



STATE OF CALIFORNIA
OFFICE OF THE ATTORNEY GENERAL
KAMALA D. HARRIS
ATTORNEY GENERAL

February 27, 2012

The Honorable John Boehner
Speaker of the House of Representatives
Office of the Speaker
H-232 The Capitol
Washington, DC 20515

The Honorable Nancy Pelosi
House Minority Leader
House of Representatives
H-204, US Capitol
Washington, DC 20515

RE: H.R. 1837 (Nunes)

Dear House Speaker Boehner and House Minority Leader Pelosi:

I am writing to express my opposition to H.R. 1837, the Sacramento-San Joaquin Valley Water Reliability Act. I am deeply concerned that passage of H.R. 1837 would abrogate long-standing provisions of California law designed to protect the State's natural resources and would violate settled constitutional principles of state sovereignty.

H.R. 1837 would transgress state sovereignty in at least three important respects. First, the legislation would mandate that the federal Central Valley Project (CVP) and the California State Water Project (SWP) operate in perpetuity to fixed water quality standards for the Sacramento-San Joaquin Delta agreed upon in 1994, even though the California State Water Resources Control Board (SWRCB) is presently re-evaluating those standards based upon the almost two decades of new scientific information made available since 1994. Second, the legislation would prohibit the SWRCB and the California Department of Fish and Game (DFG) from exercising their state law responsibilities to protect fishery resources and public trust values where such actions would restrict the diversion and storage of water, not just by the CVP and the SWP, but by virtually any water diverter in the State. Third, the legislation would overturn settled principles of cooperative federalism by vacating the San Joaquin River Restoration Settlement Act and banning the application of State fishery protections to the San Joaquin River operations of the Friant Unit of the CVP.

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These proposed federal constraints on California's ability to manage its natural resources are unprecedented. Over three decades ago, in the seminal decision of *California v. United States* (1978) 438 U.S. 645, 653, former Chief Justice William Rehnquist affirmed California's ability to impose state law terms and conditions on federal reclamation projects, and observed that "[t]he history of the relationship between the Federal Government and the States in the reclamation of the arid lands of the Western States is both long and involved, but through it runs the consistent thread of purposeful and continued deference to state water law by Congress." Under California law, the SWRCB has the continuing authority to review and reconsider all water rights for the purpose of determining whether the exercise of those rights would violate the reasonable use requirements of Article X, Section 2 of the California Constitution or California's public trust doctrine. According to the California Supreme Court in *National Audubon Society v. Superior Court* (1983) 33 Cal.3d 419, 446, "[t]he state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible." In 2009, the California Legislature expressly adopted these principles as "the foundation of state water management policy." (Cal. Wat. Code, § 85023.) By abrogating the State's ability to apply these principles to water diverters, H.R. 1837 contravenes the long-standing history of deference to state water law described by Chief Justice Rehnquist.

Moreover, H.R. 1837 takes these steps in violation of settled constitutional principles of state sovereignty. Relying upon separation of powers principles set forth in the Tenth Amendment and elsewhere in the U.S. Constitution, the U.S. Supreme Court in *New York v. United States* has held that "Congress may not simply 'commandeer[r] the legislative processes of the States by directly compelling them to enact and enforce a federal regulatory program.'" (*New York v. United States, supra*, 505 U.S. at 161, citing *Hodel v. Virginia Surface Mining & Reclamation Assn., Inc.* (1981) 452 U.S. 264, 288.) In *Printz v. United States*, the U.S. Supreme Court expanded its ruling in *New York* and declared that "[t]oday we hold that Congress cannot circumvent that prohibition by conscripting the States' officers directly." *Printz v. United States* (1997) 521 U.S. 898, 935. According to the Court, the constitutional system of dual sovereignty demands that "[t]he Federal Government may neither issue directives requiring the States to address particular problems, nor command the States' officers, or those of their political subdivisions, to administer or enforce a federal regulatory program." (*Id.*)

By compelling the SWP, a state financed and managed water project, to operate based upon 1994 Delta water quality standards, rather than allowing California to develop standards that reflect the most recent scientific information regarding the Delta, H.R. 1837 violates the U.S. Supreme Court's state sovereignty principles. Similarly, by prohibiting the SWRCB, the DFG, or other state agencies from taking action to protect fishery and public trust values other than those contained in the 1994 standards, the legislation further violates these state sovereignty

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rulings. Under H.R. 1837, Congress would have, in effect, unconstitutionally “dragooned” state officers “into administering federal law.” (*Id.* at 928.)

I urge you to reject H.R. 1837. It undermines the long history of cooperative federalism and invades an important arena of state sovereignty. It is important to Californians and to all the citizens of this great Nation that the existing legal framework for water resource issues be strengthened and preserved, rather than dismantled.

Sincerely,

A handwritten signature in black ink, appearing to read "Kamala D. Harris", with a long horizontal flourish extending to the right.

KAMALA D. HARRIS
Attorney General

cc: California Congressional Delegation
Senator Dianne Feinstein
Senator Barbara Boxer
Jerry Brown, California Governor
John Laird, California Natural Resources Secretary
Senator Pavley, California Senate Natural Resources and Water Comm. Chair
Assembly Member Huffman, CA Assembly Water, Parks, & Wildlife Comm. Chair



Redline and Review of CVPIA and Title I of H.R. 1837, as amended

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<p>SEC. 3401. SHORT TITLE.</p> <p>This title may be cited as the "Central Valley Project Improvement Act".</p>		
<p>SEC. 3402. PURPOSES.</p> <p>The purposes of this title shall be—</p> <p>(a) to protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California;</p> <p>(b) to address impacts of the Central Valley Project on fish, wildlife and associated habitats;</p> <p>(c) to improve the operational flexibility of the Central Valley Project;</p> <p>(d) to increase water-related benefits provided by the Central Valley Project to the State of California through expanded use of voluntary water transfers and improved water conservation;</p> <p>(e) to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay/Sacramento-San Joaquin Delta Estuary;</p> <p>(f) to achieve a reasonable balance among competing demands for use of Central Valley Project water, including the requirements of fish and wildlife, agricultural, municipal and industrial and power contractors</p>	<p>SEC. 101. AMENDMENT TO PURPOSES.</p> <p>Section 3402 of the Central Valley Project Improvement Act (106 Stat. 4706) is amended—</p> <p>(1) in subsection (f), by striking the period at the end; and</p> <p>(2) by adding at the end the following:</p> <p><i>“(g) to ensure that water dedicated to fish and wildlife purposes by this title is replaced and provided to Central Valley Project water contractors by December 31, 2016, at the lowest cost reasonably achievable; and</i></p> <p><i>“(h) to facilitate and expedite water transfers in accordance with this Act.”.</i></p>	<p>Section 101 adds two new purposes, to ensure replacement of water dedicated to fish and wildlife purposes, and to expedite water transfers.</p> <p>Section (g) addresses the water users concerns whose supplies remain uncertain under CVPIA. Does not address the environmental implications.</p>

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<p>SEC. 3403. DEFINITIONS. As used in this title—</p> <p>(a) the term "anadromous fish" means those stocks of salmon (including steelhead) striped bass, sturgeon and American shad that were present in the Sacramento and San Joaquin Rivers and their tributaries and the Sacramento-San Joaquin Delta to reproduce after maturing in San Francisco Bay or the Pacific Ocean;</p>	<p>SEC. 102. AMENDMENT TO DEFINITION.</p> <p>Section 3403(a) of the Central Valley Project Improvement Act (106 Stat. 4707) is amended to read as follows:</p> <p>(a) the term "anadromous fish" means those <i>native</i> stocks of salmon (including steelhead) striped bass, sturgeon and American shad <i>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</i></p> <p><i>(section 3403 b-k unchanged)</i></p> <p><i>Added: (n) the term "reasonable flows" means water flows capable of being maintained taking into account competing consumptive uses of water and economic, environmental, and social factors.</i></p>	<p>Changes the definition of anadromous fish to remove American Shad and Striped Bass. Attack on the recreational fishing industry.</p> <p>Limits stocks of salmon and steelhead to only those that were in the Sacramento and San Joaquin as of Nov. 1992. This is an attack on the San Joaquin Restoration efforts-spring chinook have been absent from the San Joaquin River since the late 1940's.</p> <p>Adds definition for reasonable flows. May give more weight to consumptive uses instead of environmental uses.</p>
<p>SEC. 3404. LIMITATION ON CONTRACTING AND CONTRACT REFORM.</p> <p>(a) New Contracts.--Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:</p> <p>(1) The provisions of subsections 3406(b) -(d) of this title are met;</p> <p>(2) The California State Water</p>	<p>SEC. 103. CONTRACTS</p> <p>Section 3404 of the Central Valley Project Improvement Act (106 Stat. 4710) is amended by striking the language of the section and by adding:</p> <p>SEC. 3404. LIMITATION ON CONTRACTING AND CONTRACT REFORM.- CONTRACTS</p> <p>(a) New Contracts.--Except as provided in subsection (b) of this section, the Secretary shall not enter into any new short-term, temporary, or long-term contracts or agreements for water supply from the Central Valley Project for any purpose other than fish and wildlife before:</p> <p>(1) The provisions of subsections 3406(b) -(d) of this title are met;</p> <p>(2) The California State Water Resources Control Board concludes the</p>	<p>H.R. 1837 strikes the entire section and removes the provisions that prohibited the signing of new contracts until certain criteria were met, which included a completion of an EIS. The EIS was completed in 1999.</p> <p>Section 3404 of CVPIA reduced the maximum duration of water deliveries from the 1939 Reclamation Projects Act from 40 years to no more than 25 years. H.R. 1837 amends this section by changing the renewal duration back to 40 years, and directs the Secretary to renew existing long term contracts for successive periods of up to 40 years. This likely removes the Secretary's discretion and thereby removes any NEPA consultation and ESA.</p>

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<p>Resources Control Board concludes the review ordered by the California Court of Appeals in U.S. v. State Water Resources Control Board, 182 Cal. App. 3rd 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and,</p> <p>(3) At least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.</p> <p>(b) Exceptions to Limit on New Contracts.--The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Pub. L. 102-250 or section 206 of Pub. L. 101-514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the</p>	<p>review ordered by the California Court of Appeals in U.S. v. State Water Resources Control Board, 182 Cal. App. 3rd 82 (1986) and determines the means of implementing its decision, including the obligations of the Central Valley Project, if any, and the Administrator of the Environmental Protection Agency shall have approved such decision pursuant to existing authorities; and,</p> <p>(3) At least one hundred and twenty days shall have passed after the Secretary provides a report to the Committee on Energy and Natural Resources of the Senate and the Committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives explaining the obligations, if any, of the Central Valley Project system, including its component facilities and contracts, with regard to achieving its responsibilities for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary as finally established and approved by relevant State and Federal authorities, and the impact of such obligations on Central Valley Project operations, supplies, and commitments.</p> <p>(b) Exceptions to Limit on New Contracts.--The prohibition on execution of new contracts under subsection (a) of this section shall not apply to contracts executed pursuant to section 305 of Pub. L. 102-250 or section 206 of Pub. L. 101-514 or to one-year contracts for delivery of surplus flood flows or contracts not to exceed two years in length for delivery of class II water in the Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for</p>	<p>Section 103(2) stipulates that once contracts have been converted to repayment contracts, they only have to pay for water that they have received.</p>

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<p>Friant Unit. Notwithstanding the prohibition in the Energy and Water Development Appropriations Act of 1990, the Secretary is authorized, pursuant to section 203 of the Flood Control Act of 1962, to enter into a long-term contract in accordance with the Reclamation laws with the Tuolumne Regional Water District, California, for the delivery of water from the New Melones project to the county's water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.</p> <p>(c) Renewal of Existing Long-Term Contracts.--Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.</p> <p>(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two</p>	<p>the delivery of water from the New Melones project to the county's water distribution system and a contract with the Secretary of Veteran Affairs to provide for the delivery in perpetuity of water from the project in quantities sufficient, but not to exceed 850 acre-feet per year, to meet the needs of the San Joaquin Valley National Cemetery, California.</p> <p>(c) Renewal of Existing Long-Term Contracts.--Notwithstanding the provisions of the Act of July 2, 1956 (70 Stat. 483), the Secretary shall, upon request, renew any existing long-term repayment or water service contract for the delivery of water from the Central Valley Project for a period of 25 years and may renew such contracts for successive periods of up to 25 years each.</p> <p>(1) No such renewals shall be authorized until appropriate environmental review, including the preparation of the environmental impact statement required in section 3409 of this title, has been completed. Contracts which expire prior to the completion of the environmental impact statement required by section 3409 may be renewed for an interim period not to exceed three years in length, and for successive interim periods of not more than two years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply</p>	

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<p>years in length, until the environmental impact statement required by section 3409 has been finally completed, at which time such interim renewal contracts shall be eligible for long-term renewal as provided above. Such interim renewal contracts shall be modified to comply with existing law, including provisions of this title. With respect to all contracts renewed by the Secretary since January 1, 1988, the Secretary shall incorporate in said contracts a provision requiring payment of the charge mandated in subsection 3406(c) and subsection 3407(b) of this title and all other modifications needed to comply with existing law, including provisions of this title. This title shall be deemed "applicable law" as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.</p> <p>(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.</p> <p>(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half</p>	<p>with existing law, including provisions of this title. This title shall be deemed "applicable law" as that term is used in Article 14(c) of contracts renewed by the Secretary since January 1, 1988.</p> <p>(2) Upon renewal of any long-term repayment or water service contract providing for the delivery of water from the Central Valley Project, the Secretary shall incorporate all requirements imposed by existing law, including provisions of this title, within such renewed contracts. The Secretary shall also administer all existing, new, and renewed contracts in conformance with the requirements and goals of this title.</p> <p>(3) In order to encourage early renewal of project water contracts and facilitate timely implementation of this title, the Secretary shall impose on existing contractors an additional mitigation and restoration payment of one and one-half times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund; Provided, however, That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract immediately upon completion of that environmental impact statement, if such contract has not</p>	

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<p>times the annual mitigation and restoration payment calculated under subsection 3407(d) of this title for every year starting October 1, 1997 or January 1 of the year following the year in which the environmental impact statement required under section 3409 is completed, whichever is sooner, and ending on the effective date of the renewed contract payable prior to the renewal of such contract, to be covered to the Restoration Fund; Provided, however, That this paragraph shall not apply to contracts renewed after January 1, 1988, and prior to the date of enactment of this title or, in the event the environmental impact statement required by section 3409 is not completed by October 1, 1997, to any holder of a contract in existence on the date of enactment of this title who enters into a binding agreement with the Secretary prior to October 1, 1997, to renew its contract immediately upon completion of that environmental impact statement, if such contract has not expired prior to such date.</p>	<p>expired prior to such date.</p> <p><i>(a) RENEWAL OF EXISTING LONG-TERM CONTRACTS.—Upon request of the contractor, the Secretary shall renew any existing long-term repayment or water service contract that provides for the delivery of water from the Central Valley Project for a period of 40 years, and renew such contracts for successive periods of 40 years each.</i></p> <p><i>(b) DELIVERY CHARGE.—Beginning on the date of the enactment of this Act, a contract entered into or renewed pursuant to this section shall include a provision that requires the Secretary to charge the other party to such contract only for water actually delivered by the Secretary.”</i></p>	
<p>SECTION 3405. WATER TRANSFERS, IMPROVED WATER MANAGEMENT & CONSERVATION</p> <p>(a) Water Transfers.--In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central</p>	<p>SEC. 104. WATER TRANSFERS, IMPROVED WATER MANAGEMENT, AND CONSERVATION.</p> <p>Section 3405 of the Central Valley Project Improvement Act (106 Stat. 4710) is amended as follows:</p> <p>(a) Water Transfers.--In order to assist California urban areas, agricultural water users, and others in meeting their future water needs, subject to the conditions and requirements of this subsection, all individuals or districts who receive Central Valley Project water under water service or repayment contracts, water rights settlement</p>	

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<p>Valley Project water under water service or repayment contracts, water rights settlement contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian Tribe, or private non-profit organization for project purposes or any purpose recognized as beneficial under applicable State law. Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.</p>	<p>contracts or exchange contracts entered into prior to or after the date of enactment of this title are authorized to transfer all or a portion of the water subject to such contract to any other California water user or water agency, State or Federal agency, Indian Tribe, or private non-profit organization for project purposes or any purpose recognized as beneficial under applicable State law. <i>The Secretary shall take all necessary actions to facilitate and expedite transfers of Central Valley Project water in accordance with such this Act or any other provision of federal reclamation law and the National Environmental Policy Act of 1969.</i> Except as provided herein, the terms of such transfers shall be set by mutual agreement between the transferee and the transferor.</p>	<p>Language is added directing the Secretary to “take all necessary actions to facilitate and expedite transfers” of CVP water.</p>
	Section 3405(a)(1) unchanged	
(A) No transfer to combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.	(A) No transfer to <i>or</i> combination of transfers authorized by this subsection shall exceed, in any year, the average annual quantity of water under contract actually delivered to the contracting district or agency during the last three years of normal water delivery prior to the date of enactment of this title.	Technical amendment.
	Section 3405(a)(1)(B-M) unchanged	
<p>(2) Review and Approval of Transfers.--All transfers subject to review and approval under this subsection shall be reviewed and approved in a manner consistent with the following:</p> <p>(A) Decisions on water transfers subject to review by a contracting district or agency or by the Secretary shall be rendered within ninety days of receiving a written transfer proposal from the transferee or transferor. Such written proposal should provide all information reasonably necessary to determine whether</p>	<p>(Section 3405(a)(2)(A-D) unchanged)</p> <p>(C) in paragraph (2), by adding at the end the following:</p> <p><i>“(E) The contracting district from which the water is coming, the agency, or the Secretary shall determine if a written transfer proposal is complete within 45 days after the date of submission of such proposal. If such district or agency or the Secretary determines that such proposal is incomplete, such district or agency or the Secretary shall state with specificity what must be added to or revised in order for such proposal to be complete.</i></p>	<p>Section 104(1)(C) adds Section 3405(a)(2)(E-F). (2)(E) expands current law to expedite water transfer requests. Specifically, it requires the Secretary to determine if a proposal is complete within 45 days and if not, to specify what is needed for completion.</p> <p>The addition of Section 3405(a)(2)(F) prohibits the Secretary from “mitigation or</p>

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<p>the transfer complies with the terms and conditions of this subsection.</p> <p>(B) All transfers subject to review by a contracting district or agency shall be reviewed in a public process similar to that provided for in section 226 of Pub. L. 97-293.</p> <p>(C) The contracting district or agency or the Secretary shall approve all transfers subject to review and approval by such entity if such transfers are consistent with the terms and conditions of this subsection. To disapprove a transfer, the contracting district or agency or the Secretary shall inform the transferee and transferor, in writing, why the transfer does not comply with the terms and conditions of this subsection and what alternatives, if any, could be included so that the transfer would reasonably comply with the requirements of this subsection.</p> <p>(D) If the contracting district or agency or the Secretary fails to approve or disapprove a proposed transfer within ninety days of receiving a complete written proposal from the transferee or transferor, then the transfer shall be deemed approved.</p>	<p><i>“(F) Except as provided in this section, the Secretary shall not impose mitigation or other requirements on a proposed transfer, but the contracting district from which the water is coming or the agency shall retain all authority under State law to approve or condition a proposed transfer.”</i></p>	<p>other requirements” on a proposed transfer. Language directs the contractors to retain all authority under state law to approve or condition a proposed transfer.</p> <p>Mitigation requirements are often used to protect parties not party to the water transfer (third parties).</p>
	<p>Section 3405(a)(3) unchanged</p>	
	<p>Added after Section 3405(a)(3)</p> <p><i>(4) Notwithstanding any other provision of reclamation law—</i></p> <p><i>(A) the authority to make transfers or exchanges of, or banking or recharge arrangements using, Central Valley Project water that could have been conducted before October 30, 1992, is valid, and such transfers, exchanges, or arrangements shall not be subject to,</i></p>	<p>H.R. 1837 adds a new subsection (4) to Section 3405 (a) which exempts transfers that could have been made before enactment of CVPIA. Water users have argued that short term, district-to-district or within-district water transfers were “easier” prior to CVPIA. This section attempts to solve the issue.</p>

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	<p><i>limited, or conditioned by this title; and</i></p> <p><i>(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.</i></p>	
<p>(b) Metering of Water Use Required.--All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.</p>	<p>(b) Metering <i>Measurement</i> of Water Use Required.--All Central Valley Project water service or repayment contracts for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title, shall provide that the contracting district or agency shall ensure that all surface water delivery systems within its boundaries are equipped with water measuring devices or water measuring methods of comparable effectiveness acceptable to the Secretary within five years of the date of contract execution, amendment, or renewal, and that any new surface water delivery systems installed within its boundaries on or after the date of contract renewal are so equipped. <i>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.</i> The contracting district or agency shall inform the Secretary and the State of California annually as to the monthly volume of surface water delivered within its boundaries.</p>	<p>Replaces term "Metering" with "Measurement." Makes section broader, since "metering" is considered as one option for "measuring" water.</p> <p>Waives the measurement requirement for large contracting districts (e.g. the City of Fresno, and the Friant and Delta-Mendota contracting districts) after the point where their CVP supplies are commingled with other water supplies.</p>
	Section 3405(c) unchanged	
<p>(d) Water Pricing Reform.--All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title</p>	<p>(d) Water Pricing Reform.--All Central Valley Project water service or repayment contracts for a term longer than three years for agricultural, municipal, or industrial purposes that are entered into, renewed, or amended under any provision of Federal Reclamation law after the date of enactment of this title shall provide that all project water subject to contract shall</p>	<p>Section 104(3) of H.R. 1837 strikes the system of tiered pricing for the use of CVP water. Eliminates another priority of CVPIA water conservation. Striking this section also reduces revenues from tiered pricing that go into the Restoration Fund.</p>

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<p>shall provide that all project water subject to contract shall be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:</p> <p>(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;</p> <p>(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;</p> <p>(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and</p> <p>(4) the Secretary shall charge contractors only for water actually delivered. The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for water fowl in fields where the water is used and the crops are produced; Provided, That such waiver shall apply only if such habitat values can be assured consistent with the goals and objectives of this title through binding agreements executed with or approved by the Secretary.</p>	<p>be made available to districts, agencies, and other contracting entities pursuant to a system of tiered water pricing. Such a system shall specify rates for each district, agency or entity based on an inverted block rate structure with the following provisions:</p> <p>(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;</p> <p>(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;</p> <p>(3) the third rate tier shall apply to that quantity of water over 90 percent of the contract total and shall not be less than the full cost rate; and</p> <p>(4) the Secretary shall charge contractors only for water actually delivered. The Secretary shall waive application of this subsection as it relates to any project water delivered to produce a crop which the Secretary determines will provide significant and quantifiable habitat values for water fowl in fields where the water is used and the crops are produced; Provided, That such waiver shall apply only if such habitat values can be assured consistent with the goals and objectives of this title through binding agreements executed with or approved by the Secretary.</p>	

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(f) Increased Revenues.--All revenues received by the Secretary as a result of the increased repayment rates applicable to water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund.	(f) Increased Revenues. <i>RESTORATION FUND</i> --All revenues received by the Secretary as a result of the increased repayment that exceed the cost-of-service rate rates applicable to <i>the delivery of</i> water transferred from irrigation use to municipal and industrial use under subsection 3405(a) of this section, and all increased revenues received by the Secretary as a result of the increased water prices established under subsection 3405(d) of this section, shall be covered to the Restoration Fund shall be deposited into the Restoration Fund, as established under section 3407.	The new subsection states that revenues in excess of cost-of-service rates are required to be deposited to the Restoration Fund. It is unclear what happens to revenues less than the cost-of-service rates- assumption would be that this would be returned to the treasury and be credited toward payment obligations.
SECTION 3406. FISH, WILDLIFE, IMPROVED WATER MANAGEMENT & CONSERVATION	SEC. 105. FISH, WILDLIFE, AND HABITAT RESTORATION. Section 3406 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended as follows:	
	Section 3406 (a) unchanged	
	Section 3406(b)(1)(A) unchanged	
(B) As needed to achieve the goals of this program, the Secretary is authorized and directed to modify Central Valley Project operations to provide flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish, except that such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2) of this subsection; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. Instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on	Section 3406(b)(1)(B) <i>MODIFICATION OF PROGRAM</i> <i>(i) In General.--</i> As needed to achieve the goals of this program <i>established under this paragraph</i> , the Secretary is authorized and directed to <i>may</i> modify Central Valley Project operations to provide <i>reasonable water</i> flows of suitable quality, quantity, and timing to protect all life stages of anadromous fish except that . Such flows shall be provided from the quantity of water dedicated to fish, wildlife, and habitat restoration purposes under paragraph (2); of this subsection ; from the water supplies acquired pursuant to paragraph (3) of this subsection; and from other sources which that do not conflict with fulfillment of the Secretary's remaining contractual obligations to provide Central Valley Project water for other authorized purposes. <i>Reasonable</i> instream flow needs for all Central Valley Project controlled streams and rivers shall be determined by the Secretary based on recommendations of the U.S. Fish and Wildlife <i>Service</i>	Section 105 allows, instead of directs, the Secretary to modify CVP operations to provide flows to protect fish. Adds the term "Reasonable" flows which is defined in section 102 (new subsection in CVPIA) Also directs that such flows shall be provided from b(2) water. Attempts to create a ceiling of environmental water limited to 800,000 af. Language removes consultation on instream flows with the State California Department Fish and Game. Includes two federal

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recommendations of the U.S. Fish and Wildlife Service after consultation with the California Department of Fish and Game.	<i>and the National Marine Fisheries Service</i> after consultation with the California Department of Fish and Game <i>United States Geological Survey.</i>	agencies: NMFS and USGS. No deference to the state.
	Section 3406(b)(1)(C-D) unchanged	
<p>Section 3406(b)(2)</p> <p>Upon enactment of this title dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purpose of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including but not limited to additional obligations under the federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met.</p>	<p>Section 3406(b)(2)</p> <p>Upon enactment of this title dedicate and manage annually 800,000 acre-feet of Central Valley Project yield for the primary purposes of implementing the fish, wildlife, and habitat restoration purposes and measures authorized by this title; to assist the State of California in its efforts to protect the waters of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary; and to help meet such obligations as may be legally imposed upon the Central Valley Project under state or federal law following the date of enactment of this title, including, but not limited to additional obligations under the federal Endangered Species Act. For the purpose of this section, the term "Central Valley Project yield" means the delivery capability of the Central Valley Project during the 1928-1934 drought period after fishery, water quality, and other flow and operational requirements imposed by terms and conditions existing in licenses, permits, and other agreements pertaining to the Central Valley Project under applicable State or Federal law existing at the time of enactment of this title have been met. <i>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</i></p>	<p>Section 105(B)</p> <p>Deletes the word "primary," thus putting the fish, wildlife and habitat restoration purposes on par with other requirements (e.g. in-Delta ESA and CWA needs) for which water may be needed.</p> <p>Eliminates the primary purpose of b(2), eliminates the open ended use of b(2) (so does not apply to new obligations). Use b(2) to meet the Accord. b(2) water shall be reused (where now it is not mandatory) and puts on additional obligations.</p>

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	<i>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.</i>	
	Section 3406(b)(2)(A-B) unchanged	
(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; Provided, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; provided further, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety.	(C) The Secretary may temporarily reduce deliveries of the quantity of water dedicated under this paragraph up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water; Provided, That such reductions shall not exceed in percentage terms the reductions imposed on agricultural service contractors; provided further, That nothing in this subsection or subsection 3406(e) shall require the Secretary to operate the project in a way that jeopardizes human health or safety. <i>If by March 15th of any year the quantity of Central Valley Project water forecasted to be made available to water service or repayment contractors in the Delta Division of the Central Valley Project is below 75 percent of the total quantity of water to be made available under said contracts, the quantity of Central Valley Project yield dedicated and managed for that year under this paragraph shall be reduced by 25 percent.</i>	Under existing law, you reduce b2 allocations when you reduce deliveries to settlement and exchange contractors. Language says that you reduce b2 by 25 percent if the agriculture service contractors get less than 75 percent at the March 15 allocation. Also limits allocation to b2 water to March 15- which is a conservative forecast.
	Section 3406(b)(2)(D) unchanged Section 3406(b)(3-23) unchanged Section 3406(c-h) unchanged	
	<i>Section 3406 (i) included:</i> <i>(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).</i>	Section 3406(i) deems <i>pursuing</i> authorized activities counts as <i>meeting</i> the fish and wildlife purposes of the CVP authorization act as amended. This would appear to set a lower threshold for meeting the standard; agencies would merely have to show they were pursuing activities in order to

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		meet the requirement of this Act.
<p>SECTION 3407. RESTORATION FUND</p> <p>(a) Restoration Fund Established.--There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") which shall be available for deposit of donations from any source and revenues provided under sections 3404(c) (3), 3405(f), 3406(c) (1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b) (4)-(6), (10)-(18), and (20)-(22) of this title. Monies donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.</p>	<p>SEC. 106. RESTORATION FUND.</p> <p>Section 3407 of the Central Valley Project Improvement Act (106 Stat. 4714) is amended as follows:</p> <p><i>“(1) IN GENERAL.—”</i> There is hereby established in the Treasury of the United States the "Central Valley Project Restoration Fund" (hereafter "Restoration Fund") which shall be available for deposit of donations from any source and revenues provided under sections 3404(c) (3), 3405(f), 3406(c) (1), and 3407(d) of this title. Amounts deposited shall be credited as offsetting collections. Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b) (4)-(6), (10)-(18), and (20)-(22) of this title. Monies <i>Monies</i> donated to the Restoration Fund by non-Federal entities for specific purposes shall be expended for those purposes only and shall not be subject to appropriation.</p> <p><i>“(2) PROHIBITIONS.—The Secretary may not directly or indirectly require a donation or other payment to the Restoration Fund—</i></p> <p><i>“(A) or environmental restoration or mitigation fees not otherwise provided by law, as a condition to—</i></p> <p><i>“(i) providing for the storage or conveyance of non-Central Valley Project water pursuant to Federal reclamation laws; or</i></p> <p><i>“(ii) the delivery of water pursuant to</i></p>	<p>Strikes the CVPIA requirement that not less than 67% of Central Valley Project Restoration Fund monies are authorized to carry out habitat restoration, improvement and acquisitions. Instead, the money can be used to meet any action specified by this Act.</p> <p>Prohibits mandatory direct or indirect payment to the Restoration Fund not otherwise provided by law. Essentially no funds will be deposited into the account for environmental restoration or mitigation.</p>

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	<p><i>section 215 of the Reclamation Reform Act of 1982 (Public Law 97-293; 96 Stat. 1270); or</i></p> <p><i>“(B) for any water that is delivered with the sole intent of groundwater recharge.”</i></p>	(ii) Doesn't require the payment of Section 215 (Surplus) water for the sole intent of groundwater storage (Kern).
	Section 3407(b) unchanged	
<p>(c) Mitigation and Restoration Payments by Water and Power Beneficiaries.--</p> <p>(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3404(c) (3), 3405(a) (1) (C), 3405(f), and 3406(c) (1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs of fish, wild fish, and habitat restoration programs and projects under this title.</p>	<p>(c) Mitigation and Restoration Payments by Water and Power Beneficiaries.--</p> <p>(1) To the extent required in appropriation Acts, the Secretary shall assess and collect additional annual mitigation and restoration payments, in addition to the charges provided for or collected under sections 3404(c) (3), 3405(a) (1) (C), 3405(f), and 3406(c) (1) of this title, consisting of charges to direct beneficiaries of the Central Valley Project under subsection (d) of this section in order to recover a portion or all of the costs of fish, wild fish, and habitat restoration programs and projects under this title <i>of carrying out all activities described in this title.</i></p>	<p>Payments are no longer strictly for mitigation. Removes the RF limitation and allows for the use of funds for all activities described in Title I.</p> <p>Adds “carrying out” in references to recovering the costs of the program, but drops fish, wild fish, and habitat restoration from the costs listed. Could include non-fish activities, such as water supply and storage projects.</p>
	No Change to Section d(1)	
<p>Section d(2)(A)</p> <p>The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c) (2) of this subsection; Provided, That such additional payments shall</p>	<p>Section d(2)(A)</p> <p>The Secretary shall require Central Valley Project water and power contractors to make such additional annual payments as are necessary to yield, together with all other receipts, the amount required under paragraph (c) (2) of this subsection; Provided, That such additional payments shall not exceed \$30,000,000 (October 1992</p>	

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<p>not exceed \$30,000,000 (October 1992 price levels) on a three-year rolling average basis; Provided further, That such additional annual payments shall be allocated so as not to exceed \$6.00 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by the Central Valley Project, and \$12.00 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project, Provided further, that the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; Provided further, That the Secretary shall impose an additional annual charge of \$25.00 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; And Provided further, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, 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</p>	<p>price levels) on a three-year rolling average basis; Provided further, That such additional annual payments shall be allocated so as not to exceed \$6.00 per acre-foot (October 1992 price levels) for agricultural water sold and delivered by the Central Valley Project, and \$12.00 per acre-foot (October 1992 price levels) for municipal and industrial water sold and delivered by the Central Valley Project, <i>or after October 1, 2013, \$4 per megawatthour for Central Valley Project power sold to power contractors (October 2013 price levels)</i>; Provided further, that the charge imposed on agricultural water shall be reduced, if necessary, to an amount within the probable ability of the water users to pay as determined and adjusted by the Secretary no less than every five years, taking into account the benefits resulting from implementation of this title; Provided further, That the Secretary shall impose an additional annual charge of \$25.00 per acre-foot (October 1992 price levels) for Central Valley Project water sold or transferred to any State or local agency or other entity which has not previously been a Central Valley Project customer and which contracts with the Secretary or any other individual or district receiving Central Valley Project water to purchase or otherwise transfer any such water for its own use for municipal and industrial purposes, to be deposited in the Restoration Fund; And Provided further, That upon the completion of the fish, wildlife, and habitat mitigation and restoration actions mandated under section 3406 of this title, <i>no later than December 31, 2020</i>, the Secretary shall reduce the sums described in paragraph (c) (2) of this section to \$35,000,000 per year (October 1992 price levels) and shall reduce the annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment</p>	<p>Sets a limit of \$4 per megawatt-hour on payments to the Restoration Fund for CVP power sold to contractors. Requires that total payments into the Restoration Fund from water and power users be reduced from 30 million to \$15 million by December 31, 2020.</p> <p>Deems that fish, wildlife and habitat mitigations are complete by December 31, 2020. (therefore no more deposits into the reclamation fund).</p>

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<p>annual mitigation and restoration payment ceiling established under this subsection to \$15,000,000 (October 1992 price levels) on a three-year rolling average basis. The amount of the mitigation and restoration payment made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project.</p>	<p>made by Central Valley Project water and power users, taking into account all funds collected under this title, shall, to the greatest degree practicable, be assessed in the same proportion, measured over a ten-year rolling average, as water and power users' respective allocations for repayment of the Central Valley Project.</p>	
	<p>Section 3407 (e-f) unchanged</p>	
	<p>Added to the end of Section 3407:</p> <p><i>(g) REPORT ON EXPENDITURE OF FUNDS.—At the end of each fiscal year, the Secretary, in consultation with the Restoration Fund Advisory Board, shall submit to Congress a plan for the expenditure of all of the funds deposited into the Restoration Fund during the preceding fiscal year. Such plan shall contain a cost effectiveness analysis of each expenditure.</i></p> <p><i>(h) ADVISORY BOARD.—</i></p> <p><i>“(1) ESTABLISHMENT.—There is hereby established the Restoration Fund Advisory Board (hereinafter in this section referred to as the ‘Advisory Board’) composed of 12 members selected by the Secretary, each for four-year terms, one of whom shall be designated by the Secretary as Chairman. The members shall be selected so as to represent the various Central Valley Project stakeholders, four of whom shall be from CVP agricultural users, three from CVP municipal and industrial users, three from CVP power contractors, and two at the discretion of the Secretary. The Secretary and the Secretary of Commerce may each designate a</i></p>	<p>Establishes an Advisory Board for the management and expenditure of the restoration fund. Requires and annual report to Congress.</p> <p>There are no environmental, tribal, or business-related members that are specified to be a part of this board.</p>

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	<p><i>representative to act as an observer of the Advisory Board.</i></p> <p><i>“(2) DUTIES.—The duties of the Advisory Board are as follows:</i></p> <p><i>“(A) To meet at least semiannually to develop and make recommendations to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to the Central Valley Project Improvement Act.</i></p> <p><i>“(B) To ensure that any advice or recommendation made by the Advisory Board to the Secretary reflect the independent judgment of the Advisory Board.</i></p> <p><i>“(C) Not later than December 31, 2013, and annually thereafter, to transmit to the Secretary and Congress recommendations required under subparagraph (A).</i></p> <p><i>“(D) Not later than December 31, 2013, and biennially thereafter, to transmit to Congress a report that details the progress made in achieving the actions mandated under section 3406 of this title.</i></p> <p><i>“(3) ADMINISTRATION.—With the consent of the appropriate agency head, the Advisory Board may use the facilities and services of any Federal agency.”.</i></p>	<p>Allows for the use ANY federal facility for the advisory board.</p>
SEC. 3408. ADDITIONAL AUTHORITIES.	SEC. 107. ADDITIONAL AUTHORITIES.	
	Section 3408(a-b) unchanged	
(c) Contracts for Additional Storage and Delivery of Water.-- The Secretary is authorized to enter into contracts pursuant to Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private non-profit organization for the exchange, impoundment, storage, carriage, and delivery of Central Valley	(c) Contracts for Additional Storage and Delivery of Water.== (1) IN GENERAL.-- The Secretary is authorized to enter into contracts pursuant to Federal Reclamation law and this title with any Federal agency, California water user or water agency, State agency, or private non-profit organization for the exchange, impoundment, storage, carriage, and	Strikes non-profit

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<p>Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose, except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Pub. L. 99-546 (100 Stat. 3051).</p>	<p>delivery of Central Valley Project and non-project water for domestic, municipal, industrial, fish and wildlife, and any other beneficial purpose. Except that nothing in this subsection shall be deemed to supersede the provisions of section 103 of Pub. L. 99-546 (100 Stat. 3051).</p> <p><i>(2) LIMITATION.--, except that n</i> Nothing in this subsection shall be deemed to supersede the provisions of section 103 of Pub. L. 99-546 (100 Stat. 3051).</p> <p><i>(3) AUTHORITY FOR CERTAIN ACTIVITIES.-- The Secretary shall use the authority granted by this subsection in connection with requests to exchange, impound, store, carry, or deliver nonproject water using Central Valley Project facilities for any beneficial purpose.</i></p> <p><i>(4) RATES.—The Secretary shall develop rates not to exceed the amount required to recover the reasonable costs incurred by the Secretary in connection with a beneficial purpose under this subsection. Such rates shall be charged to a party using Central Valley Project facilities for such purpose. Such costs shall not include any donation or other payment to the Restoration Fund.</i></p> <p><i>(5) CONSTRUCTION.—This subsection shall be construed and implemented to facilitate and encourage the use of Central Valley Project facilities to exchange, impound, store, carry, or deliver nonproject water for any beneficial purpose.</i></p>	<p>This language will facilitate the transfer of non-project and project water from new sources, including those storage studies authorized under CALFED (eg.Sites Reservoir)</p> <p>Nothing in this subsection supersedes the Coordinated operations agreement.</p> <p>Currently payments for transferred water go into the Reclamation Fund. This prohibits transferred water from going into the Reclamation Fund.</p> <p><i>Warren Act?</i></p>
	Section 3408 (d-e) unchanged	
<p>(f) Annual Reports to Congress.-- Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of</p>	<p>(f) Annual Reports to Congress.--Not later than September 30 of each calendar year after the date of enactment of this title, the Secretary shall submit a detailed report to the Committee on Energy and Natural Resources of the Senate and the</p>	<p>Technical amendment-reflecting name change of Authorization Committee.</p>

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<p>the Senate and the committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this title. Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title.</p>	<p>committee on Interior and Insular Affairs and the Committee on Merchant Marine and Fisheries <i>Natural Resources</i> of the House of Representatives. Such report shall describe all significant actions taken by the Secretary pursuant to this title and progress toward achievement of the intent, purposes and provisions of this title, <i>including progress on the plan required by subsection (j).</i> Such report shall include recommendations for authorizing legislation or other measures, if any, needed to implement the intent, purposes and provisions of this title. <i>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.</i></p>	<p>Bypasses the Secretary and goes directly to Congress from the MP Regional Director.</p>
	<p>Section 3408(g) unchanged</p>	
<p>Section 3408(h) Land Retirement. -</p> <p>(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in paragraph (h) (2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.</p> <p>(2) The Secretary is authorized to purchase, under the authority of paragraph (h) (i), and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary -</p> <p>(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation</p>	<p>Section 3408(h) Land Retirement.--</p> <p>(1) The Secretary is authorized to purchase from willing sellers land and associated water rights and other property interests identified in paragraph (h) (2) which receives Central Valley Project water under a contract executed with the United States, and to target such purchases to areas deemed most beneficial to the overall purchase program, including the purposes of this title.</p> <p>(2) The Secretary is authorized to purchase, under the authority of paragraph (h) (i), and pursuant to such rules and regulations as may be adopted or promulgated to implement the provisions of this subsection, agricultural land which, in the opinion of the Secretary -</p> <p>(A) would, if permanently retired from irrigation, improve water conservation by a district, or improve the quality of an irrigation district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform</p>	<p>Technical corrections.</p>

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<p>district's agricultural wastewater and assist the district in implementing the provisions of a water conservation plan approved under section 210 of the Reclamation Reform Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September, 1990) ; or</p> <p>(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes.</p>	<p>Act of 1982 and agricultural wastewater management activities developed pursuant to recommendations specific to water conservation, drainage source reduction, and land retirement contained in the final report of the San Joaquin Valley Drainage Program (September, 1990) ; or</p> <p>(B) are no longer suitable for sustained agricultural production because of permanent damage resulting from severe drainage or agricultural wastewater management problems, groundwater withdrawals, or other causes.</p>	
	Section 3408 (i) unchanged	
<p>(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:</p> <p>(1) Improvements in, modification of, or additions to the facilities</p>	<p>(1) Project Yield Increase In General- 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 the Secretary, on a priority basis and not later than September 30, 2013, 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 and otherwise required to meet the purpose of the Central Valley Project including <u>contractual obligations</u>. The plan required by this subsection shall include <u>recommendations on appropriate cost-</u></p>	<p>Deletes "if any" from sentence qualifying whether CVP contractors may experience adverse effects from implementation of CVPIA.</p> <p>Adds "on a priority basis"</p> <p>Requires the Secretary to submit a report to Congress no later than September 30, 2016.</p>

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<p>and operations of the project;</p> <p>(2) Conservation;</p> <p>(3) Transfers;</p> <p>(4) Conjunctive use;</p> <p>(5) Purchase of water;</p> <p>(6) Purchase and idling of agricultural land; and</p> <p>(7) Direct purchase of water rights.</p> <p>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.</p>	<p>sharing arrangements and authorizing legislation or other measures needed to implement, intent, purposes and provisions of this subsection and a description of how the Secretary intends to use the following options- 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:</p> <p>(4 A) Improvements in, modification of, or additions to the facilities and operations of the project and construction of new water storage facilities;</p> <p>(2 B) Conservation;</p> <p>(3 C) Transfers;</p> <p>(4 D) Conjunctive use;</p> <p>(5 E) Purchase of water;</p> <p>(6 F) Purchase and idling of agricultural land;</p> <p>(7 G) Direct purchase of water rights.</p> <p>(H) Water banking and recharge.</p> <p>(2) IMPLEMENTATION OF PLAN.— The Secretary shall implement the plan required by paragraph (1) commencing on October 1, 2013. In order to carry out this subsection, the Secretary shall coordinate with the State of California in implementing measures for the long-term resolution of problems in the San Francisco Bay/Sacramento-San Joaquin Delta Estuary.</p> <p>(3) FAILURE OF THE PLAN.— Notwithstanding any other provision of Federal reclamation law, if by</p>	<p>Requires that the Secretary write a plan that would replace any water dedicated to fish and wildlife as well as meet CVP contractual obligations (like Westlands Water District). This plan could include the Secretary determining that new facilities are necessary to meet contractual obligations.</p> <p>Upon appropriation of required funds, this section appears to implement or pre-authorize projects or programs included in the plan.</p>

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	September 30, 2016, the plan required by paragraph (1) fails to increase the annual delivery capability of the Central Valley Project by 800,000 acre-feet, implementation of any non-mandatory action under section 3406(b)(2) shall be suspended until the plan achieves an increase in the annual delivery capability of the Central Valley Project by 800,000 acre-feet.”.	If the plan fails to increase annual delivery by 800,000 af, the dedicated water to the environment must also be suspended.
	Added Section 3408(l) (e) Water storage project construction.—The Secretary, acting through the Commissioner of the Bureau of Reclamation, may partner on the water storage projects identified in section 103(d)(1) of the Water Supply Reliability, and Environmental Improvement Act (Public Law 108–361)(and Acts supplemental and amendatory to the Act) with local joint powers authorities formed pursuant to State law by irrigation districts and other local water districts and local governments within the applicable hydrologic region, to advance these projects. No Federal funds are authorized for this purpose and each water storage project is authorized for construction if non-Federal funds are used for financing and constructing the project.	Denham Storage Amendment from 2/16 FC Markup. Would authorize the construction of Sites Reservoir, but without federal funding. Prohibiting federal funding would deter the project from being constructed, since Reclamation cannot work with the JPA for free.
	Section 3409-Section 3412 unchanged	
	SEC. 108. BAY DELTA ACCORD (a) Congressional direction regarding central valley project and California state water project operations.—The Central Valley Project and the State Water Project shall be operated pursuant to the water quality standards and operational constraints described in the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” dated December 15, 1994, and such operations shall proceed without regard to the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) or any other law pertaining to the operation of the	*(NEW Section)* Directs that CVP and SWP be operated according to the 1994 Bay Delta Accord, and “ such operations shall proceed without regard to the Endangered Species Act OR any other law. ” Conflicts with Section 402.

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	<p>Central Valley Project and the California State Water Project. Implementation of this section shall be in strict conformance with the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” dated December 15, 1994.</p> <p>(b) Application of laws to others.— Neither a Federal department nor the State of California, including any agency or board of the State of California, shall impose on any valid water right obtained pursuant to State law, including a pre-1914 appropriative right, any condition that restricts the exercise of that water right in order to conserve, enhance, recover or otherwise protect any species that is affected by operations of the Central Valley Project or California State Water Project. Nor shall the State of California, including any agency or board of the State of California, restrict the exercise of any valid water right obtained pursuant to State law, including a pre-1914 appropriative right, in order to protect, enhance, or restore under the Public Trust Doctrine any public trust value. Implementation of the “Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government” dated December 15, 1994, shall be in strict compliance with the water rights priority system and statutory protections for areas of origin.</p> <p>(c) Costs.—No cost associated with the implementation of this section shall be imposed directly or indirectly on any Central Valley Project contractor, or any other person or entity, unless such costs are incurred on a voluntary basis.</p> <p>(d) Native species protection.— California law is preempted with respect to any restriction on the quantity or size of nonnative fish taken or harvested that</p>	<p>Language put in place to protect non CVP water deliveries, preempts State Constitution.</p> <p>Taxpayer pays cost of mitigation</p>

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	preys upon one or more native fish species that occupy the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento-San Joaquin Rivers Delta.	Removes State size limit on bass catch
	SEC. 109. NATURAL AND ARTIFICIALLY SPAWNED SPECIES After the date of the enactment of this title, and regardless of the date of listing, the Secretaries of the Interior and Commerce shall not distinguish between natural-spawned and hatchery-spawned or otherwise artificially propagated strains of a species in making any determination under the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.) that relates to any anadromous fish species present in the Sacramento and San Joaquin Rivers or their tributaries and ascend those rivers and their tributaries to reproduce after maturing in San Francisco Bay or the Pacific Ocean.	Mandates that hatchery fish be counted as part of the stock.
	SEC. 110. AUTHORIZED SERVICE AREA The authorized service area of the Central Valley Project shall include the area within the boundaries of the Kettleman City Community Services District, California, as those boundaries exist on the date of the enactment of this title. Notwithstanding the provisions of the Act of October 30, 1992 (Public Law 102-575, 106 Stat. 4600 et seq.), upon enactment of this title, the Secretary is authorized and directed to enter into a long-term contract in accordance with the reclamation laws with the Kettleman City Community Services District, California, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use. The Secretary may temporarily reduce	Expands CVP service area when there are already problems in meeting CVP contractual obligations. Affects in-Delta diverters.

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	<p>deliveries of the quantity of water made available pursuant to up to 25 percent of such total whenever reductions due to hydrologic circumstances are imposed upon agricultural deliveries of Central Valley Project water. If any additional infrastructure or related-costs are needed to implement this section, such costs shall be the responsibility of the non-Federal entity.</p>	
	<p>SEC. 111. REGULATORY STREAMLINING</p> <p>(a) Applicability of certain laws.—Filing of a Notice of Determination or a Notice of Exemption for any project, including the issuance of a permit under State law, related to any project of the CVP or the delivery of water there from in accordance with the California Environmental Quality Act shall be deemed to meet the requirements of section 102(2)(C) of the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)) for that project or permit.</p> <p>(b) Continuation of project.—The Bureau of Reclamation shall not be required to cease or modify any major Federal action or other activity related to any project of the CVP or the delivery of water there from pending completion of judicial review of any determination made under the National Environmental Protection Act of 1969 (42 U.S.C. 4332(2)(C)).</p> <p>(c) Project defined.—For the purposes of this section:</p> <p>(1) CVP.—The term “CVP” means the Central Valley Project.</p> <p>(2) PROJECT.—The term “project”—</p> <p>(A) means an activity that—</p> <p>(i) is undertaken by a public agency, funded by a public agency, or that requires an issuance of a permit by a</p>	<p>Simply filing a notice of exemption shall satisfy any requirement to comply with NEPA.</p> <p>Allows a project to bypass NEPA if it adheres to requirements of CEQA.</p>

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	<p>public agency;</p> <p>(ii) has a potential to result in physical change to the environment; and</p> <p>(iii) may be subject to several discretionary approvals by governmental agencies;</p> <p>(B) may include construction activities, clearing or grading of land, improvements to existing structures, and activities or equipment involving the issuance of a permit; or</p> <p>(C) as defined under the California Environmental Quality Act in section 21065 of the California Public Resource Code.</p>	