendum, it did not pass the vote of the electorate until December 19, 1914. To this day, surface water appropriations initiated after this date must be authorized by a water rights permit or license; appropriations existing before this date do not require a permit or license and are commonly known as “pre-1914 rights.” As a result of these statutory exemptions, the State Water Resources Control Board (SWRCB) or “the board”—the successor to the Water Commission—regulates through the permit and license system less than half of the water used by agricultural and urban interests in California today.” (Managing California’s Water – From Conflict to Reconciliation, Public Policy Institute of California, 2011)

¹⁰ “The California Legislature has created a variety of Water Code provisions to protect the area of origin water rights of Californians living in the state’s wet areas. These area of origin rules include the Watershed Protection Act, Water Code sections 11460 through 11463; the County of Origin protection, Water Code section 10500; the Delta Protection Act, Water Code sections 12201 through 12204; and the protected area provisions, Water Code sections 1215 through 1222. Generally speaking, these statutes mandate that large-scale water transport systems, like the CVP, not deprive an area where water originates of the prior right to all water reasonably required to adequately meet the beneficial needs of the area and its inhabitants.” (Protecting the Source: The Impact of California’s Area of Origins Protections on Federal Exports of Water from Northern California to Southern California, Gregory H. Gallo, UC Davis School of Law, 2011)

¹¹ The California Department of Fish and Game, with the support of the Delta Stewardship Council, the Association of California Water Agencies, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service, recently proposed to proceed with an environmental analysis to modify existing striped bass fishing regulations. The striped bass is a non-native species in the Sacramento-San Joaquin Rivers Delta and is a predatory species that prey on salmonid and Delta smelt species listed under the federal Endangered Species Act. This proposal would have increased the daily number of striped bass that could be harvested by sport fishermen and lowered the minimum length of harvested fish from 18” to 12”. With the lobbying of the environmental community and the sport fisherman alliance, the California Fish and Game Commission denied the proposal thereby ensuring predatory species continue to have a devastating impact on native endangered salmonid and Delta smelt species. <http://cdfnews.wordpress.com/2012/02/02/fish-and-game-commission-votes-against-pursuing-striped-bass-proposal/>





Sec. 110 – Authorized service area

Adds Kettleman City Community Services District as a new authorized service area of the Central Valley Project. Authorizes the Secretary to enter into a long-term contract, in accordance with Reclamation laws, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use. Allows the Secretary to reduce deliveries by 25% if restrictions are imposed on agricultural deliveries.

Clarifies that if any additional infrastructure is needed to enable the storage and conveyance of such water, the costs of constructing, operating, and maintaining the infrastructure shall be the responsibility of the non-Federal entity contracting with the Secretary of the Interior.

Sec. 111 – Regulatory Streamlining

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 Central Valley Project (CVP) water project will satisfy the requirements of the National Environmental Protection Act (NEPA). Allows the Bureau of Reclamation to continue their work on a CVP project while a legal determination challenging the Notice of Determination is pending.

Defines the definition of a project as being part of the Central Valley Project and having the following qualities: An action being undertaken by a public agency or that requires an 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

Sec. 201 – Repeal of the San Joaquin River settlement

Directs the Secretary to cease implementation of Stipulation of Settlement filed in federal court of the Eastern District of California (Natural Resources Defense Council, et al. v. Kirk Rodgers, et al., Eastern District of California, No. Civ. S-88-1658 LKK/GHH). The Stipulation of Settlement required the restoration of a cold water salmon run on the San Joaquin River.

Sec. 202 – Purpose

Amends § 10002 of Subtitle A of Title X of Public Law 111-11 by striking the words “implementation of the Settlement” and replacing with “restoration of the San Joaquin River”.

Sec. 203 – Definitions

Amends § 10003 of Subtitle A of Title X 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”.

Amends § 10003 of Subtitle A of Title X of Public Law 111-11 by defining a number of terms: “Restoration Flows” is 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” is 1 March through the last day of February of the following Calendar Year, both dates inclusive; “Critical Water Year” is when 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

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”.

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by directing 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. Authorizes the Secretary to, within one year of enactment, develop and implement a plan to fully recirculate, recapture, reuse, exchange or transfer all “Restoration Flows”. Further directs the Secretary to address any impact on ground water resources within the Friant service area and identifies that mitigation may include ground water banking and recharge projects.

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by directing the Secretary to: identify the impacts associated with the release of Restoration Flows prescribed in the San Joaquin River Settlement implementation legislation (Subtitle A of Title X of 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.

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by authorizing 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 Subtitle A of Title X of Public Law 111-11.

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by declaring that, notwithstanding § 8 of the Reclamation Act of 1902¹² and Title IV of this Act, the title preempts and supersedes any State law, regulation, or requirement that imposes more restrictive requirements or regulations on the activities authorized under this title. It further declares that the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project shall comply with orders issued by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act. Provided such orders are consistent with the Congressional authorization for any affected federal facilities.

Amends § 10004 of Subtitle A of Title X of Public Law 111-11 by directing 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.

Sec. 205 – Disposal of property; title to facilities

Amends § 10005 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement” and authorization to use eminent domain (§ 2 of the Act of August 26, 1937 (Chapter 832; 50 Stat. 850)¹³).

Sec. 206 – Compliance with applicable law

Amends § 10006 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”. It further clarifies that the federal share of the costs shall be non-reimbursable.

¹² Section 8 of the Reclamation Act of 1902: “That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right of the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right.”

¹³ Section 2 of the Rivers and Harbors Act of 1937 (Central Valley Project Authorization Act of 1937): “... *Provided further*, That the entire Central Valley project, California, heretofore authorized and established under the provisions of the Emergency Relief Appropriation Act of 1935 (49 Stat. 115) and the First Deficiency Appropriation Act, fiscal year 1936 (49 Stat. 1622), is hereby reauthorized and declared to be for the purposes of improving navigation, regulating the flow of the San Joaquin River and the Sacramento River, controlling floods, providing for storage and for the delivery of the stored waters thereof, for the reclamation of arid and semiarid lands and lands of Indian reservations, and other beneficial uses, and for the generation and sale of electric energy as a means of financially aiding and assisting such undertakings and in order to permit the full utilization of the works constructed to accomplish the aforesaid purposes: *Provided further*, That, except as herein otherwise specifically provided, the provisions of the reclamation law, as amended, shall govern the repayment of expenditures and the construction, operation, and maintenance of the dams, canals, power plants, pumping plants, transmission lines, and incidental works deemed necessary to said entire project, and the Secretary of the Interior may enter into repayment contracts, and other necessary contracts, with State agencies, authorities, associations, persons, and corporations, either public or private, including all agencies with which contracts are authorized under the reclamation law, **and may acquire by proceedings in eminent domain**, or otherwise, all lands, rights-of-way, water rights, and other property necessary for said purposes: *And provided further*, That the said dam and reservoirs shall be used, first, for river regulation, improvement of navigation, and flood control; second, for irrigation and domestic uses; and, third, for power.”





Sec. 207 – Compliance with Central Valley Project Improvement Act

Amends § 10007 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”.

Amends § 10007 of Subtitle A of Title X of Public Law 111-11 by declaring that implementation of the part satisfies federal obligations under the Endangered Species Act and under § 5937 of the California Fish and Game Code¹⁴ which 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."

Sec. 208 – No private right of action

Amends § 10008 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”.

Amends § 10008 of Subtitle A of Title X of Public Law 111-11 by affirming that nothing in the part shall confer upon anyone a private right of action or claim for relief to interpret or enforce the provisions of the section (except for contractors within Friant Division, Hidden Unit, or Buchanan Unit).

Sec. 209 – Implementation

Amends § 10009 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”.

Amends § 10009 of Subtitle A of Title X of Public Law 111-11 by striking \$250 million in authorized funding; the word “Settlement”; descriptive language on levels of funding; limitations on contributions; and Reach 4B study.

Sec. 210 – Repayment contracts and acceleration of repayment of construction costs

Amends § 10010 of Subtitle A of Title X of Public Law 111-11 by striking the word “Settlement”; the word “Interim Flows”; the word “Water Management Goal”; and references to the “Settlement”.

Sec. 211 – Repeal

Strikes § 10011 of Subtitle A of Title X of Public Law 111-11 (salmon restoration program).

¹⁴ California Fish and Game Code 5937: “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. During the minimum flow of water in any river or stream, permission may be granted by the department to the owner of any dam to allow sufficient water to pass through a culvert, waste gate, or over or around the dam, to keep in good condition any fish that may be planted or exist below the dam, when, in the judgment of the department, it is impracticable or detrimental to the owner to pass the water through the fishway.”





Sec. 212 – Water supply mitigation

Amends § 10202 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement”.

Sec. 213 – Additional Authorities

Amends § 10203 of Subtitle A of Title X of Public Law 111-11 by striking all language that references or directs the implementation of the “Settlement” and \$50 million in authorized funding.





TITLE III

REPAYMENT CONTRACTS AND ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS

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

Directs the Secretary, upon the request of a contractor, to convert all long-term Central Valley Project contracts 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 any long-term Central Valley Project contracts entered into under subsection 9(c)(2) of the Reclamation Project Act of 1939 into contracts under subsection 9(c)(1) of the same law.¹⁵

A contractor that chooses to convert shall be required to, either in lump sum or accelerated prepayment (deadlines are set in the section), pay the remaining balance of construction costs they owe the federal government from the allocated construction of the Central Valley Project. Those costs are published annually in the Central Valley Project Schedule of Irrigation Capital Allocations by Contractor and the Central Valley Project Schedule of Municipal and Industrial Water Rates. It further provides for capital costs that have been incurred after the date of conversion. In such case, any costs that are below \$5 million shall be repaid within five years of being incurred. Any costs above \$5 million shall be repaid as provided by applicable Reclamation law.

Full cost pricing¹⁶ and acreage limitation¹⁷ shall not apply to all lands in a district of a contractor that chooses to convert. Furthermore, the Secretary shall waive the pricing provisions of § 3405(d) of P.L. 102-575 (tiered pricing) of a contractor that chooses to convert.

¹⁵ According to Richard Wahl in “Markets for Federal Water: Subsidies, Property Rights, and the Bureau of Reclamation,” two types of contracts with water districts are allowable under the bureau’s principal contracting authority, the Reclamation Project Act of 1939 (53 Stat. 1187; 43 U.S.C. 390). Under “repayment contracts,” [9(d) and 9(c)(2)] capital costs are amortized over the repayment period in annual installments. This fixed annual charge is not dependent on the exact amount of water delivered each year. Under “water service contracts,” [9(e) and 9(c)(1)] a combined capital and operation and maintenance charge is levied for each acre-foot of water delivered to the district. The 9(d) and 9(e) contracts relate to agriculture irrigation water and 9(c)(2) and 9(c)(1) contracts relates to water for municipal and industrial and power contracts.

¹⁶ Reclamation Reform Act of 1982 § 202(3)(A): “The term “full cost” means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of the Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act: *Provided*, That operation, maintenance, and replacement charges required under Federal reclamation law, including this title, shall be collected in addition to the full cost charge.”

¹⁷ The Reclamation Act of 1902 limited the amount of water an individual farmer could obtain from a federal water project to what was needed to irrigate 160 acres. This limitation was to ensure that family farms, not speculators, received the benefits of a federal water project. The Reclamation Reform Act of 1982 increased the limitation to 960 acres.





TITLE IV BAY-DELTA WATERSHED WATER RIGHTS PRESERVATION AND PROTECTION

Sec. 401 – Water rights and area-of-origin protections

Directs the Secretary, in the operation of the Central Valley Project, to strictly adhere to State water rights law and priorities and to honor water rights senior to those held by the Central Valley Project. It 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. Ensures that the Endangered Species Act is implemented in a manner that honors the priorities delineated above.

Sec. 402 – Sacramento River settlement contracts

Directs the Secretary to apply any limitations, with respect to the ESA, on the operation of the Central Valley Project in a manner that strictly adheres to and applies the water rights priorities for “Project Water”¹⁸ and “Base Supply”¹⁹ provided for in the Sacramento River Settlement Contracts. Ensures that Article 3(i)²⁰ 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)²¹ of those contracts.

Sec. 403 – Sacramento River Watershed Water Service Contractors

Subject to the absolute priority of Sacramento River Settlement Contractors, the provision directs the Secretary to allocate water provided for irrigation purposes to existing Central Valley Project agricultural water service contractors within the Sacramento River Watershed in the following order: Not less than 100% of their contract quantities in a “Wet”, “Above Normal”, and “Below Normal” water year; Not less than 75% of their contract quantities in a “Dry” water year; and, Not less than 50% of their contract quantities in a “Critically Dry”

¹⁸ "Project Water" shall mean all Surface Water diverted or scheduled to be diverted each month during the period April through October of each Year by the Contractor from its Source of Supply which is in excess of the Base Supply. The United States recognizes the right of the Contractor to make arrangements for acquisition of water from projects of others than the United States for delivery through the Sacramento River and tributaries subject to written agreement between Contractor and the United States as to identification of such water which water when so identified shall not be deemed Project Water under this Settlement Contract (*Contract Between the United States and Glenn-Colusa Irrigation District, Diverter of Water from Sacramento River Sources, Settling Water Rights Disputes and Providing for Project Water - Contract No. 14-06-200-855A-R-1*);

¹⁹ "Base Supply" shall mean the quantity of Surface Water established in Articles 3 and 5 which may be diverted by the Contractor from its Source of Supply each month during the period April through October of each Year without payment to the United States for such quantities diverted (*Contract Between the United States and Glenn-Colusa Irrigation District, Diverter of Water from Sacramento River Sources, Settling Water Rights Disputes and Providing for Project Water - Contract No. 14-06-200-855A-R-1*);

²⁰ Article 3(i) of the Contract Between the United States and Glenn-Colusa Irrigation District: "(i) In addition to the provisions of subdivision (h) of Article 3 of this Contract, if there is a shortage of Project Water because of actions taken by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of Article 30 of this Contract, no liability shall accrue against the United States or any of its officers, agents, or employees for any damage, direct or indirect, arising therefrom."

²¹ Article 5(a) of the Contract Between the United States and Glenn-Colusa Irrigation District: "(a) In a Critical Year, the Contractor's Base Supply and Project Water agreed to be diverted during the period April through October of the Year in which the principal portion of the Critical Year occurs and, each monthly quantity of said period shall be reduced by 25 percent."





water year. The water years have the meaning given in the Sacramento Valley Water Year Type (40-30-30) Index.

Directs the Secretary to ensure that actions undertaken to deliver water as prescribed in this section shall not modify any municipal and industrial water service contracts. Furthermore, the Secretary, in implementing this section, shall not constrain the operations of the Central Valley Project's American River Division.

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 Central Valley Project that have a water service contract in effect on the date of enactment of this Act.

Sec. 404 – No redirected adverse impacts

Directs the Secretary to ensure there are no redirected adverse water supply or fiscal impacts to those within the Sacramento River or the San Joaquin River watershed, or to the State Water Project, arising from the Secretary's operation of the Central Valley Project to meet legal obligations (including ESA, Clean Water Act or this Act) 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

Sec. 501 – Precedent

Declares that coordinated operations of the Central Valley Project and the State Water Project, consented to by the State of California, requires the assertion of Federal supremacy to protect existing water rights. Furthermore, declares that the circumstances are unique to California and the Act shall not serve as a precedent in any other State.

